

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 EDC 04390

<p>Student, along with parents, Mother and Father of Student Petitioner,</p> <p>v.</p> <p>Guilford County Board of Education Respondent.</p>	<p><b>FINAL EXPEDITED DECISION</b> <b>Redacted for Publication</b></p>
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**THIS MATTER** was heard before the undersigned Administrative Law Judge on the following dates: December 11-13, and 16 at the High Point Courthouse in High Point, North Carolina, and virtually via WebEx on December 17, 2024.

After considering a hearing on the merits held on the above-mentioned dates, arguments from counsel for all parties, all documents in support of or in opposition to the parties' motions, all documents in the record including the Proposed Decisions as well as all stipulations and exhibits, and the testimony of all witnesses of all Parties, this Tribunal finds that Respondent's manifestation determination review ("MDR") was procedurally and substantively flawed and Student's conduct was a manifestation of the combination of his disabilities and caused by Respondent's failure to implement his Individualized Education Program ("IEP"), and judgment is Ordered for Petitioners.

### **INTRODUCTION**

An inherent conflict of interest arises when the investigator is also the final decisionmaker for an MDR team. This arrangement risks the person becoming invested in the results, outcome, and correctness of the investigation, losing their objectivity. As evidenced throughout both the documentary and testimonial evidence presented over the course of the hearing in this matter, Principal fell prey to this conflict of interest. She led the investigation into Student's conduct and determined he had violated GCS's policies despite advice and evidence to the contrary.

The results of the MDR on September 26, 2024 are the culmination of a lack of investigative and disciplinary training, intersecting with GCS's violations of Student's right to a FAPE. GCS violated state law in admittedly denying Student's due process rights throughout the discipline process. And here, the failures in its investigations led to the improper decision that Student's behavior was not a manifestation of his disabilities. At multiple steps in the underlying "investigation," Student's disabilities were held against him as supposed corroborating evidence – a term which GCS staff showed they did not understand. This incident, even if it occurred which Student disputes, would have to be a manifestation of Student's disabilities. Student's family was

never allowed to question the conduct and told at the MDR meeting “this is not the place.” With the fallout from the unfettered actions of a principal wearing the multiple hats of lead investigator, imposer of disciplinary sanctions, head administrator of the school, and LEA representative for an IEP meeting, Student never had a chance for an open-minded and fair MDR meeting, where the outcome was not predetermined.

Principal determined Student was culpable of acts of terror and removed him from her school. Finding the alleged conduct in question was a manifestation of his disabilities at the MDR would have impeded the ultimate goal of removal– even when she had no other evidence. From the moment Principal heard the first report against Student she had determined that he was guilty of the violation, she defied the lack of evidence and the orders of her superiors in order to follow through with her pre-determined outcome — suspension of Student.

Principal’s determination that Student was culpable of the conduct – acts of terror – blinded her ability to be a neutral arbiter of the facts. Principal would not consider any section of the GCS code of conduct less than this. When multiple parties in the classroom in question, even one sitting at the same table, said they did not hear Student make the statements, Principal went back multiple times requesting again and again to these witnesses, seeking the response that she desired. Principal was told the investigation was closed, yet she continued investigating that afternoon, sure that more evidence would surface. Principal was told Student’s alleged conduct did not warrant a recommendation for long-term suspension, yet she recommended it anyway. Principal was told to send a ConnectEd message, yet she decided to ignore her supervisor’s direction because “she had a feeling.” Principal was told Student did not make a threat, yet she chose to ignore his denial and the absence of corroborating evidence and suspend him, recommend long term suspension, and conclude the alleged behavior was not a manifestation of his disabilities.

**APPEARANCES**

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**WITNESSES**

For Petitioners:       Expert Speech Pathologist Witness, Expert Witness  
                                  Expert Speech Education Witness, Expert Witness  
                                  Mother of Student  
                                  Father of Student

For Respondent:      Principal  
                                6th Grade Assistant Principal  
                                8th Grade Assistant Principal  
                                Secondary Exceptional Children Director  
                                Special Education One-On-One Reading Teacher  
                                School Psychologist  
                                Speech Language Pathologist  
                                Special Education Inclusion Teacher  
                                Science Teacher  
                                Respondent’s Expert Witness

**EXHIBITS**

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the “Bates stamped” numbers.

**Stipulated Exhibits (“Stip. Ex.”):** the Court admitted into evidence Stipulated Exhibits numbered 1, 2, 4, 8, 10, 13, 15-21 during Petitioners’ case-in-chief and Stipulated Exhibits numbered 9 and 22 during Respondent’s case-in-chief.

**Petitioners’ Exhibits (“Pet. Ex.”):** Petitioners’ Exhibits numbered 1, 2, 6, 7, 13, and 14 were submitted as evidence during Petitioners’ case-in-chief. Petitioners’ Exhibits numbered 3 and 4 were submitted as evidence during Respondent’s case-in-chief.

**Respondent’s Exhibits (“Resp’t’s Ex.”):** Respondent’s Exhibits numbered 3, 6, 93, 120, 128, 148, 154, 155, and 175 were submitted as evidence in support of Petitioners’ case-in-chief. Respondent’s Exhibits numbered 2, 4, 14, 89-92, 98, 100, 101, 109, 126, 127, 159-163, 172, and 188 were submitted as evidence in support of Respondent’s case-in-chief.

The aforementioned exhibits have been retained as part of the official record of this contested case.

**OTHER DOCUMENTS**

Transcript volumes 1 through 5 were received and have been retained in the official record of this case and cited as T vol \_\_\_\_, p \_\_\_\_:[line].

**ISSUES**

The Parties identified the issues for hearing as follows:

- 1. Whether the Manifestation Determination Review conducted on September 26, 2024, was procedurally appropriate?**

- a. Whether GCS failed to follow the procedures of the IDEA and State law related to the MDR and the disciplinary event?
- b. Whether GCS failed to consider all relevant and necessary information when conducting the MDR?
- c. Whether GCS impeded Student's parent's abilities to meaningfully participate in the September 26, 2024, MDR by predetermining Student's behavior was not a manifestation of his disability?

**2. Whether the Manifestation Determination Review conducted on September 26, 2024, was substantively appropriate?**

- a. Whether GCS failed to implement Student's IEP and failed to consider the causal relationship of such failure on Student's alleged conduct?
- b. Whether GCS's procedural violations significantly impeded Student's parents' right to meaningfully participate in the MDR and resulted in educational harm to Student and a denial of FAPE?
- c. Whether GCS incorrectly determined that Student's alleged conduct was not a manifestation of his disability?

**BURDEN OF PROOF**

Petitioners bear the burden of proof in North Carolina. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The standard of proof is by a preponderance of the evidence. N.C. Gen. Stat. §150B-34(a). Courts give educators “deference . . . based on the application of expertise and the exercise of judgment by school authorities.” *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 1001 (2017). “By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement,” and a “reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Id.* at 1001-1002.

**PROCEDURAL BACKGROUND**

1. Petitioners Student along with parents Mother of Student and Father of Student filed an Expedited Petition for Contested Case Hearing (“Petition”) on November 8, 2024. The Petition alleges violations of the Individuals with Disabilities Education Improvement Act (“IDEA”), over which the Office of Administrative Hearings has jurisdiction including a manifestation determination and the provision of a free appropriate public education (“FAPE”).
2. On November 12, 2024, Petitioners filed a Motion to Sequester Witnesses.
3. On November 18, 2024, Respondent filed a Motion to Dismiss the Petition and a Response to Petitioners Motion to Sequester Witnesses.
4. On November 19, 2024, the Undersigned issued a Notice of Hearing scheduling the Due

Process Hearing to start on December 11, 2024.

5. Petitioners responded to the Motion to Dismiss on November 22, 2024.
6. On November 25, 2024, the Tribunal issued an Order Denying Respondent's Motion to Dismiss and an Order Granting Petitioners Motion to Sequester Witnesses.
7. On December 4, 2024, the Parties participated in a Webex prehearing conference. Prior to the Webex conference, the Parties had submitted a Proposed Pre-Hearing Order via email to the Tribunal for consideration. On the initial draft of the Pre-Hearing Order, Respondent had listed twelve (12) anonymous witnesses, Students 1-4 and their parents. During the prehearing conference, Petitioners' Counsel requested the names of the anonymous witnesses to be able to examine them. Respondent's Counsel requested to have the option to withdraw the anonymous witnesses from his witness list.
8. On December 6, 2024, the Parties filed a Joint Motion to Permit Video Testimony or Telephonic Testimony during the hearing and a Proposed Order to Disclose Information.
9. Following discussions at the prehearing conference, the Parties filed a Final Proposed Pre-Hearing Order on December 6, 2024.
10. On December 9, 2024, the Tribunal issued an Order Permitting Video Testimony, an Order to Disclose Information, and the Order on the Final Prehearing Conference.
11. On December 10, 2024, the Tribunal issued an Administrative Order for parties to be allowed electronics in the courthouse.
12. The Parties presented evidence in the Due Process hearing from December 11-13, and 16-17, 2024.
13. On December 20, 2024, the parties filed their verifications and admitted hearing exhibits.

### **FINDINGS OF FACT**

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case including, but not limited to, verbal statements made at meetings as documented in the admitted exhibits, MDR documents, IEP documents, Prior Written Notices, correspondence, notes, evaluations, and all other competent and admissible evidence.

At the start of the hearing in this matter, the parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in a proposed Pre-Trial Order, which was approved and filed in the Office of Administrative Hearings on December 9, 2024. Stipulations are referenced as “Stip. 1,” “Stip. 2,” “Stip. 3,” etc. To the extent the Stipulations are not specifically stated herein, the Stipulations of Fact in the Order on the Pre-Trial Conference are incorporated fully herein by reference.

Based upon the stipulations of record and the preponderance of the admissible evidence, the Undersigned finds as follows:

1. Unless specifically contradicted herein, this Order incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation.
2. To the extent the Findings of Fact contain Conclusions of Law or the Conclusions of Law are Findings of Fact, they should be considered without regard to their given labels.

### **Credibility of Witnesses**

3. The Undersigned determined the credibility of the witnesses in this case based on any inconsistencies in the record and the witnesses’ testimony as well as the Undersigned’s observations of witnesses’ demeanor, voice inflection, tone, hesitation in responding to questions, facial features, body language, as well as any leading nature in the questioning by and the witnesses’ interactions with legal counsel. The transcript of the hearing cannot record these mannerisms of witnesses.
4. In this case, as most others, the Undersigned has not indicated in the record to legal counsel how he intended to rule on the credibility of the witnesses. Occasionally in hearings, the Undersigned has noted on the record when a witness significantly and routinely delays answering a question. There is no legal authority requiring that an administrative law judge, or any judge, make any credibility determinations on the record or advise legal counsel on how the administrative law judge intends to rule on the credibility of witnesses.
5. Even though this Final Decision may incorporate language from the Parties’ respective Proposed Final Decisions, credibility determinations are made independently from any proposals by the Parties. The Undersigned notes that legal counsel of both Parties also heard and/or observed each witness testify.

#### **A. Petitioners’ Witnesses**

Petitioners called two (2) expert witnesses, Expert Speech Education Witness and Expert Speech Pathologist Witness. Petitioners Father of Student and Mother of Student also testified.

#### *Expert Speech Education Witness (T vol 2)*

6. Expert Speech Education Witness was qualified and received by the Tribunal as an expert in the following areas:

Special Education  
Behavior

Evaluating and analyzing behavior as it relates to educational programming and discipline in the school setting

T vol 2 p 254:13-17 (T of Expert Speech Education Witness).

7. Expert Speech Education Witness earned a Bachelor of Science in Special Education from Winthrop University in May 2010. She earned a Master of Education in Special Education from Winthrop University in May 2012. Expert Speech Education Witness has been a Board Certified Behavior Analyst since May 2013 having completed the Applied Behavior Analysis Program at the University of West Florida. Pet. Ex. 14 p 84.
8. Since the Fall of 2013, Expert Speech Education Witness has taught multiple special education courses at Winthrop University. Pet. Ex. 14 p 84; T vol 2 p 244:12-17 (T of Expert Speech Education Witness).
9. Expert Speech Education Witness worked as a special education teacher in school districts in South Carolina. Pet. Ex. 14 pp 88-89.
10. Expert Speech Education Witness was appointed as an expert witness in a case involving Atlanta Public Schools and testified as an expert witness on behalf of another school system. Pet. Ex. 14 p 90; T vol 2 p 329:4-12 (T of Expert Speech Education Witness). Additionally, Expert Speech Education Witness has served as an expert witness in due process cases in North Carolina and Washington, D.C. since 2020. Pet. Ex. 14 p 90; T vol 2 p 328:17-329:3 (T of Expert Speech Education Witness).
11. Additionally, Expert Speech Education Witness has provided training to multiple school districts, is a member of the Council for Exceptional Children, and has presented at conferences related to students with disabilities in South Carolina. Pet. Ex. 14 p 89.
12. Expert Speech Education Witness's education and background qualified her to offer her expert opinions about the areas in which she was qualified as an expert by the Tribunal. Pet. Ex. 14. Expert Speech Education Witness had direct contact with Student prior to the hearing and reviewed Student's educational record and the trial exhibits as part of gathering information to form the basis of her opinions about whether Student's conduct was a manifestation of his disabilities. T vol 2 p 250:17-22 (T of Expert Speech Education Witness).
13. Expert Speech Education Witness explained she had training through the Cherokee County, South Carolina School District in MDR meetings where she has been since 2010, with the exception of a single school year, and she also takes trainings for her BCBA licensure which incorporate MDR meeting components as well. T vol 2 p 247:18-248:6 (T of Expert Speech Education Witness.)

14. Expert Speech Education Witness participates with school level administrators to investigate discipline incidents at the school level specifically “to help explain how the antecedent and the consequences surrounding the behavior will . . . result in the behavior from occurring.” T vol 2 p 248:7-14 (T of Expert Speech Education Witness). Expert Speech Education Witness has also been called in by school districts for threat assessments “particularly when it is a student who has deficits in language or processing delays . . . to help determine if the behavior is a significant threat or not.” T vol 2 p 248:14-20 (T of Expert Speech Education Witness).
15. The Undersigned found Expert Speech Education Witness credible and knowledgeable about Student’s unique circumstances, the implementation of his IEP, and whether the conduct in question was a manifestation of his disabilities. As Expert Speech Education Witness was a credible expert witness, her testimony will be given weight throughout the Final Decision. The Respondent did not offer any expert testimony on whether Student’s conduct was a manifestation of his disabilities or whether GCS’s failure to implement Student’s IEP caused the conduct in question. As Expert Speech Education Witness was the only expert qualified in these areas, her testimony will be given significant weight throughout the Final Decision

*Expert Speech Pathologist Witness (T vol 1)*

16. Expert Speech Pathologist Witness was qualified as an expert in the following areas:

- Pediatric speech pathology
- Speech-language deficits and disorders
- Pragmatic language
- Pediatric speech-language evaluations
- Narrative language disorders
- Speech/language special education services
- Development and progress monitoring of speech-language goals for IEPs

T vol 1 p 138:8-13 (T of Expert Speech Pathologist Witness).

17. Expert Speech Pathologist Witness earned a Bachelor of Arts degree from The George Washington University in 1991. In 1998, she earned her Master of Science in Speech Language Pathology from Massachusetts General Hospital Institute of Health Professions/Harvard. Pet. Ex. 13 p 81.
18. Expert Speech Pathologist Witness served as a speech-language pathologist in Brookline Public Schools before transitioning into private practice. Pet. Ex. 13 p 82; T vol 1 p 131:18-132:7 (T of Expert Speech Pathologist Witness). In 2007, she began working at Duke University Medical Center, Department of Speech Language Pathology and Audiology. Pet. Ex. 13 p 82. In 2015, Expert Speech Pathologist Witness transitioned back into private practice where she “[p]rovide[s] cognitive and communication therapy services to individuals of all ages in the setting of group and individual treatment sessions that target the following areas: social attention, perspective taking, emotional regulation, social



problem solving, narrative skills, and traditional speech pathology services, including intelligibility, articulation and fluency.” Pet. Ex. 13 p 81.

19. Expert Speech Pathologist Witness testified about her continuing education focusing on “narrative language, written language, and evidence based practice for treatment.” T vol 1 p 132:13-133:6 (T of Expert Speech Pathologist Witness). Additionally, Expert Speech Pathologist Witness holds licensures for speech language pathology in both North Carolina and Massachusetts as well as a Certificate of Clinical Competence from the American Speech Language Hearing Association. T vol 1 p 133:9-12 (T of Expert Speech Pathologist Witness). To attain her Certificate of Clinical Competence, Expert Speech Pathologist Witness had to complete a clinical fellowship year following the completion of her master’s degree in communication and sciences where she completed the requisite treatment hours and professional development. T vol 1 p 133:13-23 (T of Expert Speech Pathologist Witness).
20. Expert Speech Pathologist Witness’s education and background qualified her to offer her expert opinions about the areas in which she was qualified as an expert by the Tribunal. Pet. Ex. 13. Expert Speech Pathologist Witness was the only witness who testified who evaluated Student in 2024, an evaluation occurring the week preceding the conduct in question. Stip. Ex. 8 p 70; T vol 1 p 139:5-18 (T of Expert Speech Pathologist Witness the evaluation was conducted on September 11, 2024, and the written report completed on September 25, 2024). Expert Speech Pathologist Witness had direct contact with Student and his parents prior to the hearing and reviewed Student’s relevant educational records and the relevant trial exhibits as part of gathering information to form the basis of her opinions about whether Student’s conduct was a manifestation of his disabilities. T vol 1 p 135:11-17 (T of Expert Speech Pathologist Witness).
21. The Undersigned found Expert Speech Pathologist Witness credible and knowledgeable about Student’s unique language profile and needs, particularly at the discourse level, and whether the conduct in question was a manifestation of his language disabilities. As Expert Speech Pathologist Witness was a credible expert witness, her testimony will be given weight throughout the Final Decision. The Respondent did not offer any expert testimony on Student’s unique language profile and needs and whether Student’s conduct was a manifestation of his language disabilities. As Expert Speech Pathologist Witness was the only expert qualified in these areas, her testimony will be given significant weight throughout the Final Decision.

*Student’s Parents: Student’s mother (T vols 1, 5) and Student’s father (T vol 2)*

22. The Undersigned found Student’s parents to be credible even though, as Student’s parents they have an explicit and implicit bias for Student’s best interests. The Undersigned observed Mother of Student and Father of Student’s demeanors as they testified on direct examination and were cross examined by opposing counsel. The Undersigned observed Student’s parents to be forthright during the entirety of their testimony and found their testimony told the story of how their journey through the entirety of this disciplinary process with Student’s alleged conduct had affected Student and their family. As Student’s

parents were credible witnesses, their testimony will be given weight throughout the Final Decision.

23. The Undersigned found Mother of Student's testimony to be corroborated by Student's educational record and the testimony of other witnesses. *Compare* T vol 1 p 9:20-10:16 (T of Mother of Student about obtaining the initial evaluation) (language) *with* Pet. Ex. 6 (initial evaluation); *Compare* T vol 1 p 55:4-12 (T of Mother of Student there was no discussion of the current disciplinary event at the MDR) *with* T vol 4 p 648:4-8 (T of Secondary Exceptional Children Director "it was probably just read").
24. The Undersigned found Petitioner Father of Student's testimony to be corroborated by Student's educational record and the testimony of other witnesses. *Compare* T vol 2 p 226:8-15; 229:3-8 (T of Father of Student the team did not discuss the disciplinary event beyond reading the statement as written) *with* T vol 4 p 648:4-8 (T of Secondary Exceptional Children Director "it was probably just read").
25. Mother of Student and Father of Student's commitment and concern for their son was evident throughout the hearing, throughout this entire disciplinary process, and throughout their sincere testimony.

#### **B. Respondent's Witnesses**

Respondent called one (1) expert witness, Respondent's Expert Witness. Respondent also called Principal, 6th Grade Assistant Principal, 8th Grade Assistant Principal, Secondary Exceptional Children Director, Special Education One-On-One Reading Teacher, School Psychologist, School Speech Language Pathologist, Special Education Inclusion Teacher, and Science Teacher.

##### *Principal (T vol 3)*

26. Respondent called Principal as its first witness. Principal was Student's principal at Elementary School from the 2016-2017 school year until the 2019-2020 school year. Stip. 7. She was Student's principal at Middle School for the 2023-2024 school year and the portion of the 2024-2025 school year when Student attended Middle School. Stips. 12, 27.
27. The Undersigned did not find Principal's testimony to be credible. For example, she testified first on direct examination Principal Supervisor was new and did not understand Respondent's policies and the difference between long-term suspension and expulsion. *See* T vol 3 p 416:21-417:18 (T of Principal). However, on cross examination, Principal revealed she in fact had to inquire of Principal Supervisor "do you notify a parent if their child has been named directly?" T vol 3 p 454:15-25 (T of Principal). Further, Principal exaggerated her training. Specifically, Principal first testified she had to ask multiple questions about "what would be happening during an MDR meeting" and "what her role would be in the MDR meeting" as an LEA, T vol 3 p 433:13-18 (T of Principal), but, despite needing to "learn[] of the process for the MDR meeting," *Id.*, she then said she must have had some training in her 21 years as a principal. T vol 3 p 448:15-449:6 (T of Principal). Unlike "some training" on MDRs, Principal testified to receiving training three

(3) times per year on the threat assessment protocol. T vol 3 p 472:2-9 (T of Principal). Principal testified she had training on completing threat assessment documents; yet she completed the document to be turned into herself, the principal, because “if the principal is the one that completes it, then yes, there would be nobody above me in the school to turn it into.” T vol 3 pp 470:18-21, 471:9-11 (T of Principal). She could not recall if this had “specifically ever been brought up in training” despite testifying to her multiple trainings. T vol 3 p 471:16-17 (T of Principal). Principal also misconstrued important details in her testimony to the Undersigned such as why Student 3 was absent on Wednesday, September 18, 2024. *Compare* T vol 3 pp 405:23-25, 423:18-19 (T of Principal that Student 3 did not come to school because Student threatened him and Student’s threat was an interruption to Student 3’s school day) *with* T vol 3 pp 472:14-473:2 (T of Principal acknowledging Student 3 stayed home because he was sick with gastrointestinal issues).

28. Principal inserted herself into every area of this investigation – as the lead investigator and the LEA representative at the MDR – even though she was not the administrator assigned to handle discipline for eighth (8th) grade students, like Student. T vol 3 p 448:5-14 (T of Principal). Yet, she had never served as the LEA for an MDR meeting in the past and had to call and ask questions about “what to expect and how to proceed.” T vol 2 p 448:15-449:6 (T of Principal).
29. Respondent did not have Principal testify as to her education, experience, or training. Therefore, the Undersigned cannot and will not infer any specialized knowledge or training to Principal in addition to her role as a school principal. Specifically, Principal offered no testimony related to what training, if any, she had received in conducting disciplinary investigations, and as noted *supra*, her testimony regarding her training for conducting MDRs was not persuasive. As such, her testimony related to the disciplinary event and the conducting of the MDR are not entitled to deference and will be diminished and given less weight throughout this final decision.
30. The Undersigned found Principal’s testimony about the many missteps and ignoring of directives of her superiors to be elucidating in understanding her leading of the investigative process, the MDR meeting, and her assumption of numerous roles throughout the entire process. Her testimony was not supported by the evidence in the record. As such, her credibility is diminished, and her testimony will be given appropriate weight throughout this final decision.

*6th Grade Assistant Principal (T vol 3)*

31. Respondent called 6th Grade Assistant Principal as its second witness. 6th Grade Assistant Principal is the sixth (6th) grade assistant principal at Middle School. T vol 3 p 499:16-17 (T of 6th Grade Assistant Principal).
32. 6th Grade Assistant Principal had never served as Student’s assistant principal as he was in charge of different grades each year Student was attending Middle School. T vol 3 p 499:16-24 (T of 6th Grade Assistant Principal). 6th Grade Assistant Principal was the supervising administrator for a game on the afternoon of September 18, 2024, when the

district was first notified by Student 1's parent. T vol 3 p 500:11-18 (T of 6th Grade Assistant Principal).

33. 6th Grade Assistant Principal provided insight into his compliance with the training he received to follow the directives of superiors in GCS. *See* T vol 3 pp 503:1-7 (first contacted supervisor and then “follow[ed] directions as written”); p 506:18-25 (following “directions of our GCS policy” and “follow the directives of our bosses”). This testimony contrasted with Principal's testimony regarding ignoring directives from her supervisors.
34. 6th Grade Assistant Principal appeared sincere in his testimony, though he had a limited role in the events surrounding the hearing. He did not attend the MDR meeting at issue. T vol 3 p 514: 19-21 (T of 6th Grade Assistant Principal). Respondent did not have 6th Grade Assistant Principal testify as to his education, experience, or training specifically related to the disciplinary investigative process for which he was called to testify. Therefore, the Undersigned cannot and will not infer any specialized knowledge or training to 6th Grade Assistant Principal in addition to his role as a middle school assistant principal. The Undersigned will give his testimony the appropriate weight and deference.

*8th Grade Assistant Principal (T vol 4)*

35. Respondent called 8th Grade Assistant Principal as its third witness. 8th Grade Assistant Principal is the eighth (8th) grade assistant principal at Middle School. T vol 4 p 528:3-4; 555:10-11 (T of 8th Grade Assistant Principal ).
36. As Student was in eighth (8th) grade at the time of the conduct in question, 8th Grade Assistant Principal could have attended his MDR meeting as the LEA representative; however, she did not attend his MDR meeting at all. T vol 4 p 555:12-23 (T of 8th Grade Assistant Principal ). 8th Grade Assistant Principal participated in the investigation conducting the threat assessment of Student 1. T vol 4 p 532:1-17 (T of 8th Grade Assistant Principal ). She was also present for the multiple times Student 2 was questioned after he repeatedly stated he did not hear Student make any threatening statements. T vol 4 p 535:16-21; p 540:17-541:5; 550:4-15 (T of 8th Grade Assistant Principal about the three separate interviews of Student 2 where he did not hear threats).
37. The Undersigned finds 8th Grade Assistant Principal is a kind and concerned middle school assistant principal. However, the Undersigned has concerns about 8<sup>th</sup> Grade Assistant Principal's veracity. On her direct examination, 8th Grade Assistant Principal testified her handwritten notes, Respondent's Exhibit 126, were taken “pretty much in real-time” and they were in chronological order. T vol 4 p 529:3-8 (T of 8th Grade Assistant Principal ). However, when pressed on cross examination, 8th Grade Assistant Principal testified she was not present for a conversation she took notes about (T vol 4 p 560:17-561:2), and she went back and added things to her notes (T vol 4 p 563:2-19). Further, 8<sup>th</sup> Grade Assistant Principal's testimony surrounding the interactions with the SRO on the evening of September 18, 2024, are contradicted by both the stipulated facts and 6th Grade Assistant Principal's testimony. *Compare* T vol 4 p 561:17-562:6 (T of 8th Grade Assistant Principal “We don't direct SROs to do that”) *with* Stip. 33 (“The SRO reported back to school

administration . . . ‘that the information had been delivered successfully,’ which Respondent had requested he deliver.”) and T vol 3 p 512:5-8 (T of 6th Grade Assistant Principal “It is not uncommon to ask an SRO to deliver specific information to families.”). Therefore, the Undersigned will give her testimony, and her notes diminished weight throughout this decision.

*Science Teacher (T vol 4)*

38. Respondent called Science Teacher as its fourth witness. Science Teacher was Student’s science teacher at Middle School. T vol 4 p 572:4-5 (T of Science Teacher).
39. Science Teacher explained Student’s assignments were not modified in his class. “Everybody is working on the same assignments.” T vol 4 p 579:17-20 (T of Science Teacher).
40. The alleged conduct in question was said to have occurred in Science Teacher’s classroom, yet Science Teacher did not hear any concerning conversations (Stip. 40), despite his walking around the room among the many tables. T vol 4 p 576:9-21, p 578:7-16, p 582:6-9 (T of Science Teacher). He attended the MDR meeting as the general education teacher (Stip. 66) and did not receive any information other than Student’s IEP prior to the meeting. T vol 4 p 585:20-586:1 (T of Science Teacher).
41. The Undersigned finds Science Teacher credible and, as such, will give his testimony the appropriate weight throughout this Final Decision.

*School Psychologist(T vol 4)*

42. Respondent called School Psychologist as its fifth witness. School Psychologist serves as the school psychologist for Middle School. T vol 4 p 587:12-14 (T of School Psychologist). School Psychologist testified she spoke with multiple other members of Student’s MDR team prior to the meeting but had not made a decision as to whether Student’s conduct was a manifestation of his disabilities prior to the MDR meeting. T vol 4 p 590:24-591:23 (T of School Psychologist she spoke with Principal, School Counselor, and EC School Support Lead); T vol 4 p 620:10-20 (T of School Psychologist she had “a good idea going in” but did not “make [her] decision until [she] heard from the whole team”). However, School Psychologist and Respondent’s Expert Witness both testified to their conversation prior to the MDR, where Respondent’s Expert Witness gave “advice on how to report that opinion outward so it would be understood by the team.” T vol 4 p 775:12-25 (T of Respondent’s Expert Witness).
43. Furthermore, School Psychologist testified she had not reviewed the witness statements but relied on the summaries of others in making her determination the statements showed evidence of planning. *Compare* T vol 4 p 624:5-625:1 (T of School Psychologist she did not review the statements herself) with Stip. Ex. 21 p 174 (“School Psychologist shared that she sees evidence of planning in this incident as evidence by the witness statement.”).

44. Respondent did not have School Psychologist share any of her education, training, or continuing education as it relates to MDR meetings, which would have been helpful to the Undersigned in assessing her credibility and knowledge base for her testimony. As no evidence was offered, the Undersigned cannot and will not infer any specialized knowledge or training to School Psychologist beyond her experience as a school psychologist. Further, the Undersigned is troubled School Psychologist based her opinions in the MDR meeting on the statements of others summarizing written student statements rather than directly from the written sources and her efforts to present her opinion (formed prior to the MDR meeting) at the MDR. As such, the Undersigned will give her testimony diminished weight throughout this Final Decision.

*Secondary Exceptional Children Director (T vol 4)*

45. Respondent called Secondary Exceptional Children Director as its sixth witness. Secondary Exceptional Children Director is Respondent's Secondary Exceptional Children Director. T vol 4 p 643:5-6 (T of Secondary Exceptional Children Director).
46. Secondary Exceptional Children Director completed the Prior Written Notice for Student's MDR conducted on September 26, 2024. T vol 4 p 643:18-21 (T of Secondary Exceptional Children Director). She also helped Special Education Inclusion Teacher "with preparation for the paperwork, just making sure things were typed in ECATS . . ." prior to the MDR as Special Education Inclusion Teacher "is a brand new EC teacher." T vol 4 p 643:23-644:2 (T of Secondary Exceptional Children Director).
47. Secondary Exceptional Children Director appeared forthcoming in her testimony regarding her role of completing the Prior Written Notice during the September 26, 2024, MDR meeting and assisting Special Education Inclusion Teacher with completing the MDR paperwork prior to the meeting. The Undersigned finds Secondary Exceptional Children Director credible for this limited testimony.

*Respondent's Expert Witness (T vol 4)*

48. Respondent called Respondent's Expert Witness as its seventh witness. Respondent's Expert Witness is one of the lead school psychology coordinators with GCS. T vol 4 p 694:1-2 (T of Respondent's Expert Witness). In that role, she serves elementary schools "providing evaluations, consultation, direct services, including counseling and therapy to students, as well as analyzing data, informing behavior plans and eligibility for special education decisions." T vol 4 p 694:3-9 (T of Respondent's Expert Witness). She offered no testimony about her work with middle school students.
49. Respondent's Expert Witness was qualified as an expert in the following areas:

Evaluating students with disabilities; and  
Interpreting evaluations of students with disabilities for the purpose of making recommendations regarding educational programming

T vol 4 p 718:4-8 (T of Respondent's Expert Witness)

50. Notably, Respondent's Expert Witness did not evaluate Student or make any recommendations regarding his educational programming. Despite being qualified in these two (2) areas of expertise, Respondent's Expert Witness did not provide any information to the Tribunal about whether Student's educational programming was appropriate or what it should or should not have been.
51. The Tribunal questioned Respondent's Expert Witness's ability to offer unbiased expert opinions in any area as they overstated their qualifications as an expert witness. By way of example and not limitation, without testimony or a curriculum vita about their coursework, or even the specific names of their degrees, Respondent's Expert Witness agreed they were qualified as an expert in the broad area of "behavior" with "over a hundred graduate credit hours" of coursework. T vol 700:5-9 (T of Respondent's Expert Witness). Yet, when asked questions about their qualifications, Respondent's Expert Witness testified "It's a minimum of three courses . . . where behavior would be in the name of the course." T vol 4 p 714:13-715:2 (T of Respondent's Expert Witness). Respondent's Expert Witness formulated numerous opinions outside the scope of their expertise. *See e.g.* T vol 4 p 719:4-6 (T of Respondent's Expert Witness they had an opinion "as to whether GCS established that Student did the conduct in question); T vol 4 p 719:22-24 (T of Respondent's Expert Witness they had an opinion "as to whether Student's conduct was caused by his disabilities"); T vol 4 p 720:8-11 (T of Respondent's Expert Witness they had an opinion "as to whether Student's conduct was substantially related to his disabilities"); T vol 4 p 720:20-22 (T of Respondent's Expert Witness they had an opinion "as to [the] causal relationship between his IEP and his behaviors"); T vol 4 p 721:6-9 (T of Respondent's Expert Witness they had an opinion "regarding whether GCS considered all relevant information when conducting the MDR").
52. The Tribunal questioned Respondent's Expert Witness's formulation of their expert opinions. Respondent's Expert Witness only spoke with Special Education One-On-One Reading Teacher in formulating their expert opinions related to Student and his conduct in question. T vol 4 p 739:10-13 (T of Respondent's Expert Witness). Respondent's Expert Witness never spoke with or asked to speak with Student or his parents. T vol 4 p 774:9-18 (T of Respondent's Expert Witness).
53. As Respondent's Expert Witness continued overstating their expertise, they noted they were "very familiar" with the components of the psychological evaluations administered to Student. However, "[they] updated [themselves] on the specific items on the BRIEF because [they hadn't] given that yet this year." T vol 4 p 781:19-25 (T of Respondent's Expert Witness). The Undersigned notes Respondent's Expert Witness gave this testimony on December 16, 2024.
54. Respondent's Expert Witness testified they had eleven years of experience but had only been licensed as a psychologist in North Carolina for 3.5 years. *Compare* T vol 4 p 695:10-19 (T of Respondent's Expert Witness "extensive expertise over 11 years in providing psychoeducational assessments . . .") *with* T vol 4 p 706:9-12 (T of Respondent's Expert

Witness “held a state license as a psychologist for the past three and a half years”). Only when pressed on cross examination did they admit the years prior to working in GCS were “under supervision in other school districts.” T vol 4 p 780:18-25 (T of Respondent’s Expert Witness).

55. Respondent’s Expert Witness testified they did have a curriculum vitae (“CV”) and did not provide it because they “[were] not asked to provide it.” T vol 4 p 713:12-16 (T of Respondent’s Expert Witness). The Undersigned is perplexed by the attempt to tender an expert witness without providing a CV to the Tribunal and notes it could have provided valuable information for their consideration as an expert witness.

*Special Education One-On-One Reading Teacher (T vol 4)*

56. Respondent called Special Education One-On-One Reading Teacher as its eighth witness. Special Education One-On-One Reading Teacher is a “professional learning and coaching teacher lead” in GCS and provides Wilson Reading instruction to Student. T vol 4 p 786:15-18.
57. Special Education One-On-One Reading Teacher explained, “Wilson Reading is a structured literacy program. It is accredited by the International Dyslexia Association, and it is created to work with students with severe reading difficulty, specifically dyslexia.” T vol 4 p 786:20-23 (T of Special Education One-On-One Reading Teacher). She explained Student was doing well, “progressing exceptionally well,” in his Wilson Reading instruction at the start of eighth (8th) grade. T vol 4 p 787:2-7 (T of Special Education One-On-One Reading Teacher).
58. Special Education One-On-One Reading Teacher explained she met with Student’s teachers at the start of his eighth (8th) grade year to walk them through his “IEP at a glance” (Stip. Ex. 13) to “ensure they understood what the expectation was in the class sense.” T vol 4 p 788:8-14 (T of Special Education One-On-One Reading Teacher). She explained Student’s accommodation that Student “will receive modified assignments” actually meant the teachers had the discretion to modify based on “time and content.” T vol 4 p 790:4-25 (T of Special Education One-On-One Reading Teacher). Unfortunately, her misunderstanding of Student’s accommodations permeated his teachers’ understanding of what Student required.
59. Special Education One-On-One Reading Teacher was present during the administration of the threat assessment. Stip. 35. Student’s parents requested Special Education One-On-One Reading Teacher be present for Student’s meeting at the school on the morning of September 19, 2024. *See* T vol 4 p 795:22-796:8 (T of Special Education One-On-One Reading Teacher). The Undersigned notes Principal did not request Special Education One-On-One Reading Teacher prepare a written statement about her involvement with the threat assessment and did not request Special Education One-On-One Reading Teacher attend the MDR meeting for Student. T vol 4 p 802:9-20 (T of Special Education One-On-One Reading Teacher). Special Education One-On-One Reading Teacher did not attend the MDR meeting for Student. Stip. 66.



60. The Undersigned finds Special Education One-On-One Reading Teacher is a kind and dedicated teacher and will give her testimony appropriate deference as it relates to the provision of one- on-one Wilson reading services to Student.

*Special Education Inclusion Teacher (T vol 4)*

61. Respondent called Special Education Inclusion Teacher as its ninth witness. Special Education Inclusion Teacher is Student’s “case manager” at Middle School. T vol 4 p 813:2-3 (T of Special Education Inclusion Teacher).
62. Special Education Inclusion Teacher did not testify to any specialized training or education she had received. As Student’s case manager, she attended the MDR meeting. T vol 4 p 818:13-15 (T of Special Education Inclusion Teacher). Prior to the MDR, Special Education Inclusion Teacher had been provided the student testimonies or statements, and Principal talked with her and shared the “testimony to give [her] a little more detail about what had happened.” T vol 4 p 819:14-19 (T of Special Education Inclusion Teacher).
63. While Special Education Inclusion Teacher attended the MDR meeting at issue, she provided no direct testimony on the meeting and very little testimony through cross examination about the meeting. The Undersigned will give her testimony appropriate deference as it relates to the provision of case management services to Student.

*School Speech Language Pathologist (T vol 4)*

64. Respondent called School Speech Language Pathologist as its tenth and final witness. School Speech Language Pathologist is a Speech Language Pathologist at GCS. T vol 4 p 823:4-5 (T of School Speech Language Pathologist).
65. School Speech Language Pathologist testified she completed a speech language screening of Student in August 2023 and then completed a speech language evaluation of Student in September 2023 but never provided speech therapy services to Student. T vol 4 p 823:5-8 (T of School Speech Language Pathologist about assessment timeframe) and T vol 4 p 846:22-25 (T of School Speech Language Pathologist that she never provided services). School Speech Language Pathologist was asked to expound upon circumstances where a child may qualify for speech services under a medical model but not necessarily an educational model, and she was unable to provide examples. T vol 4 p 825:17-23 (T of School Speech Language Pathologist).
66. School Speech Language Pathologist testified once she was able to identify preferred topics and areas of interest, she was then able to get Student talking to her in “short conversations.” T vol 4 p 852:21-24 (T of School Speech Language Pathologist). The Undersigned found School Speech Language Pathologist to be a kind, well-intentioned speech pathologist. However, she did not attend the MDR meeting at issue, and her limited testimony was of little value to the Undersigned.

### Disciplinary Change of Placement

67. Although Respondent's counsel argued Student was not suspended for ten (10) days and presumably was not entitled to an MDR, the Disciplinary Change in Placement and other evidence in the record did not support this argument. *See, e.g.*, Stip. Ex. 1 p 1 ("Today, school personnel determined that the student listed above is subject to a disciplinary removal that will constitute a change in placement"; Stip. Ex. 2 p 4 ("As a result your student is suspended for 10 days, starting on Monday, September 23, 2024, with a recommendation to the Superintendent for long term suspension for the remainder of the school year"); Stip. Ex. 4 p 7 (notifying Father of Student and Mother of Student of the "Actions Taken" to include a "10-Day Out-of-School Suspension and Informal Conference" with ten (10) dates from September 23, 2024, through October 4, 2024, indicating Student was suspended for "Full Day" on each date); Resp't's Ex. 6 p 128 (printed on October 7, 2024, and noting Student was suspended from September 23, 2024, through October 4, 2024); Resp't's Ex. 155 (decision of the Hearing Officer dated October 8, 2024).
68. On September 18, 2024, the SRO informed Student's parents that Student needed "to stay home the next morning until the school notified them of a time to bring him in and meet with administration." Stip. Ex. 4 p 15. Principal originally scheduled the meeting for 2:00 p.m. *Id.* Although Principal testified Student was not suspended at that point, he was not allowed to attend school prior to the meeting. T vol 3 p 393:12-13 (T of Principal).
69. The September 20, 2024, letter informed Father of Student and Mother of Student that Student "must remain off the campus of Middle School and all Guilford County Schools ("GCS") property and cannot attend any event sponsored by any Guilford County School until this matter is resolved." Stip. Ex. 2 p 4.
70. The letter indicated the hearing would be scheduled for October 1, 2024. *Id.* Principal copied Hearing Officer, to whom she had been communicating throughout the investigation, the Superintendent, and the Principal of SCALE, the alternative school to which Student was assigned. Stip. Ex. 2 p 5.
71. Special Education One-On-One Reading Teacher was unable to serve Student at another location once he was suspended from Middle School and before he enrolled at SCALE because Student "was not allowed on Guilford County Schools property, and the location we had chosen was a Guilford County Schools facility." T vol 4 p 797:10-16 (T of Special Education One-On-One Reading Teacher).
72. Due to Principal communicating with the GCS Hearing Officer throughout the investigation, a different hearing officer had to be appointed, and the hearing was rescheduled to October 7, 2024.
73. Hearing Officer did not issue her decision until October 8, 2024. Resp't's Ex. 155.

74. Hearing Officer ultimately did not uphold Principal's recommendation for long-term suspension. Instead she modified the disciplinary consequence to the suspension and reassigned Student to SCALE for the remainder of the fall semester. Resp't's Ex. 155 p 1028.
75. The Hearing Officer's letter informed Student's parents: "You will be contacted by the SCALE program with details of the SCALE program and his first day, and/or you may contact the SCALE counselor." Resp't's Ex. 155 p 1031. The letter also notified Mother of Student and Father of Student of the appeal process and informed them Student "may attend SCALE while an appeal to the Board is pending." Student was not required to attend, but he was not permitted on any GCS property other than the SCALE facility. Resp't's Ex. 155 pp 1031-32.
76. Following the receipt of the letter assigning Student to SCALE and indicating someone would reach out to the family, Mother of Student called the school that Friday when she had not heard anything. The principal explained to Mother of Student. he did not have information on Student yet and they would schedule the intake conference on October 24, 2024. T vol 1 p 101:15-102:20 (T of Mother of Student).
77. Mother of Student's testimony is corroborated by the October 16, 2024, email exchange with the SCALE principal who confirmed Mother of Student contacted him on Friday, October 11, 2024, and they scheduled a meeting for October 23, 2024. SCALE principal then contacted Mother of Student to invite Student to enroll as early as October 16, 2024. Resp't's Ex. 159.
78. Therefore, Student remained unable to attend any GCS school through at least October 8, 2024, which, according to the calendar, Stip. Ex. 10, and Student's recorded absences was more than ten (10) days. Resp't's Ex. 6 p 128.
79. A disciplinary change of placement differs from a change of placement under the IDEA as "the student is removed from the current general education classroom or specialty education classroom that they're receiving instruction and they are moved to like, in this case, an alternative school. . . ." T vol 2 p 348:8-11 (T of Expert Speech Education Witness).
80. Principal testified Student only served nine (9) days of suspension; however, this is contrary to the documentary evidence in the record. *Compare* T vol 3 p 426:6-8 (T of Principal) *with* paragraph 67 *Supra*. Student was not allowed to come to school from September 23, 2024, through October 4, 2024. T vol 3 p 450:9 (T of Principal).
81. Principal contended Student was not suspended on September 19, 2024, when she told Student "not come to school the next day until he could come in with his parents" "in order to maintain safety of the school." T vol 3 p 426:19-22 (T of Principal). Student was not allowed to come to school prior to the meeting on September 19, 2024, which was originally scheduled for 2:00 p.m. T vol 3 p 450:14-22 (T of Principal). North Carolina makes clear that a suspension is not the only "removal" that is considered for determining

when there is a disciplinary change in placement. When a child is not permitted to be at school for disciplinary reasons it is a removal.

### **Jurisdictional, Party, and Legal Findings**

82. This Tribunal has personal jurisdiction over Petitioners, Student, along with parents, Mother of Student and Father of Student, and Respondent, Guilford County Board of Education. Stip. 1.
83. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate public education (“FAPE”) pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400 *et seq.* (2004) and implementing regulations, 34 C.F.R. Part 300; specifically 20 U.S.C. § 1415 and N.C. Gen. Stat. § 115C-109.6(a) control the issues to be reviewed. Stip. 2.
84. The IDEA is the federal statute governing education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Part 300. Stip. 3.
85. Respondent, Guilford County Board of Education, is a local educational agency (“LEA”) as defined by the IDEA and receiving monies pursuant to the IDEA. *See* 20 U.S.C. § 1401 and N.C. Gen. Stat. § 115C-5(7a). Stip. 4.
86. The controlling state law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9. Stip. 5.

### **Relevant Facts**

87. The student’s name is Student (Student). He is thirteen (13) years old and was born on February 16, 2011. Student’s mother is Mother of Student, and his father is Father of Student. Student resides with his parents. Stip. 6.
88. Principal was Student’s principal at Elementary School from when Student began attending Elementary School in the 2016-2017 school year through the end of her tenure in the 2019-2020 school year. Stip. 7.
89. Student’s final year at Elementary School was the 2021-2022 school year. Stip. 8.
90. Student’s parents got him evaluated because of concerns his first grade teacher had about the possibility of his having a learning difference. T vol 1 p 9:20-10:16 (T of Mother of Student); Pet. Ex. 6. Student’s parents secured a private psychoeducational evaluation of Student in April 2018 by Licensed Psychological Associate, which the school district used, *inter alia*, to find him eligible for special education services under the category Other Health Impairment (“OHI”), with a secondary category of Specific Learning Disability (“SLD”). Stip. 9; Pet. Ex. 6.

*July 17, 2023, Psychoeducational Evaluation (Pet. Ex. 7)*

91. On July 17, 2023, Licensed Psychological Associate and Licensed Psychological Associate conducted a psychoeducational evaluation of Student. Licensed Psychological Associate and Licensed Psychological Associate had previously evaluated Student in April 2018. Stip. 10.

***2023-2024 School Year***  
*Seventh Grade*

92. Student began seventh grade at Middle School in the GCS on or about August 28, 2023. Stip. 11. Principal was serving as the Principal at Middle School at that time. Stip. 12.

*August 25, 2023, Reevaluation Meeting*

93. On August 25, 2023, Student’s IEP Team held a reevaluation meeting at Student’s parent’s request after Student’s parent provided the July 2023 evaluation conducted by Licensed Psychological Associate to GCS. Stip. 13. The IEP Team agreed Student remained eligible for special education services. The school-based team agreed to evaluate Student and ordered evaluations which included progress monitoring, a review of existing data, an observation across settings, a speech-language screening, and a speech-language/communication evaluation. Stip. 14.

*January 30, 2024, Contested Case Petition*

94. Student’s parents filed a Petition for a Contested Case Hearing (“Due Process Petition”) on January 30, 2024, claiming GCS failed to provide appropriate services for multiple years. Stip. 22.

*March 5, 2024, Settlement Agreement*

95. The Parties reached a settlement on March 5, 2024, to fully resolve all claims that were, or could have been brought, under the IDEA and the North Carolina special education statutes through the date of the Agreement. Stip. 26; Stip. Ex. 22.

***2024-2025 School Year***  
*Eighth Grade*

96. Student continued to attend Middle School for the start of eighth (8th) grade. Principal remained the principal. Stip. 27.
97. Mother of Student emailed Special Education One-On-One Reading Teacher at the start of the 2024-2024 school year explaining she had been having health issues and a “mountain of appointments.” Mother of Student had a stroke earlier in the year and had put her behind. T vol 1 p 24:9-20 (T of Mother of Student); Pet. Ex. 2.

98. Mother of Student was the only witness to describe Student. He is thirteen years old and “small for his age.” At his October physical, he was 4’11” and 65 pounds. T vol 1 p 7:24-25 (T of Mother of Student). Mother of Student explained how Student had changed from the year prior:

He still lacks executive functioning. So -- but, you know, last year I was physically getting him dressed and bringing him down the stairs, and brush your teeth, brush your teeth, brush your teeth or, you know, comb your hair, you've got to eat, and then we've got to get in the car and saying it five times. You know, this year he's -- we still have to lay his clothes out for him, but he's able to get himself dressed and come down the stairs by himself. And so, that's what I meant by different. You know, he -- he liked going to Middle School and -- and, you know, he liked meeting with Special Education One-On-One Reading Teacher. That was his first, you know, first class of the day was special Ed, one-on-one with Special Education One-On-One Reading Teacher. And, you know, he would get right in the car, and -- and off we would go.

T vol 1 p 25:6-17 (T of Mother of Student)

99. The Undersigned notes during the time Mother of Student was getting Student dressed for school and bringing him down the stairs, he was a seventh-grade student.

Wednesday, September 11, 2024: Independent Speech Evaluation

100. On September 11, 2024, Expert Speech Pathologist Witness completed an independent speech-language evaluation of Student Stip. 28.
101. The Undersigned notes the proximity of Expert Speech Pathologist Witness’s evaluation to the alleged conduct. While the prior evaluations from 2018 (Pet. Ex. 6) and 2023 (Pet. Ex. 7) were useful in knowing Student’s diagnoses, Expert Speech Pathologist Witness completed her in person portion of the evaluation of Student only six (6) days prior to the alleged conduct. *Compare* T vol 1 p 139:10-15 (T of Expert Speech Pathologist Witness she met with Student on September 11, 2024) *with* Stip. Ex. 4 p 7 (allegation of conduct on September 17, 2024).

**Relevant Facts Regarding the Alleged Conduct and Underlying Investigation**

Tuesday, September 17, 2024

102. The first statement Student is alleged to have made was reported to occur during Science Teacher’s class where Student purportedly threatened Student 3. Stip. Ex. 4 p 8-9.
103. The Undersigned notes Student 3 did not report the threat to Science Teacher during the science class period on September 17, 2024, and GCS presented no evidence of *any* report

Student 3 made on the day the statement allegedly occurred—no report at school, to a parent on the way home from school, or to any family member.

Wednesday, September 18, 2024

104. Student 3 did not attend school on Wednesday, September 18, 2024, due to gastrointestinal issues. T vol 4 p 568:23-569:5 (T of 8th Grade Assistant Principal ).
105. Late Wednesday afternoon, September 18, 2024, Student 1 reported to his parent that Student threatened to shoot another student and shoot up the school using Student’s father’s gun. Student 1’s parent notified Respondent at approximately 5:00 p.m. Stip. 29; Stip. Ex. 4 p 15.
106. Student 1 reported Student made this statement during science class. Stip. 30; Stip. Ex. 4 p 22. The Undersigned notes Student 1 did not report this statement to Science Teacher during the school day or to anyone else at school that day.
107. 6th Grade Assistant Principal participated in the gathering of additional information following the initial report GCS received from the parent. T vol 3 p 503:16-22 (T of 6th Grade Assistant Principal about report from mother and then his follow up call to father of Student 1). As part of the gathering of additional information, Student 1’s father connected 6th Grade Assistant Principal to Student 1 so he could directly relay the information. T vol 3 p 504:10-17 (T of 6th Grade Assistant Principal).
108. According to 6th Grade Assistant Principal’s Statement written on September 23, 2024, Student 1 reported Student told him “not to come to school tomorrow, but also to not come to school next week.” When 6th Grade Assistant Principal asked Student 1 to clarify, “he explained that [Student]’s statements seemed to shift from being directed at the individual student to a general threat involving the school population.” Stip. Ex. 3 p 22.
109. Student 1 then reported Student would get around the security measures in place, Student “might have said he would come to school late and go directly to the mobiles.” Stip. Ex. 4 p 22.
110. Student 1 also stated “Student 2 may have heard the statements, but that others at his table may have heard as well.” Stip. Ex. 4 p 22. It is unclear to the Undersigned who the “others at his table” might have been because only Student, Student 2, and Student 1 were at Student 1’s table in science class on September 18, 2024, as Student 3 was absent.
111. 6th Grade Assistant Principal testified Student 1 was talking to him while in the car on his way to “a very well-known community event within the Middle School community. It’s called Impact. It’s through a local church. So a lot of our students get together at this community event.” T vol 3 p 505:7-17 (T of 6th Grade Assistant Principal).
112. 6th Grade Assistant Principal testified he advised Student 1 about the sensitive nature of the information and “when information is in the community, it goes quickly,” therefore “I

reiterated that this information is important and it's part of what could be an investigation down the road. And so I highly recommended that he keep that between himself, anybody else he felt comfortable sharing it with, and administration." T vol 3 p 505:19-506:5 (T of 6th Grade Assistant Principal). The Undersigned notes Student 1's presence at a well-known community event with many other Middle School students where he had the opportunity to share his conversation with 6th Grade Assistant Principal with other Middle School students. The Undersigned also notes it was not documented in anyone's notes that Student 1 attended this event, GCS did not disclose the names of Students 1-4 or call them to testify in this hearing, so it is unknown whether other students interviewed were present at Impact.

113. Throughout the course of his testimony, 6th Grade Assistant Principal reiterated the importance of following GCS's policies in the investigative process. T vol 3 p 503:1-13 and p 506:18-25 (T of 6th Grade Assistant Principal following the directions of GCS policies).
114. GCS staff attempted to call both of Student's parents at 6:45 pm and Student's mother again at 7:07 pm on September 18, 2024. Student's parents did not answer these three calls. GCS staff did not leave voicemails. Stip. 31. Stip. Ex. 4 p 23 (noting 8th Grade Assistant Principal and 6th Grade Assistant Principal "felt leaving a message was not prudent" due to the "time of day and nature of the message").
115. 6th Grade Assistant Principal explained staff did not leave voicemails when they called "because this information is very, very critical, and it's information that needs to be explained and expanded upon for the benefit of the family. So we felt it best to directly communicate in depth from administration, but we're again unable to contact the family." T vol 4 p 507:17-24 (T of 6th Grade Assistant Principal).
116. Father of Student explained why they did not answer the phone calls that evening or call the school back. He explained the calls came from the same main Middle School phone number, they waited to listen to or read the message, and when there was no message, he believed this was a "robo call that had no message to it." T vol 2 p 210:23-211:11 (T of Father of Student).
117. 6th Grade Assistant Principal was directed to "inform the SRO first." Stip. Ex. 4 p 23.
118. Prior to the SRO's visit to Student's home, 8th Grade Assistant Principal sent a ConnectED message to the school community. Stip. Ex. 4 p 15.
119. 8th Grade Assistant Principal's handwritten notes that reference the investigation were also admitted into evidence over Petitioners' objection due to the notes were not written contemporaneously. The Undersigned agrees many of the notes were not contemporaneous and merely reported hearsay. *See, e.g.*, Resp't's Ex. 126 p 857 (documenting the conversation with Student 1 and his father for which 8th Grade Assistant Principal was not present). Therefore, the Undersigned will reference these notes in the Final Decision only



when necessary for corroborating testimony or providing additional details not contained within 8th Grade Assistant Principal's typed statement.

120. Following the calls from the school's phone number, Father of Student received a call from an unknown number. After unsuccessfully trying to identify the number, he "called back and was speaking with SRO Fleiss." T vol 2 p 211:13-22 (T of Father of Student). SRO Fleiss informed Father of Student "he was on his way to our house to inform us of something that Student had done at school." T vol 2 p 212:1-2 (T of Father of Student). Father of Student had gone to the grocery store and requested SRO Fleiss wait for him to arrive home as Mother of Student was sick. T vol 2 p 212: 2-8 (T of Father of Student).
121. Upon Father of Student's arrival at home, the SRO accompanied him into the house and told them "a threat had been made sometime around the – the end of the day from the – from the information that he was given, and that was all the information he knew." T vol 2 p 213:2-6 (T of Father of Student). The first time Mother of Student learned about any accusations against Student were when the SRO went to her house on the evening of September 18, 2024. T vol 1 p 29:13-30:15 (T of Mother of Student).
122. That night, the School Resource Officer (SRO), Deputy Justin Fleiss, who is not a GCS employee, went to Student's home and asked to search the home and question Student, to which Student's parents consented. Stip. 32; Stip. Ex. 4 p 15. The SRO did not find anything concerning during his search of Student's room. T vol 2 p 213:18-23 (T of Father of Student). Further, Father of Student understood the SRO would be returning to the school with his findings "that he did not see this as a credible threat, and that Student needed to stay home the next day until the school contacted us." T vol 2 p 214:24-215:3 (T of Father of Student). The SRO informed Student's parents that Student needed "to stay home the next morning until the school notified them of a time to bring him in and meet with administration." Stip. Ex. 4 p 15.
123. Despite issuing a subpoena, Respondent elected not to call the SRO to testify at the administrative hearing to refute any of the testimony provided by Mother of Student and Father of Student regarding what information he conveyed or their understanding of his assessment of the threat once he left their house on September 18, 2024; therefore, the Undersigned will accept their unrefuted testimony.
124. No one from GCS spoke with Student's parents on September 18, 2024 to inform them of the accusations against Student. T vol 1 p 25:2-5 (T of Mother of Student).
125. After learning the limited information from the SRO, Mother of Student contacted Special Education One-On-One Reading Teacher, Student's reading teacher, regarding the visit from the SRO and informed her of their fears that Student was being bullied. Resp't's Ex. 126 p 859.
126. The SRO reported back to school administration at approximately 8:41 p.m. "that the information had been delivered successfully," which Respondent had requested he deliver. Stip. 33. The Undersigned notes 8th Grade Assistant Principal's testimony contradicts this

stipulated fact. *See* T vol 4 p 561:23-562:6 (T of 8th Grade Assistant Principal). 6th Grade Assistant Principal explained the required information the SRO gave the G. family was “that a threat had been made” and Student needed to be accompanied by a guardian to speak with administration the following day. T vol 4 p 515:6-516:6 (T of 6th Grade Assistant Principal).

127. 6th Grade Assistant Principal said something Principal and others seem to have lost sight of during this investigation: “Anytime that we have a threat – this is only an accusation, it does not show any level of proof.” T vol 3 p 515:12-14 (T of 6th Grade Assistant Principal).

Thursday, September 19, 2024

128. Based on the information conveyed through the SRO, Student did not attend school on Thursday, September 19, 2024. T vol 2 p 214:22-215:5 (T of Father of Student) Father of Student called the school that morning “to see if [he] could get any more information from Principal. She was unavailable at that time due to school starting and buses . . . .” T vol 2 p 215:11-15 (T of Father of Student).
129. Principal did call Father of Student later that morning to advise the meeting would take place at 2:00 pm that day. Principal spoke with Father of Student on Thursday morning on speakerphone with 8th Grade Assistant Principal and 6th Grade Assistant Principal present. Resp’t’s Ex. 126 p 859. Father of Student requested Special Education One-On-One Reading Teacher be present for the meeting as “it might help with Student with answering the questions since she works with him on a daily basis and is familiar with his communication style, and maybe give him just a little bit of ease, if you will, to answer or take part of whatever this meeting was going to be.” T vol 2 p 215:17-24 (T of Father of Student). Principal asked to Father of Student to bring Student to school at 2:00 p.m. Stip. Ex. 4 p 15; Resp’t’s Ex. 126 p 859. About 9:15 am, Principal called Father of Student advising Special Education One-On-One Reading Teacher was already at the school requesting they come to the school at that time. T vol 2 p 216:14-20 (T of Father of Student)
130. Notably, the initial time Principal requested was 2:00 pm. Middle School’s school hours are 8:20 am until 3:20 pm. T vol 2 p 216:23-24 (T of Father of Student)
131. Student and his father arrived at the school at the appointed time agreed upon with Principal. Stip. 34; Stip. Ex. 4 p 15. When they arrived at the school, no one shared with Student or Father of Student what the allegations were against Student. T vol 2 p 217:18-21 (T of Father of Student) Father of Student shared with Principal the text about his friend hurting his back out of concern Student was being bullied and they “had no other idea of what was – was going on.” T vol 2 p 217:22- 218:5 (T of Father of Student); Stip. Ex. 4 pp 15-16. Father of Student showed the text to Principal because he was concerned Student was being bullied by Student 4, and Principal explained she investigated that allegation and found nothing to substantiate the concern about bullying. T vol 2 p 231:8-232:16 (T of Father of Student). Principal testified the message was sent “prior to going to core four”; however, Principal did not ask for a copy of the text message and did not, in fact, know when the message was sent. T vol 3 p 424:16-25 (T of Principal this text message was

- “correlation and corroboration”) *but see* T vol 451:12-25 (T of Principal there is no screenshot of the message and she did not document the time). There was no evidence on any video footage of “Student falling or of Student 4 pushing him into a wall.” Stip. Ex. 4 p 16; T vol 3 p 424:7-13 (T of Principal).
132. Principal is not assigned to handle discipline for eighth grade students, like Student, however, “when a situation is of this nature, [she’s] going to step in and be the lead investigator.” T vol 3 p 448:5-8 (T of Principal).
  133. School Counselor, Principal, and Special Education One-On-One Reading Teacher (EC Teacher) took part in conducting a threat assessment on Student. Stip. 35; Stip. Ex. 4 p 15. School Counselor asked the questions for the threat assessment. Principal rephrased some questions “after Student said he didn’t know or he didn’t remember.” T vol 2 p 218:15-219:18 (T of Father of Student). Special Education One-On-One Reading Teacher was present for the threat assessment on September 19, 2024, but she only sat next to him and did not do anything else during the threat assessment. T vol 4 p 795:18-796:1 (T of Special Education One-On-One Reading Teacher).
  134. Father of Student and Student’s meeting at the school lasted approximately 30-35 minutes. T vol 2 p 219:19-21 (T of Father of Student). During the threat assessment, when Mother of Student continued to talk about circumstances surrounding the buses “No one from Guilford County Schools who was on that line was correcting us.” T vol 1 p 35:8-13 (T of Mother of Student).
  135. Student’s parents testified to the limited information provided to them prior to the threat assessment, and their understanding something happened at the end of the day near the buses. T vol 1 p 35:8-13 (T of Mother of Student they were still talking about buses, and “no one . . . was correcting us”); and T vol 2 p 217:18-21 (T of Father of Student that no one shared what the allegations were). Principal did not provide additional information or any details based on the directions on the form. T vol 3 p 394:13-395:24 (T of Principal).
  136. While Student was at the school, he wrote a statement. Student’s written statement was: “I wouldn’t harm Forster [sic] or the school.” Stip. 38; Stip. Ex. 4 p 12. Special Education One-On-One Reading Teacher offered to write the statement for Student, but he declined her offer. T vol 4 p 796:4-8 (T of Special Education One-On-One Reading Teacher). No one asked Special Education One-On-One Reading Teacher to provide any notes or write a statement despite her participating in Student’s threat assessment. T vol 4 p 802:14-20 (T of Special Education One-On-One Reading Teacher). Principal does not know the date she prepared her typed Statement. T vol 3 p 467:2-3 (T of Principal). However, she asked 8<sup>th</sup> Grade Assistant Principal, 6<sup>th</sup> Grade Assistant Principal, and School Counselor to prepare those typed statements “[a]s evidence of . . . the investigation that took place so that we would have a succinct record of everything that had happened.” T vol 3 pp 467:4-10. 468:23-25 (T of Principal).
  137. Following the completion of the threat assessment, Principal advised Father of Student she would “continue with the investigation and let [them] know the findings.” Principal also

informed Father of Student “Student would not be in school until the completion of the investigation.” T vol 2 p 220:2-8 (T of Father of Student).

138. Principal concluded Student 1 “would have had no knowledge that [Student’s back had been hurt] – if Student had not said that to him.” Yet, Principal chose not to ask Student if he told Student 1 about Student 4 hurting his back during the threat assessment. Instead, she chose to view it as evidence of “a direct correlation and corroboration” of Student 1’s statement. T vol 3 p 424:21-25 (T of Principal).
139. The Threat Assessment Documentation was completed by Principal after Student was welcomed back to school, and the threat was deemed “not credible.” Stip. Ex. 4. Despite informing Student’s parents and Student 1’s parent the investigation was completed, Principal “continued to work on the Threat Assessment document, the other pages that weren’t the interview . . . Literally the rest of that day, all that [she] remember[ed] doing was focusing on this investigation.” *Compare* Resp’t’s Ex. 128 p 884 *and* T vol 2 p 220:14-221:9 (T of Father of Student investigation was complete) *with* T vol 3 p 403:17-22 (T of Principal). Principal communicated with Student 1’s father “after [her] conversation with Principal Supervisor.” T vol 3 p 496: 7-15 (T of Principal).
140. The Threat Assessment Documentation erroneously reported Student’s areas of eligibility under the IDEA. Stip. Ex. 4 p 27. Principal testified she is “very familiar with [Student]’s disabilities”; yet, she did not identify all his areas of eligibility on the threat assessment documentation. *Compare* T vol 3 p 387:24 *with* Stip. Ex. 4 p 27.
141. Principal also completed the Assessing Level of Threat Checklist. The recommendations were to “Monitor situation” to include meeting Student “in front lobby each day” and to Contact law enforcement. Stip. Ex. 4 p 28.
142. School Counselor completed the Threat-Related Initial Statement Interview Guide for Perpetrators of Threat.” Stip. Ex. 4 pp 29-30. School Counselor’s Analysis of Student Interview answered “no” to every question except one (1) – “‘Story’ was consistent with actions,” which was marked N/A because Student “did not have a story or actions.” Stip. Ex. 4 p 30.
143. While School Counselor, Principal, and Special Education One-On-One Reading Teacher were conducting the threat assessment, Student 1 gave the following written statement to 8<sup>th</sup> Grade Assistant Principal:

*We were in science KC came in put his head down i asked him what was wrong and if he was ok and he shuck his head then we started working together and he told me that [Student 4] hurt his back by pushing him in to a wall and then he told me that he had a important thing to do that night and if he did not get to it that he was going to shoot up the school and after that he say he was only going for Student 4 so i was asking him questions like how and when so I could get enough details so I cold be safe and also so I could report it. and he sayed he was going to do it in 2 core and I asked*

*how are you going to get past the scaners and he say he was just going to come late and go strait to [Student 4] class. Then I sayed you dont and cant get a gun and he sayed he would take one of his dads.<sup>1</sup>*

Stip. 36; Stip. Ex. 4 pp 10-11.

144. Principal was not present for 8th Grade Assistant Principal's interview of Student 1, as she was with Student, School Counselor, and Special Education One-On-One Reading Teacher. Stip. 37. While School Counselor, Principal, and Special Education One-On-One Reading Teacher were conducting the threat assessment, 8th Grade Assistant Principal conducted the Witness Interview of Student 1. 8th Grade Assistant Principal questioned Student 2—who was seated at the same table as Student 1 and Student —who confirmed he was in the class with Student 1 but said he didn't hear anything. Stip. 39; Stip. Ex. 4 pp 10, 16. Student 2 confirmed he did hear Student 1 and Student talking but “he did not hear any of the information that was reported by [Student 1].” Stip. Ex. 4 p 28. 8th Grade Assistant Principal documented Student 1 was a “witness to threat, but not recipient.” Stip. Ex. 4 pp 31-32.
145. Student's table in science class, where Students 1-3 also sit, is situated directly in between the teacher's desk and the location where the teacher stands when presenting information on the white board. Resp't's Ex. 188.
146. Principal spoke with the science teacher, Science Teacher, who reported that he did not hear any concerning conversations between Student and Student 1 on September 18, 2024. Stip. 40; Stip. Ex. 4 p 16. During his testimony, Science Teacher did not contradict this former statement. Rather, he testified he learned Student was involved in making the statements when “admin came to me and asked where he was sitting and where . . . the other students that were sitting at his table were. T vol 4 p 585:1-6 (T of Science Teacher). Notwithstanding Student purportedly talking with Student 1 for twenty-five (25) minutes outlining his detailed plan to “shoot up the school,” Science Teacher “did not hear a specific conversation between Student and these other students.” T vol 3 p 412:7-8 (T of Principal). Principal was unable to offer any explanation for Science Teacher not hearing the conversation except “during independent work time [Science Teacher] moves around all of the tables.” *Id.* at 412:12-22.
147. Student 3 did not report the alleged threat until Friday, September 20, 2024. T vol 3 p 474: 10-14 (T of Principal). During her investigation, Principal did not ask Science Teacher if Student 3 had previously reported the threatening statements from Student, and Science Teacher never reported to Principal any such threatening statements. T vol 3 pp 474: 22-475:1. (T of Principal).
148. Student 4 was interviewed and informed School Counselor and 8th Grade Assistant Principal that he and Student were friends and got along well with each other, had one class

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<sup>1</sup> This statement is included as written by Student 1, including the inaccuracies in the grammar and spelling.

together and ate lunch together each day, did not have disagreements, and “sometimes they would joke around with each other and ‘goof off’ together,” but “there had never been pushing.” They would also race each other back to the classroom from the cafeteria when they were leaving lunch, and that “it was possible that they had bumped into each other when they were racing” “to see who could get back to the classroom door first.” Stip. 41; Stip. Ex. 4 p 25.

149. Student 4 also provided a statement.

*We have been friends sence 7 grade and he would never do anything to harm anyone on porpuse. And says stuff he doesn't mean but don't we all.*<sup>2</sup>

Stip. 42; Stip. Ex. 4 p 13.

150. Principal reported school administration interviewed Student 2 and Student 4 a second time. Student 2 continued to deny hearing Student make any of the purported threats. Stip. 43; Ex. 4 p 16.
151. Principal and 8th Grade Assistant Principal then interviewed Student 1, again, who informed them that his conversation with Student lasted about twenty-five (25) minutes. He then posited that Student 2 may not have heard the threats because Student “was talking in a low voice and there was music playing.” Stip. Ex. 4 p 31.
152. Principal then spoke with Hearing Officer, “to share that we had received a report of a threat to shoot up the school and target a specific student that we were investigating next steps.” Stip. 44; Stip. Ex. 4 p 16; T vol 3 p 392:18-21 (T of Principal).
153. Principal also spoke “with Principal Supervisor to debrief the information and determined that we had a situation where one student was saying one thing, and the other student was denying it and there were not witnesses to substantiate the threat at this time.” Stip. 45; Stip. Ex. 4 p 16.
154. Principal Supervisor directed Principal to invite Student back to school. T vol 3 p 398:3-5 (T of Principal). Principal spoke with Student’s parents and told them that Student could return to school that day. Stip. 46; Stip. Ex. 4 p 16. Principal called Father of Student around noon on Thursday, September 19, 2024, “saying the investigation was complete . . . it was unfounded, and that Student was welcome back at school.” T vol 2 p 220:14-221:9 (T of Father of Student). Student’s parents expressed that he would not be returning that day or the next due to having a therapy appointment. Stip. 47; Stip. Ex. 4 p 16.
155. On Thursday, Principal called the Student’s family to let them know “they had completed their investigation. It was unfounded, and she wanted to welcome Student back to school.” T vol 1 p 37:13-22 (T of Mother of Student). Principal let them know she would be

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<sup>2</sup> This statement is included as written by Student 4, including the inaccuracies in the grammar and spelling.

- “sending out a ConnectEd later that day to say [the threat] was unfounded.” This message never came. T vol 1 p 37:25-38:15 (T of Mother of Student).
156. On the afternoon of Thursday, September 19, 2024, Mother of Student believed the allegations against Student were “That one student had made an allegation. We still honestly thought it was something that -- around the buses, because Guilford County, no one from the administration was telling us anything different. They weren't telling us really anything at all. And that it was believed to be unfounded and that they were closing it out.” T vol 1 p 41:11-15 (T of Mother of Student).
  157. Principal testified “throughout that afternoon there was conversation about the school resource’s [sic] officer’s involvement in the investigation and how – if any charges would be filed how that would happen.” T vol 3 p 456:21-457:4 (T of Principal). Yet, when asked if this took place “in the afternoon after [Student’s] parents were called,” she could not recall. T vol 3 p 457:5-10 (T of Principal). Principal was “literally conducting the investigation the rest of [Thursday afternoon]” after notifying Student’s parents the investigation was closed. T vol 3 p 455:9-11 (T of Principal).
  158. Principal Supervisor “states that because 2 say nothing was said and 1 says something was said we have to in direction of nothing was said as evidence.” Resp’t’s Ex. 128 p 881; T vol 3 p 397:21-398:2 (T of Principal). Principal’s handwritten notes indicated she was directed to “separate [Student] and Student 1 in science,” “thank [Student’s parents] for their patience,” “[r]eply to Communications Director: Investigation completed, not credible, follow up,” “call Student 1’s parents: we completed the invest[igation], no threat at this time,” “worked with district’s lawyer for comment,” and send ConnectED.” A copy of the draft Connect ED message was included in Principal’s documentation of the investigation. Stip. Ex. 4 p 18. Principal added to her handwritten notes “I decided not to send ConnectED message – did not feel like it right thing to do!” Resp’t’s Ex. 128 p 883.
  159. Principal documented she advised Student 1’s parent “a follow up communication from district relations will be going out this afternoon.” Resp’t’s Ex. 128 p 884. Principal explained her notes meant she was to call Student 1’s parent to advise “we completed the investigation, there’s no threat at this time,” and that this is what she said to the parent. T vol 3 p 457:11-458:4 (T of Principal regarding Resp’t’s. Ex. 128 p 883). She did remember after reviewing her notes she had told Student 1’s parent she would be sending a Connect Ed message. T vol 3 p 459:7-11 (T of Principal regarding Resp’t’s. Ex. 128 p 884).
  160. 8th Grade Assistant Principal drafted an email for Communications Director which did not reflect the language Principal Supervisor requested: “The investigation has now been completed and we have *not* found the threat to be NOT credible.” Stip. Ex. 4 p 18. The additional communication Principal Supervisor requested was not sent.
  161. Principal included the following handwritten notes on the draft email: “Requested updated communication. What we sent did not align with the request – communication was not sent on 9/19/24 because the message from District Relations indicated not credible and this was not accurate so I did not send it.” Stip. Ex. 18.

162. Although Principal correctly noted what 8th Grade Assistant Principal sent did not align with Principal Supervisor's request, Principal instead attributed the decision not to send the request as her own choice to disobey a directive from her supervisor because of the "specific words" about the gaming try-outs. T vol 3 p 402:14-403:8 (T of Principal).
163. Principal's Statement included additional commentary regarding her thoughts she found notable during her investigation. Stip. Ex. 4 p 16 (noting the importance of trying out for the school's Gaming Club to Student, which was held the prior night and the presence of guns in Student's home), p 17 (noting Student "told [Student 3] not to come to school as a threat that he would hurt him/shoot him. That afternoon [Student 3] reported not feeling well to his parents and he indeed did not come to school the next day").
164. Principal noted these conclusions despite the evidence in the record that Student 3 reportedly was sick, according to his parents, as he suffered from gastrointestinal issues, did not wake up until noon, and ate soup upon waking. Resp't's Ex. 126 p 869-871. Student 3 sick with gastrointestinal issues, "[a]ll indicators [woke up closer to lunch, mostly hazy, [Student 3] was brought a bowl of soup] that he was not feeling well." T vol 3 pp 472:14-473:2 (T of Principal).
165. Although Principal was aware Student 3 was home sick with gastrointestinal issues, Principal informed this Tribunal that Student 3 "was also told not to come to school along with this threat, and indeed that student did not come to school the next day." T vol 3 p 405:23-25 (T of Principal). Principal repeated this statement as evidence of the disruption to Student 3's school day—"Student 3 did not attend school the next day after being told not to attend by Student." T vol 3 p 423:18-19 (T of Principal).
166. Principal testified Student 3's report "that he told his parents on Wednesday" was "the big a-ha moment for [her], because [Student 3] had not been back to school and had no knowledge of the Student 1's interaction with Student on Wednesday." T vol 3 pp 409:25 – 410:4 (T of Principal). Student 3's parents informed Principal he did not, in fact, tell them on Wednesday. *Id.* at 410:12-14 (T of Principal referencing Resp't's Ex. 128 p 889).
167. Principal credited Student 3 as being "articulate" even though he was "very nervous," "very shaky," and "very upset." She found his written statement "aligned exactly with what he had said to us verbally." T vol 3 pp 410:25-411:4 (T of Principal). However, his written statement did not align with what he said.
168. Principal found Student 3 believable based on his demeanor, "the way he was able to articulate what had happened," his statement "as long as Student is not here we do not have to worry," and the fact that "he had told an adult on Wednesday prior to returning to school on Thursday. He had already made an adult aware that he had been threatened." T vol 3 p 415:3-11 (T of Principal). However, as discussed no adult—not his mother, his father, or his Romanian grandmother—recalled any such report.



169. Mother of Student asked Principal if Student could participate in another try-out for the school's Gaming Club because "the Deputy has [sic] shown up during the Try Out and [Student] was very upset over not being able to try out." Stip. Ex. 4 p 16. When Principal testified, she reported Mother of Student said "specific words, that was something that was important to him . . . and caused me not to follow the directive of my supervisor." T vol 3 p 402:14-403:8 (T of Principal). Notably, the call went into 8th Grade Assistant Principal's office, not Principal's.
170. Principal's handwritten notes confirm Mother of Student asked for Student's "statement and copies of the original complaint and copies of witness statements." Resp't's Ex. 128 p 881; T vol 3 p 395:17-20 (T of Principal).
171. That afternoon, during Science Teacher's science class, Student 1 told Student 3 that Student was suspended because he had threatened to shoot Student 4 and/or up the school. Stip. 48.
172. By the end of the day, Principal had decided *not* to send the Connect Ed message to the entire school despite being directed by her supervisor to do so. She did not inform her supervisor of this decision. "I think it was towards the end of the day, and I had just decided that I wasn't going to send it and I just didn't send it." T vol 3 p 458:13-23 (T of Principal). It was "within [Principal's] authority to send or not send a Connect Ed message, so [she] didn't." Even though Principal Supervisor was her supervisor, and she directed Principal to send the message. T vol 3 pp 458:25 – 459:6 (T of Principal).
173. The Undersigned notes: throughout the entirety of Thursday, September 19, 2024, GCS received no report from Student 3 or his family about Student's alleged threats to Student 3.

Friday, September 20, 2024

174. Student did not attend school on Friday, September 20, 2024, which Student's mother had explained to Principal would be to attend a therapy appointment to address the stress caused by this situation. Stip. 49.
175. Father of Student called the school on the morning of September 20, 2024 and spoke with Principal to inquire why a call had not gone out to Middle School about the threat being unfounded. Principal did not tell Father of Student she had decided not to issue the message but instead explained "she was still talking with legal to get the correct wording for the call." However, this was false—Principal had already decided she was not sending a call. T vol 2 p 221:25-222:8 (T of Father of Student).
176. On the morning of Friday, September 20, 2024, Student 3 came to the office to "report a concern to someone" for the first time. Stip. Ex. 4 p 16. Principal and 8th Grade Assistant Principal met with Student 3's report "of a conversation he had with [Student] on Tuesday, 9/17/24 during 4th Core Science." Stip. Ex. 4 p 16.

177. Student 3 did not report this alleged threat or any of the prior alleged threats to school administrators until Friday, September 20, 2024, after speaking with Student 1. Stip. 50; Resp't's Ex. 155 p 1029.
178. 8th Grade Assistant Principal's Statement is undated, but it contained typographical errors regarding the dates of incidents, which she corrected after Principal reviewed her statement. Stip. Ex. 4 p 24; T vol 4 p 559:7-18 (T of 8th Grade Assistant Principal).
179. 8th Grade Assistant Principal documented Student 3 reported "since the beginning of the year, [Student] said things that bothered him." Stip. Ex. 4 p 24. The Undersigned notes at the time of the alleged incident on September 17, 2024, school had been in session for sixteen (16) days. Stip. Ex. 10. Student 3 and Student were not moved to the same table until the second week of school. Resp't's Ex. 175 p 1199. Therefore, all the alleged threats would have transpired in a seven (7) day period.
180. According to 8th Grade Assistant Principal's notes, Student 3 reported Student would "usually say it at the end of Science Teacher's class if [Student 3] refused to give [Student] answers to classwork." Stip. Ex. 4 p 24.
181. Student 3 wrote the following statement:

*I had to finish my work in Science Teacher's class when he threw around threats to try and get my answers for an assignment. This wasn't out of nowhere hower. It had been slowly progressing and growing from small throw around jokes to not funny jokes, to threats. "I'm going to draw on your arm with a highlighter" to "I'm going to stab you with a pencil." all the way to "I'm going to shoot you." I originally laughed it off and went on with my day. Eventually when he got suspended his threats seemed odd, his threats is something I started to worry about. If he was suspended for I threat, how about mine? Were mine just as serious as he was with the others? I talked to my friends who sat at the same table as me about my situation. They were the ones who told me about [Student]'s suspension. Only 5 minutes before I expressed my concerns. We all eventually agreed that as long as he wasn't here we had no need to worry. I'm not sure who witnessed the threats he gave me but I didn't want to wait to find out if they did so I came to the office to talk to someone. He told me he was going to shoot me because I wasn't going to give him answers to an assignment on tuesday, sept 17<sup>th</sup>. On Wednesday morning I had told a family member roughly what had occur later told my parents as the story developed.*

Stip. 50; Stip. Ex. 4 pp 8-9.

182. Student 3 reported to AP 8th Grade Assistant Principal and Principal he reported the shooting threat to a family member on September 18, 2024, while he was home. Stip. 51. Yet, 8th Grade Assistant Principal testified Student 3 "talked very extensively about how he tried to tell them on Wednesday in Romanian," an important omission from Student 3's

written statement. T vol 4 p 569:15-24 (T of 8th Grade Assistant Principal). 8th Grade Assistant Principal explained Student 3's parents "discounted [the alleged threat] because he didn't use the right words" yet she offered no explanation for why he did not use English when his parents, who speak English, purportedly did not understand him. T vol 4 p 569:22 – 570:13 (T of 8th Grade Assistant Principal). The Undersigned finds this explanation of events implausible and rather finds it far more likely Student 3 invented the story after talking with Student 1 in science class on Thursday. Unfortunately, there was not a discussion of the conduct during the MDR meeting for the team to further expound upon the details. *See discussion infra*.

183. According to 8th Grade Assistant Principal's notes, Student 3 "stayed home from school the next day [Wednesday, September 18, 2024] because he wasn't feeling well but said that his parents encouraged him to tell administrators his story." Stip. Ex. 4 p 24. Student 3 reported his "[p]arents said they would reach out to school." Resp't's Ex. 126 p 868. However, Student 3's parents reported Student 3 did not inform them until Thursday, September 19, 2024, after wrestling practice. Stip. Ex. 4 pp 16-17.
184. 8th Grade Assistant Principal documented Student 3's "parents called the school as well and a conversation with them confirmed that they have heard since the beginning of the year about [Student] telling their son he was going to 'stab him' with a pencil or scissors before escalating to 'I am going to shoot you' and that their son was genuinely afraid." Stip. Ex. 4 p 24; Resp't's Ex. 126 p 869.
185. However, according to Principal's Statement, 8th Grade Assistant Principal and Principal contacted Student 3's parents, they did not contact the school. Also, unlike Student 3's original report, Student 3's parents "confirmed that Student 3 had shared his concerns with them after wrestling practice on Thursday afternoon," and his mom did not recall Student 3 telling her about his concerns on Wednesday. Stip. Ex. 4 pp 16-17; Resp't's Ex. 128 p 889 (Student 3's father confirmed he did not hear anything on Wednesday).
186. Student 3's parents confirmed he has "ongoing gastrointestinal problems." Resp't's Ex. 126 p 870.
187. 8th Grade Assistant Principal's handwritten notes indicate other inconsistencies in Student 3's statement noting Student 3 indicated Student's jokes "turned into threats toward me and Student 4." Resp't's Ex. 126 p 865. According to 8<sup>th</sup> Grade Assistant Principal, Student 3 indicated Student said the prior week, not September 17, 2024, "I will shoot you." Resp't's Ex. 126 p 866. Despite first reporting he told his mother on Wednesday, September 18, 2024, Student 3 then reported "he didn't tell his mom before yesterday [September 19, 2024] about shooting." Resp't's Ex. 126 p 869; Resp't's Ex. 128 p 888.
188. Upon learning Student 3 did not tell his mother, Principal and 8th Grade Assistant Principal then questioned Student 3 again, who changed his story to report he told his mother or his grandmother in Romanian. Resp't's Ex. 128 p 890; Resp't's Ex. 126 p 871. They followed up again with Student 3's mother who reported Student 3's grandmother also "doesn't have

recollection but Mom said Grandmother would discount it anyway . . . very plausible he told her.” *Id.*

189. Student 3’s mother did not recall any conversation about Student threatening to shoot her son. Principal did not talk to the grandmother or speak to the grandmother. T vol 3 pp 463:18-464:3 (T of Principal). “[T]he family was not aware of hearing Student 3 report [that he had been threatened to be shot] on Wednesday,” but it was still credible to Principal. T vol 3 p 464:9-20 (T of Principal). Even when Student 3 told her his family said they would call the school on Wednesday, and did not call – she found him credible. T vol 3 pp 464:21-465:5 (T of Principal).
190. Unlike Student 3, Student was not articulate and was unable to “articulate answers to the questions the way that Student 3 did” to Principal. T vol 3 p 465:7-10 (T of Principal).
191. Principal reported these new allegations to Principal Supervisor. She then spoke again to Student 2, “who did not report hearing this conversation between Student 3 and [Student].” Stip. 52; Stip. Ex. 4 p 17. Student 2 reported he heard people talking about it in the hallway. Resp’t’s Ex. 126 p 872. Student 2 heard in the hallway that Student “was going to shoot up the school” and “Student 1 told Student 3 that [Student] threatened the school.” Resp’t’s Ex. 126 p 873.
192. According to 8th Grade Assistant Principal’s handwritten notes, Student 1 asked Student 3 on Thursday “if he knew about the school shooting plan.” Resp’t’s Ex. 126 p 869. Despite Student 3 informing 8th Grade Assistant Principal and Principal of his conversation with Student 1 on Thursday, September 19, 2024, when he returned to school, Principal testified she knew it was accurate because, even though his parents informed Principal Student 3 did not tell them, Student 3 said “he did indeed tell somebody on Wednesday morning. So I believed him.” T vol 3 p 410:20-22 (T of Principal); Resp’t’s Ex. 128 pp 886, 889.
193. Student 2 confirmed sometimes he helps Student and “others at table help [Student] too. Sometimes we say no and [Student] figures it out.” Resp’t’s Ex. 126 p 872.
194. 8th Grade Assistant Principal’s handwritten notes document that after the report from Student 3 there would be “no new threat assessment” and Student would be subject to a “daily search.” Resp’t’s Ex. 126 p 874.
195. 8th Grade Assistant Principal’s handwritten notes included a diagram of the seating arrangement with Student sitting next to Student 3 and across from Student 1 and Student 2. Resp’t’s Ex. 126 p 874.
196. Principal’s handwritten notes also confirm Principal Supervisor informed her, even with the new information, it was “not a long term suspension.” Resp’t’s Ex. 128 p 891.
197. Principal discounted Principal Supervisor’s recommendation.

198. Principal again contacted impartial Hearing Officer, “to share that a second report of a threat (Rule violation III-8 Acts of Terror) had been received and that due to now having two reports that were very detailed regarding the same student, [Student], that [she] would be putting a 10-day suspension in place with a recommendation for Long Term Suspension.” Stip. 53; Stip. Ex. 4 p 17.
199. According to 8th Grade Assistant Principal’s handwritten notes, Principal called Student’s parents with the SRO, 6th Grade Assistant Principal, and 8th Grade Assistant Principal in the room. Resp’t’s Ex. 126 p 876. Principal informed Father of Student, “we will provide evidence next week.” *Id.* Despite no one hearing the alleged threats, Principal informed Student’s parents the school now had “credible evidence.” Resp’t’s Ex. 128 p 893.
200. At 2:00 pm on Friday, September 20, 2024, Principal called Father of Student advising him “due to new information . . . she was now going with the 10-day suspension and the recommendation for a long-term suspension. And that the SRO was now already on his way to [Father of Student’s] house with that information.” T vol 2 p 222:9-14 (T of Father of Student). Principal did not share what the new evidence was or why she was recommending long-term suspension. T vol 2 p 222:15-22 (T of Father of Student).
201. Principal explained that she “checked the box that aligned with that recommendation for long-term suspension. But recommendation for long-term suspension is then determined at the hearing.” T vol 3 p 494:17-19 (T of Principal).
202. Principal explained “those are the four choices there are the choices I can check,” referring to Stipulated Exhibit 2. T vol 3 p 497:16-24 (T of Principal).
203. On Friday afternoon, Mother of Student received a call from her husband that “it was not over, that the sheriff was on his way to [their] house.” The same SRO arrived at their home, provided paperwork that Student was suspended, and explained he was not allowed to talk to Mother of Student. T vol 1 p 43:5-25 (T of Mother of Student). The SRO provided Mother of Student with a copy of the disciplinary change in placement. T vol 1 p 44:5-9 (T of Mother of Student).
204. Principal had not spoken with Student since the day prior at approximately 9:30 am. T vol 2 p 223:3-6 (T of Father of Student). Principal did not inform Student about these new allegations from Student 3 or provide him with an opportunity to respond before issuing her recommendation for Long-term Suspension on September 20, 2024. The Recommendation included the following Brief Description of Incident:

*On 9/17 [Student] stated to a student that he was going to shoot him. The next day on 9/18 [Student] stated to a different student that he was going to shoot up the school and target a particular student.*

Stip. 54.

205. Expert Speech Education Witness had concerns about Principal's failure to speak with Student about Student 3's report prior to issuing the ten-day suspension and recommendation for long-term suspension.

I have several concerns about the situation in general, but I think specifically speaking to Student, you know, he has a right, I feel like, to talk about his side of the story. But also, if he's unclear, especially with his delays in language and verbal capabilities, if he's unclear as to what is going on, it's going to result in him being more anxious, potentially shutting down, giving one-word responses, and just in general not being able to -- to process why there's the long-term suspension.

T vol 2 p 261:23-262:7 (T of Expert Speech Education Witness)

206. Expert Speech Education Witness had several concerns about the investigation GCS conducted into Student's alleged conduct.

The original statements were unfounded. . . . The principal, who was leading the investigation, also served as the LEA for the meeting, which seems to be a little bit of a conflict of interest in my opinion, my professional opinion. But also what's interesting is that -- so there was never the message sent stating that the threat was unfounded. The students return to school, Student does not return to school during that time. Another student comes forward stating that threats -- additional threats were made or similar threats were made throughout the whole school year. There's no adult that has corroborated that those threats occurred. No adult heard those threats being made, which, you know, does certainly raise a red flag. You know, if Student has preferential seating near the point of instruction, and the classroom teacher didn't hear these threats being made, and the -- the second student that came forward didn't do so until after the first student came forward, it just -- it certainly raises some red flags and some concern about the way that that investigation was handled.

T vol 2 p 293:12-294:19 (T of Expert Speech Education Witness).

207. GCS provided no documentation of Student's statement causing a disruption to the school day. T vol 2 p 298:9-19 (T of Expert Speech Education Witness).
208. Student's parents were not given adequate information about the behavior and the circumstances surrounding the behavior. They were not provided access to the parents' rights handbook in advance of the MDR meeting. Additionally, the IEP team did not consider the speech language evaluation. T vol 2 p 300:1-9 (T of Expert Speech Education Witness).

September 20, 2024, Letter to Mother of Student and Father of Student and Disciplinary Change in Placement

209. On September 20, 2024, Principal asked the School Resource Officer (SRO) to hand deliver two (2) documents: the Disciplinary Change in Placement with an invitation to a meeting scheduled to take place on September 26, 2024, and a letter informing Mother of Student and Father of Student that Student violated “Rule III-8 Acts of Terror.” Stip. Exs. 1, 2; Stip. Ex. 4 p 17.
210. The Disciplinary Change in Placement included the following Explanation of Actions: “School personnel determined disciplinary change in placement because: Student made threats against the school and peers.” The “reason and length of proposed removal” indicated: “For Violation of Student Code of Conduct Rule III-8 student received a 10 Day Suspension with Recommendation for Long Term Suspension.” Stip. Ex. 1 p 1; Stip. 56.
211. The Disciplinary Change in Placement only indicated the team only purposes of the meeting were to: Discuss educational placement and conduct the Manifestation Determination Review, Stip. Ex. 1 p 2.
212. The Disciplinary Change in Placement indicated only the following individuals would be present at the MDR meeting: LEA Representative (Principal), general education teacher (Science Teacher), special education teacher (Special Education Inclusion Teacher), the parents, and EC Behavior Support (MDR Facilitator) as individuals who would be present. Stip. Ex. 1 p 1. Yet, multiple district level personnel attended the meeting and a school psychologist who never met Student Stip. 66, 73.
213. Without identifying specific individuals, the Disciplinary Change in Placement also indicated an Interpreter of Instructional Implications of Evaluation Results would be in attendance. Stip. Ex. 1 p 2. Yet, no speech language pathologist attended the meeting to interpret the implications of Expert Speech Pathologist Witness’s evaluation. Stip. 74. Respondent’s Counsel engaged in a line of questioning Mother of Student about whether the parents requested to bring a speech pathologist to the MDR meeting to interpret the speech language evaluation they had provided. The onus is on the school district to provide procedural safeguards and ensure processes are followed to allow for parental participation. The Undersigned finds GCS bore the burden to have the appropriate people at the MDR meeting to interpret evaluation results it had been provided and if it needed to postpone the meeting to have someone there, it should have. Even holding the meeting the following day would have kept the meeting within the IDEA’s ten (10) day requirement. T vol 1 p 83:6-84:19 (T of Mother of Student).
214. On September 20, 2024, Principal also sent Mother of Student and Father of Student a letter informing them Student would be suspended for ten (10) days, and she was recommending his long-term suspension to the superintendent. Stip. Ex. 2.
215. The September 20, 2024, letter only provided the following description of the incident: “On 9/17 [Student] stated to a student that he was going to shoot him. The next day on 9/18 [Student] stated to a different student that he was going to shoot up the school and target a particular student.” Stip. Ex. 2 p 4.

216. The invitation indicated a copy of the Parents Rights and Responsibilities in Special Education: Notice of Procedural Safeguards was enclosed with the Invitation to the MDR Meeting, but it was not included. Stip. 57.
217. Principal then completed the form for Student to attend SCALE before the MDR and before the scheduled long-term suspension hearing. Resp't's Ex. 128 p 895.
218. Principal reportedly completed the Threat Assessment Referral Form on September 19, 2024, and September 20, 2024. Stip. Ex. 4 pp 33-35. The instructions indicate the form is to be completed if someone is concerned "an individual may pose a risk for harming others" and "turn[ed] in directly to the school's principal or designee." Stip. Ex. 4 p 33.
219. Principal documented her Reason for Referral to herself, as the school principal, as: "On 9/17/24 [Student] stated to a student, Student 3, that he was going to shoot him. The next day on 9/18/24 [Student] stated to a different student, Student 1, that he was going to shoot up the school and targeted a particular student." Stip. Ex. 4 p 33.
220. Principal reported Student exhibited "Imminent Warning Signs" such as "Severe rage for seemingly minor reasons" and "Severe destruction of property" despite Student never exhibited rage or destroying any property. Stip. Ex. 4 p 33.
221. Principal noted Early Warning Signs such as "social withdrawal or lacking interpersonal skills" and "depression." She also wrote: "Student is very quiet and does not easily interact with others – even in one-on-one instruction." Stip. Ex. 4 pp 33-34. Yet, during the MDR, Principal did not mention her assessment of Student lacking interpersonal skills or not easily interacting with others. To the contrary, Principal emphasizes to the MDR team that Student is social with friends. Stip. Ex. 21 p 174.
222. Principal served as the decisionmaker to suspend Student and recommend his long-term suspension. Stip. 55.
223. Student's parents received the invitation to the Manifestation Determination Review (MDR) meeting to be held on September 26, 2024. The invitation included the following Explanation of Actions:

*School personnel determined disciplinary change in placement because:  
Student made threats against the school and peers.*

*Describe the reasons and length of the proposed removal: For Violation of  
Student Code of Conduct Rule III-8 student received a 10-day Suspension  
with Recommendation for Long Term Suspension.*

Stip. 56.



224. The description of the conduct provided prior to the MDR meeting did not provide the family with any context of the behavior “or what any antecedents or consequences were surrounding that behavior.” Expert Speech Education Witness explained “So antecedent is anything that happens immediately prior to the behavior occurring, and then the consequence is anything that happens immediately after the behavior occurs.” This is important information “because antecedents and consequences surrounding a behavior are what either lead to the behavior or cause the behavior to continue to occur.” T vol 2 p 260:20-261:13 (T of Expert Speech Education Witness).
225. Principal sent out a second ConnectEd message on the afternoon of September 20, 2024, as directed by Communications Director stating: “Good afternoon, parents. This is Principal with an important message. Earlier this week, we received information concerning a threatening statement made by a student. Through joint investigation with law enforcement, the individual responsible has been identified and is facing appropriate consequences. We would like to thank the students who heard something and said something to a trusted adult. Actions like this help maintain safety on our campus. To help keep false rumors from spreading, please only share information that you can personally verify. Please know that we take these situations very seriously, so if you see or hear something of concern, you should notify an administrator or law enforcement officer immediately. By working together, we can continue to keep our schools safe. Thank you and have a good weekend.” Stip. 58.

Monday, September 23, 2024

226. Principal issued the Notice of Disciplinary Action on Monday, September 23, 2024. She did not speak with Student about the new allegations before issuing the new Notice of Disciplinary Action. Stip. 59; Stip. Ex. 4 p 7.
227. The Notice of Disciplinary Action dated September 23, 2024, and provided to Student’s parents on September 24, 2024, does not reference Principal’s recommendation for long-term suspension and reports the only actions taken were: “10-Day Out-of-School Suspension and Informal Conference,” “Administrator Conference with Parent/Guardian,” and “Report to Law Enforcement.” Stip. Ex. 4 p 7.
228. Based on the evidence presented, the only “informal conference” with Student was the threat assessment on September 19, 2024, when Student was not informed of the charges or basis of the allegations against him. The only “administrator conference with parent/guardian” in the record was Principal’s phone call to Student’s parents on September 19, 2024, notifying them “Student could return to school that day.” Stip. 46. Principal did not have a meeting with Mother of Student and Father of Student before the MDR as referenced in her notes. T vol 3 p 479:8-12 (T of Principal referencing Resp’t’s Ex. 128 p 895).
229. The Notice of Disciplinary Action reported Student had received his first office referral for his behavior at school for the 2024-2025 school year. Stip. 60.

230. The Notice listed the following Offense:

*GCS Student Code of Conduct Rule: Rule III-8 Acts of Terror – Communicating threats (RIII-8) – On Wednesday, 9/18/24 afternoon (after school was dismissed) the parent of a student reported to a district official that their child had told them that he heard [Student] say that he was going to “shoot up the school” and that he was “only going for \_\_\_\_\_” one particular student. Then on Friday, 9/20/24 another student reported that on Tuesday, 0/17/24 [Student] said directly to him “I’m going to shoot you”. He said this was said to him after he would not give him answers to an assignment.*

*These statements are a violation of Code of Conduct Rule III-8. It is reported that on 9/17/24 [Student] stated to a student that he was going to shoot him. The next day on 9/18/24 it is reported that [Student] stated to a different student that he was going to shoot up the school and target a particular student.*

Stip. 61.

231. GCS’s regulation defines Rule III-8 Acts of Terror – Communicating Threats as follows:

No student shall threaten to commit an act of terror on school property or at the site of a school activity that is designed to cause, or is likely to cause, serious injury or death to another person, when the threat is intended to cause, or actually causes, a significant disruption to the instructional day or a school-sponsored activity. No student shall make a report that they know is false, that an act of terror designed to cause, or likely to cause, serious injury or death to another person on school property or at the site of a school-sponsored activity is imminent, when that report is intended to cause, or actually causes, a significant disruption to the instructional day or a school-sponsored activity.

Stip. 62.

Tuesday, September 24, 2024

232. Principal provided Student’s father with summary investigative documents related to Student’s suspension but did not include the personal notes from Principal, 8<sup>th</sup> Grade Assistant Principal, 6th Grade Assistant Principal, and School Counselor. Stip. 63.
233. On September 24, 2024, Father of Student picked up the information regarding the school’s investigation. When Father of Student picked up the documents, he was not given any additional information. Principal handed him the documents and told him to have a nice day. T vol 2 p 225: 1-12 (T of Father of Student).

234. Stipulated Exhibit 4, the packet provided to Student's parents, included the following documents:

- Notice of Disciplinary Action, p 7;
- Student 3's handwritten statement, pp 8-9;
- Student 1's handwritten statement, pp 10-11;
- Student's handwritten statement p 12;
- Student 4's handwritten statement, p 13;
- Student's grades and absences for Quarter 1, p 14;
- Principal's typed statement, pp 15 – 17;
- Email exchanges regarding the ConnectED message with Principal's handwritten commentary, pp 18-21;
- 6th Grade Assistant Principal's typed Summary of Events prepared on 9/23/24, pp 22-23;
- 8th Grade Assistant Principal's typed statement with handwritten corrections, p 24;
- School Counselor's typed statement prepared on 9/23/24, p 25;
- Threat Assessment Documentation, pp 26-27;
- Assessing Level of Threat Checklist, pp 28-30;
- Witness Interview, pp 31-32;
- Threat Assessment Referral Form, pp 33-34;
- Record Review: Presence of Risk Factors, pp 35-36.

235. The documents in Stipulated Exhibit 4 were provided to Student's parents two (2) days before the MDR meeting. Student's parents both testified this was the first time they received any of the underlying allegations upon which Principal made her decision to suspend Student and recommend long-term suspension.

236. Student was not provided an opportunity to respond to these allegations prior to the MDR meeting, and Respondent's counsel informed the MDR team it was unable to discuss the alleged conduct or Student's culpability during the MDR meeting.

237. As discussed *infra*, the Undersigned finds Stipulated Exhibit 4 and the subsequent evidence provided at the hearing document the flaws in the investigation and raise significant questions regarding the veracity of the allegations, and Student's ability to create the narrative outlined by Student 1. These allegations should have been discussed at the meeting by the MDR team when considering "all relevant information" as required by the IDEA. 20 U.S.C. § 1415(k)(1)(E).

Wednesday, September 25, 2024

238. On September 25, 2024, at 9:43 PM, Student's parents sent Expert Speech Pathologist Witness's report from the September 11, 2024 evaluation, to GCS prior to the MDR meeting. Stip. 64.

239. After Father of Student shared the report, no one responded to him telling him he needed to request a speech language pathologist attend the MDR meeting. Special Education Inclusion Teacher only responded to say “thank you” and nothing else. T vol 2 p 224:8-16 (T of Father of Student).

Thursday, September 26, 2024, Manifestation Determination Review Meeting

240. GCS convened an MDR team on September 26, 2024. Stip. 65. The meeting was held virtually. T vol 2 p 225:16-17 (T of Father of Student).

241. The following people attended the MDR meeting to serve in the designated positions:

Principle as the LEA representative.  
Special Education Inclusion Teacher as the EC teacher.  
MDR facilitator.  
EC Behavior Support.  
Secondary Exceptional Children Director as the EC  
Secondary School Support Director.  
EC School Support Lead.  
School Psychologist.  
Science Teacher as the General Education Teacher.  
Father of Student and Mother of Student

Stip. 66.

**GCS’s Failure to Consider all Relevant and Necessary Information during the MDR:**

242. Student’s parents obtained two (2) private psychoeducational evaluations to support the development of Student’s IEPs. Pet. Ex. 6 (2018 Evaluation); Pet. Ex. 7 (2023 Evaluation). Both documents were available for the MDR team’s review and consideration. Stip. 9; Stip. 13.

*Relevant and necessary information in the 2018 psychoeducational evaluation:*

243. Student’s parents and teacher completed the Vanderbilt Rating Scales for ADHD, which “yielded strong symptom criteria for AD/HD” in both the home and classroom settings. The “symptoms associated with restlessness, poor impulse control and excessive activity level appear to be more problematic at school.” Pet. Ex. 6 p 15.
244. Student was also rated as having “mild symptoms of anxiety including the following: nervousness about being called on in class and sometimes being overly sensitive to criticism.” Pet. Ex. 6 p 15.

245. Student “demonstrated fair eye contact and an overall euthymic mood.” He “was engaged and mostly cooperative” during testing, and “[h]is approach to testing was impulsive.” Pet. Ex. 6 p 16.
246. “There is an undercurrent of oppositional behavior at times when [Student] is asked to stop his behavior—testing boundaries and limits.” Pet. Ex. 6 p 16.
247. Student’s mother and teacher both completed the Conners-3 rating scales revealing “very elevated or elevated scores” in Inattention, Hyperactivity/Impulsivity, Learning Problems, and Executive Functioning. The results from the Conners-3 rating scales met the “DSM-5 symptom criteria count for Attention-Deficit/Hyperactivity Disorder, Combined Presentation” with the Moderate severity. Pet. Ex. 6 p 18.
248. Student’s mother and teacher both completed the BRIEF Rating Scales to assess Student’s executive functioning deficits. The evaluator explained “[e]xecutive functioning refers to the mental organizational processes associated with initiating, implementing, monitoring and revising strategies and plans of action. It requires sustained focus, inhibition of impulses and working memory.” Pet. Ex. 6 p 18.
249. Student’s teacher ratings were most elevated in: Inhibit (ability to resist impulses and stop behavior at the appropriate time); Initiate (ability to begin a task and independently generate ideas responses, or problem-solving strategies); Working Memory (capacity to hold information in mind in a multi-step sequence, encode information and perform mental tasks); Plan/Organize (ability to set goals, develop sequential steps to carry out a task, bring order to information, appreciate main ideas); Organization of Materials; and Monitor (work-checking habits to ensure accuracy, keeping track of the effect his behavior has on others). Pet. Ex. 6 p 18.

*Relevant and necessary information from the 2023 psychoeducational evaluation:*

250. At the time of the 2023 evaluation, Student was receiving medication support for his ADHD symptoms, and his family had resumed counseling due to Student’s “anxiety symptoms that include[d] social avoidance and skin picking,” as well as their concerns regarding Student’s restrictive eating patterns. Pet. Ex. 7 p 24.
251. Student’s “eating appears to be a mix of both avoidant and restrictive patterns and appears related to his strong desire to be in control and behavioral rigidity.” Pet. Ex. 7 p 24. Student’s parents questioned if Student’s “behavioral rigidity and anxiety may be attributable to him having high functioning autism.” Pet. Ex. 7 p 25.
252. Student’s Full Scale IQ (FSIQ) decreased from 118 to 97 from the 2018 to 2023 evaluation. The evaluator explained “[s]low reading acquisition has cognitive and behavioral consequences that sloe [sic] the development of other cognitive skills.” Pet. Ex. 7 p 26.

253. Student's deficits in reading, spelling, and fluency remained significant, and Student continued to meet diagnostic criteria for Specific Learning Disorder with Impairment in Reading and Written Expression. Pet. Ex. 7 p 29.
254. Expert Speech Education Witness explained that for students with ADHD and anxiety, "there's a pretty direct correlation between ADHD and anxiety and behavior . . . So sometimes it's not as clear cut as the once the antecedent because sometimes that antecedent could be internal, especially if it's an ADHD or anxiety diagnosis." T vol 2 p 250:8-16 (T of Expert Speech Education Witness).
255. In reviewing the July 17, 2023 evaluation, Expert Speech Education Witness made the connection between what Student was accused of doing and the report noting Student "has a strong desire to be in control and behavioral rigidity. It's also noted that he does have those characteristics of anxiety within here." T vol 2 p 255:4-19; *See* Pet. Ex. 7 p 24. "But as it relates to behavior, you know, we see the ADHD and the anxiety within this report. It's also stated that he has less symptoms of [oppositional] defiant disorder, which was a diagnosis that he had previously had." T vol 2 p 255:20-23 (T of Expert Speech Education Witness).
256. Unlike the 2018 evaluation, only Student's parents completed rating scales for the 2023 evaluation. On the Conners-4, Student's results were "very elevated" for "Inattention/Executive Functioning," which "is a measure of [Student] having trouble paying and sustaining attention; planning and organizational skills; and time management." Pet. Ex. 7 p 27.
257. The results of the BRIEF indicated Student's "[m]ost problematic" areas were "working memory and planning and organizational skills." Pet. Ex. 7 p 27. Student met diagnostic criteria for ADHD, Inattentive Presentation. Pet. Ex. 7 p 29.
258. On the BASC-3, Student's results were in the "at-risk range" for: Attention Problems; Somatization; Adaptability, Leadership skills; and Activities of Daily Living. He "struggles with activities of daily living with difficulty performing simple daily tasks efficiently," and "with changes in routine and being flexible." His anxiety and emotional problems may be related to his high somatization scores. Pet. Ex. 7 p 28.
259. Expert Speech Education Witness noted the MDR team did not document any discussion of "Student's need for control and behavioral rigidity." *Compare* T vol 2. P 266:10-15 (T of Expert Speech Education Witness) *with* Stip. Ex. 21.
260. Student's deficits in planning and organization are evinced in the "plan" he allegedly had:
- Well, in reality he has significant deficits in planning and organizing, and that's evident in the pieces of the -- the components of those steps that he didn't talk about. It's evident in he didn't have a plan for how he was going to get to school late or why he was going to come late. He didn't have a plan for how he was going to actually access firearms in his house. They're

locked away, stored, require keys and fingerprint access and all of these things. He didn't have a clear thought-out plan for any of that. And so, you know, it really does align with these deficits that he has in planning and organizing. But, again, even like organizing materials. The behavior happened as a result of struggling with an academic assignment, and so it had his modifications been implemented, had the teacher been present providing support, those sorts of things, that behavior may not have occurred because he would have had support addressing these -- these deficits.

T vol 2 p 277:24-278:16 (T of Expert Speech Education Witness).

261. Student's parent and self-report on the MASC-2 "were in the *borderline range for [Student] having a clinical anxiety disorder.*" Student reported fears related to being alone, being called on in class and talking in front of his class "which may be secondary to [Student]'s dyslexia and anxiety about being embarrassed in front of his peers." Pet. Ex. 7 p 28. Student met diagnostic criteria for Separation Anxiety Disorder. Pet. Ex. 7 p 29.
262. Student's parents completed rating scales to assess for symptoms related to autism, which were within normal limits; therefore, the evaluator did not conduct any additional testing. Pet. Ex. 7 p 28. In reviewing the BRIEF scores from the 2023 evaluation, Expert Speech Education Witness noted the emphasis during the MDR meeting was on the areas where Student was scored to be in the typical range rather than where he was at risk. *Compare* T vol 2 p 276:10-278:16 (T of Expert Speech Education Witness) *with* Stip. Ex. 21 p 174. Further, these are parent scores and "in a school setting, these scores could look different." T vol 2 p 276:23-25 (T of Expert Speech Education Witness).

*Relevant Information from Expert Speech Pathologist Witness's Speech and Language Evaluation Report:*

263. Expert Speech Pathologist Witness, CCC-SLP evaluated Student on September 11, 2024, six (6) days prior to the first alleged threat as part of an Independent Educational Evaluation (IEE) for "eligibility and programming purposes." Stip. Ex. 8 p 70. Expert Speech Pathologist Witness shared the September 11, 2024 speech language evaluation with Secondary Exceptional Children Director on September 26, 2024, and no one from GCS contacted her to discuss the evaluation until she was invited to attend the October 2024 IEP meeting. T vol 1 p 139:20-140:2 (T of Expert Speech Pathologist Witness).
264. Expert Speech Pathologist Witness reported background information from the July 2023 psychoeducational evaluation. She noted "[r]esults of the testing components which would have given insight into a potential autism diagnosis (Social Communication Questionnaire and Social Responsiveness Scale) were not reported in this evaluation, although the evaluators concluded the results were entirely within normal limits." Stip. Ex. 8 p 70. Students with specific learning disability in reading and writing very often have some language impairment as "language is the foundation for reading and writing." T vol 1 p 146:4-14 (T of Expert Speech Pathologist Witness). Expert Speech Pathologist Witness

found it surprising Student had been exited from speech services “because he still had this intelligibility problem at the level of connected speech and discourse. It was also surprising that no further language evaluations were performed.” T vol 1 p 165:23-166:4 (T of Expert Speech Pathologist Witness).

265. Expert Speech Pathologist Witness explained the connection between speech and language disorders and ADHD as follows:

So speech and language and overall communication disorders and ADHD are definitely not mutually exclusive because of the way in which ADHD interferes with a student's frontal lobe and their executive functions and their working memory. Students can more slowly acquire vocabulary and language. They can have lagging skills in communication, and they can have impairments in pragmatic language due to difficulties with impulse control. So very often it is the case that when I evaluate a student who has a history of ADHD, he or she or they will also have some kind of language impairment.

T vol 1 p 142:6-14 (T of Expert Speech Pathologist Witness)

266. Expert Speech Pathologist Witness further explained the characteristics she noted in Student consistent with those communication features:

I observed limited vocabulary usage. He was not very talkative, so it was difficult to even get a language sample. When he did speak, he spoke with very reduced awareness and could not answer appropriate questions or follow-up questions. In addition to some of those communication features, parents described a child who was extremely rigid in his thinking, very inflexible, had very limited feeding repertoire, and had a limited food repertoire, had sensory differences.

T vol 1 p 142:15-25 (T of Expert Speech Pathologist Witness)

267. Expert Speech Pathologist Witness explained Student had “reduced awareness about the impact of how he came across to other people,” and it is important “because you have to understand your audience and your listener . . . how you’re communicating and how the person is receiving what you are saying and understanding what you are saying.” T vol 1 p 143:11-144:8 (T of Expert Speech Pathologist Witness).

268. Expert Speech Pathologist Witness reported Student’s caregiver reported, “he becomes ‘social’ and ‘talkative’ when conversing with friends, especially when engaged in online gaming, which he participates in daily.” Stip. Ex. 8 p 71. Expert Speech Pathologist Witness explained Mother of Student would have to get into online games for Student to verify he was thirteen years old because he did not sound his age. “He comes across as a much younger child.” T vol 1 p 144:9-145:3 (T of Expert Speech Pathologist Witness).



269. Mother of Student completed an intake form describing him as “temperamentally shy, and ‘rigid,’ with apparently reduced ability to access ‘gray areas’ of thinking and relating.” Stip. Ex. 8 p 71. Mother of Student and Father of Student “declined filling out a checklist for pragmatic language, referencing the 2023 psychological evaluation in which autism was ruled out.” Stip. Ex. 8 p 71.
270. Student’s parents indicated “he struggles with subjects he does not have any personal interest in” and, at school, he can be: impulsive, distracted, inflexible and rigid, anxious, and oppositional. Stip. Ex. 8 p 71.
271. At the end of the evaluation, Student’s parents “endorsed that the observed behaviors and responses [were] largely consistent with his typical, day-to-day presentation.” Expert Speech Pathologist Witness found the “[e]valuation results appear to be an adequate measure of [Student]’s communication abilities.” Stip. Ex. 8 p 73. Expert Speech Pathologist Witness collected teacher data for the September 11, 2024 evaluation but “the teacher data that was shared didn’t really change [her] impressions of Student,” therefore she did not include it in her report. T vol 1 p 170:2-12 (T of Expert Speech Pathologist Witness).
272. In addition to assessments related to Student’s articulation and intelligibility, Expert Speech Pathologist Witness conducted a language and pragmatic assessment to examine Student’s “ability to attend to, interpret, make decisions, and respond to social information in the dynamic moment.” Stip. Ex. 8 p 75.
273. Expert Speech Pathologist Witness administered the School-age Language Assessment Measures (SLAM). The “tasks require the student to describe or sequence pictures, formulate/tell a story or recount personal experiences, answer various types of social/inferential questions, problem solve, and use theory of mind skills.” Stip. Ex. 8 pp 75-76. Expert Speech Pathologist Witness “performed an evidence-based evaluation of his narrative language and his discourse using the SLAM protocol from the LiDAR’s project.” T vol 1 p 147:3-9 (T of Expert Speech Pathologist Witness). The Undersigned notes Expert Speech Pathologist Witness is the only witness who testified who had administered the SLAM or interpreted its results. She offered a helpful explanation of why she selected that specific evaluation. *See* T vol 1 p 147:16-24 (T of Expert Speech Pathologist Witness).
274. Based on Student’s performance on the SLAM, Expert Speech Pathologist Witness concluded Student “demonstrate[d] a need for support in the following areas: Generating complex clauses, Narrative and clausal density, Perspective taking, Social problem-solving skills/Self-advocacy, [and] Inferencing.” Stip. Ex. 8 p 77.
275. Expert Speech Pathologist Witness opined of Student’s language skills:

So given the amount of data that I was able to collect that day, it was true that he was functional in the sense that he could speak with words. However, at the discourse level, he -- he had some delays in expressing himself. He could not retell events coherently. He had difficulty with understanding

different perspectives and making inferences. And what was unclear to me was whether this was a function of reduced access to academic reading material because of his reading disability, or whether this was a true language impairment or whether this was, you know, just a bad day for him.

T vol 1 p 150:16-24 (T of Expert Speech Pathologist Witness).

276. Expert Speech Pathologist Witness noted Student “failed to notice subtle social cues including body states . . . [h]e required maximum verbal prompts from the clinician to notice these body states, and to general simple statements relating to the story.” Student was unable to answer most of the basic comprehension questions related to the story. Stip. Ex. 8 p 77. Special Education One-On-One Reading Teacher confirmed Student struggled with retelling stories. She had to pull information out of him about his summer vacation, and he would “respond with I don’t know, like it was okay. If I ask very specific questions I could kind of get one- or two-word answers.” T vol 4 p 799:16-23 (T of Special Education One-On-One Reading Teacher).
277. Expert Speech Pathologist Witness recommended Student’s “combination of features, which, when taken in full, point to the need for reconsideration of an autism diagnosis by an experienced psychologist. These features include the following: anxiety, attention difficulties, rigid thinking, sensory processing difficulties which appear to have a functional impact on his diet due to food selectivity/refusal, excoriation of his skin, oppositional behavior/demand avoidance, difficulties with narrative language, lack of understanding about how his voice and intelligibility impact his message to listeners, difficulty understanding context and the expectations within different contexts, executive functioning challenges, written expression difficulties, and limited interests.” Stip. Ex. 8 p 78.
278. Expert Speech Pathologist Witness explained she had offered to conduct more “standardized testing of receptive and expressive language” during the September 11, 2024 evaluation, but those were not concerns the parents had at that time and “parents aren’t supposed to be language experts . . . doesn’t necessarily know what to ask, but her ongoing concern at the time was intelligibility.” T vol 1 p 171: 11-18 (T of Expert Speech Pathologist Witness).
279. Expert Speech Pathologist Witness explained she did not see narrative language concerns in the evaluations she had reviewed; however, she clarified there was no reporting by “anybody who has training in narrative language.” T vol 1 p 176:10-21 (T of Expert Speech Pathologist Witness). The speech language evaluation GCS conducted of Student was not sufficient to identify Student’s needs. T vol 1 p 164:5-14 (T of Expert Speech Pathologist Witness).
280. Special Education One-On-One Reading Teacher, who provides one-on-one instruction to Student for his dyslexia, completed a form with input from Special Education Inclusion Teacher, Student’s special education teacher. Stip. Ex. 9. Special Education One-On-One Reading Teacher testified that she did not have any personal experience observing

Student's interactions with other students. Special Education One-On-One Reading Teacher work with Student in a one-on-one setting. T vol 4 p 798:17 (T of Special Education One-On-One Reading Teacher). She noticed he was "withdrawn, very quiet," so she spoke with other teachers about their impressions of how he interacted with other students since she never directly observed Student's peer interactions. T vol 4 p 795:3-17 (T of Special Education One-On-One Reading Teacher). The Undersigned notes this testimony from Special Education One-On-One Reading Teacher about Student's interactions with peers is hearsay. Yet, this is exactly what Respondent's Expert Witness relied upon in formulating her opinions. See T vol 4 p 739:8-18 (T of Respondent's Expert Witness the only teacher she spoke with was Special Education One-On-One Reading Teacher).

281. School Psychologist explained she reviewed the September 11, 2024 speech language evaluation. However, based on her own timeline, she had already spoken with Respondent's Expert Witness prior to GCS's receipt of the speech evaluation. Additionally, she stated she was "curious about . . . how his behavior was during the assessment . . ." as though Student's actions during the evaluation were somehow connected to the conduct in question. T vol 4 p 595:21-596:3 (T of School Psychologist). This analysis did not make sense and rather appeared as though part of GCS's efforts to persuade the Undersigned it had considered the September 11, 2024 speech evaluation despite its documentation otherwise.
282. School Psychologist is a school psychologist, not a speech language pathologist. However, GCS had her analyze the September 11, 2024 speech evaluation for the Undersigned. It appeared to the Undersigned GCS was attempting to undermine the September 11, 2024 speech evaluation through any means possible. By way of example, School Psychologist questioned whether Expert Speech Pathologist Witness had observed the behaviors she documented as examples for why she recommended Student's parents seek a provider trained in administering a specific autism assessment. T vol 4 p 603:15-604:1 (T of School Psychologist). The Undersigned finds School Psychologist was overstating her ability to interpret a speech language evaluation and gives her testimony the appropriate, diminished weight concerning the same.
283. Throughout the course of School Psychologist's testimony, there were numerous objections to her giving opinions about the speech language evaluation and her interpretation of the evaluation at which time the Undersigned stated the appropriate weight, if any, would be given to her opinions in the decision. The Undersigned notes School Psychologist's overstatement of her opinions about the speech language evaluation diminished her credibility. Additionally, School Psychologist never spoke with Student or the evaluators who completed the evaluations. T vol 4 p 625:7-18 (T of School Psychologist). While School Psychologist had many questions and concerns with Expert Speech Pathologist Witness's evaluation, she did not speak with Expert Speech Pathologist Witness, and School Psychologist cannot administer speech evaluations. T vol 4 p 626:5-11 (T of School Psychologist).

284. School psychologists and speech language pathologists have different training. “There are limitations to what psychologists can say and diagnose with respect to language because they don’t have the training or the experience that speech and language pathologist has.” T vol 5 p 893:3-8 (T of Expert Speech Pathologist Witness).
285. Respondent’s Expert Witness attempted to offer numerous opinions about speech language evaluations throughout her direct testimony. However, when pressed on cross examination about whether a particular component was a screener or an evaluation, she admitted, “I can’t speak to that.” T vol 4 p 771:9-772:14 (T of Respondent’s Expert Witness).
286. Expert Speech Pathologist Witness selects specific speech measurement tools as “some of the psychological and educational instruments are not as sensitive as some of the speech and language evaluations that I use in our discipline because of the normative sample that they’re based on.” T vol 5 p 893:23-894:2 (T of Expert Speech Pathologist Witness).

*GCS’s Documentation of what it Considered during the MDR:*

287. The only data the MDR team used to consider whether the conduct in question was a manifestation of Student’s disability is documented by GCS. The MDR paperwork, completed by GCS personnel, identified the following Data Used to Consider Manifestation of Student’s Disability:

Selection	Data Source	Date of Data Source
X	IEP	2/20/2024
X	Assessment/Evaluations	10/19/2023
X	Medical Information (Including diagnosis and medication)	08/22/2023
	Teacher Observations	
X	Discipline Report(s) (current school year)	09/18/2024
	Functional Behavior Assessment	
	Behavior Intervention Plan	
X	Other: Grades	09/26/2024

Stip. 68; Stip. Ex. 20 p 170.

288. Noticeably absent from the data considered is the September 11, 2024 speech language evaluation Father of Student had provided GCS the evening before the MDR meeting. Mother of Student explained about the evaluation: “It was not discussed. . . . Mr. Saint said that because it had not been reviewed by the IEP team, that the team on the phone for the manifestation did not have to consider it.” T vol 1 p 57:17-25 (T of Mother of Student). The IEP team also did not consider the 2018 evaluation. Pet. Ex. 6.
289. Respondent’s Expert Witness testified “the MDR team had information about Student’s medical diagnoses of ADHD, predominantly inattentive type, his medical diagnosis of separation anxiety, his medical diagnosis of specific learning disability in reading, and his medical diagnosis of specific learning disability in written expression, as well as his IDEA

classification of a student with other health impairment and specific learning disability.” T vol 4 p 722:12-19 (T of Respondent’s Expert Witness). The Undersigned notes Respondent’s Expert Witness’s omission of the September 11, 2024 Expert Speech Pathologist Witness speech language evaluation—similar to the documentation produced by GCS during the meeting.

290. School Psychologist explained about the speech evaluation, “It was not the main focus of our meeting. We did go back and forth on whether or not to discuss it because it had come in so late, so not everyone maybe had a chance to review it. But it was discussed in the meeting. . . . And again, because we didn’t have a speech path there.” T vol 4 p 614:1-10 (T of School Psychologist). School Speech Language Pathologist agreed “IEP teams do not review speech evaluations without a speech pathologist present.” T vol 4 p 846:12-21 (T of School Speech Language Pathologist).
291. Throughout the hearing, GCS presented extensive testimony trying to show the speech evaluation was discussed during the MDR meeting. The prior written notice from the meeting shows Student’s family pointed to portions of the speech language evaluation. Stip. Ex. 21. However, the best evidence is the document GCS prepared contemporaneously with the MDR meeting – the manifestation determination paperwork itself. GCS did not include the speech language evaluation in the data used to consider manifestation of student’s disability. Stip. Ex. 20 p 170. Further, GCS did not include any “specific information that is being considered from the data sources above” from the speech language evaluation. Stip. Ex. 20 p 170-71.
292. In fact, the manifestation determination paperwork has a section to document any information provided by the parent: “Describe the specific information that is being considered from the parent, including any outside evaluations.” Stip. Ex. 20 p 171. GCS completed this section with “Parent does not have any additional information at this time.” Stip. Ex. 20 p 171; Stip. 70. The manifestation paperwork anticipates a parent may have additional information for the team’s consideration; however, GCS documented its failure to consider the September 2024 speech evaluation.
293. Expert Speech Education Witness also pointed to the September 11, 2024 speech language evaluation to show a connection between the conduct of which Student is accused and his disabilities:

He's got some delay with speech sounds, and then his pragmatic -- his pragmatic language, which is the social use of language, is also lower than it should be. He needed prompting and support and had difficulty with things like sequencing and planning within this, as well as taking perspectives. So like theory of mind is a -- is a deficit that he had, as well. And being able to make inferences and advocate for himself. Those were also struggles that were noted within this evaluation report.

T vol 2 p 256:17-257:2 (T of Expert Speech Education Witness).

294. She explained theory of mind as follows:

Theory of mind is being able to put yourself in someone else's shoes, being able to take the perspective of someone else. It might be a character in a story, it might be a peer that we're socializing with, it could be an adult that we're having a social interaction with, but that ability to recognize how someone else feels in a situation. It could be as a result of your actions or something that they're experiencing, but it's how they feel, identify how someone else is feeling -- someone else feels in that situation.

T vol 2 p 257:5-14 (T of Expert Speech Education Witness).

295. The Undersigned finds the MDR team did not properly consider the September Speech Evaluation during the MDR meeting. This is further evidenced by the IEP developed one (1) month later by Student's IEP team, which determined Student required speech/language services both for articulation and, as related to the MDR, for expressive language both for narrative language and for learning to identify non-verbal cues, understand their meaning, and demonstrate an appropriate adjustment in his behavior. Stip. Ex. 19 p 160. The September 11, 2024 speech language evaluation should have been considered during the MDR meeting as "it is relevant to the conduct that he's accused of because the conduct he's accused of has to do with responding in a social situation. It is about the social context, the theory of mind portion, understanding how his words and actions impact other people, which is a deficit that is pointed out in that speech and language evaluation that he had." T vol 2 p 269:3-13 (T of Expert Speech Education Witness).

296. Documented observations of Student by GCS staff note Student has limited interactions with peers at school. Stip. Ex. 16 p. 113 ("He did not interact with others who sat near him"); Stip. Ex. 4. The record in this case repeatedly emphasizes that Student is a "very quiet" student who needs help asking for assistance and does not self-advocate. Stip. Ex. 16, pp. 99, 114-15; Stip. Ex. 4. The record in this case repeatedly emphasizes Student has deficits in his ability to plan, organize, and sequence steps. Stip. Ex. 16 p. 99; Stip. Ex. 4.

297. Principal stated during the MDR meeting that Student had no prior disciplinary history. Stip. 69.

298. At the time of the MDR, Student had the following grades:

Tech Systems	100
PE	91
Language Arts	53
Social Studies	99
NC Math 1	72
Science	70

Stip. 71.

**GCS's Impeding of Student's Parents' Meaningful Participation  
in the MDR through Predetermination and Procedural Violations:**

299. Principal recommended Student for long-term suspension and served as the “LEA representative” during Student’s MDR meeting. Stip. 72.
300. As noted above, the Disciplinary Change in Placement only indicated the team only purposes of the meeting were to: Discuss educational placement and conduct the Manifestation Determination Review, Stip. Ex. 1 p 2.
301. The school psychologist present in the meeting had not met or evaluated Student. She reviewed the 2023 psychological evaluation with the MDR team. Stip. 73. School Psychologist had never attended an MDR meeting before. T vol 4 p 623:24-624:1 (T of School Psychologist). Prior to attending the MDR meeting, School Psychologist “did a lot of consultation and information gathering with others. [She] also reviewed a lot of files.” T vol 4 p 590:24-591:2 (T of School Psychologist). She learned from her supervisor and her supervisor’s supervisor she would be participating in the MDR meeting for Student. T vol 4 p 591:6-11 (T of School Psychologist).
302. School Psychologist “went to the school . . . and briefly checked in with members of the team.” She spoke with Principal and Special Education One-On-One Reading Teacher. She noted speaking with Special Education One-On-One Reading Teacher was helpful as “she was present for the threat assessment.” T vol 4 p 591:12-20 (T of School Psychologist). She also spoke with EC School Support Lead, who is an EC coordinator. T vol 4 p 591:21-592:1 (T of School Psychologist).
303. Of particular note, School Psychologist spoke with Respondent’s Expert Witness, GCS’s expert witness. School Psychologist stated, “So after I did all of my document review, I gave her a call to kind of just talk it out a little bit before we went into the meeting.” T vol 4 p 592:5-9 (T of School Psychologist). Without reviewing any information about Student, his disabilities, or the alleged conduct in question, Respondent’s Expert Witness spoke with School Psychologist in advance of the MDR meeting. They explained the conversation was “a school psychologist relaying facts of a case and her opinion to me and me giving advice on how to report that opinion outward so that it would be understood by the team.” T vol 4 p 775:7-25 (T of Respondent’s Expert Witness). The Undersigned finds this to be evidence of School Psychologist’s preformulated opinion she had in advance of her attendance at Student’s MDR meeting. Respondent’s Expert Witness went on to explain, “she presented to me her opinion that the evidence she had seen thus [far] did not suggest that his misconduct was related directly to his disability.” T vol 4 p 776:8-15 (T of Respondent’s Expert Witness).
304. Oddly, School Psychologist focused on the areas of eligibility in making her determination of whether Student’s conduct was a manifestation of his disabilities. T vol 4 p 594:14-25 (T of School Psychologist she looked at “the actual eligibility piece” and “[she] was more concerned with looking at ‘other health impaired’ because that has more behavioral aspects to it.”)

305. Throughout her testimony, School Psychologist focused on eligibility for an IEP. She stated her role at the MDR meeting was “To help interpret the report and provided information about eligibility and whether or not that was connected or not. So to be able to help the team understand what the eligibility was and some of the psychoeducational information.” T vol 4 p 631:24-632:5 (T of School Psychologist). Notably, while she offered extensive testimony about the speech language evaluation when asked about her role at the MDR meeting she did not say she was to help interpret the speech language evaluation only “some of the psychoeducational information.”
306. School Psychologist again stated her misunderstanding of the role of an MDR team. She was focused on eligibility – “And so for OHI we’re looking at a strength and vitality and alertness and whether those particular things had impacted him.” T vol 4 p 638: 1-8 (T of School Psychologist). The only training about what to consider during MDR meetings School Psychologist testified she had received was “to look at the eligibility category.” T vol 4 p 641:7-642:6 (T of School Psychologist). The Undersigned notes an MDR team is considering a student’s disability, not his eligibility category for an IEP as School Psychologist continued to express.
307. School Psychologist revealed her predetermination toward the end of her testimony: “I can’t make the connection with ADHD and threat of violence or violence, so that, **I guess, kind of already makes my determination**, but, as well being able to plan would, I guess, speak more to the threat itself.” T vol 4 p 638: 16-20 (T of School Psychologist)(emphasis added). In her review of the information, she could not connect ADHD and a threat.
308. School Psychologist testified she went into the MDR meeting with the idea in mind that Student’s behavior was not a manifestation of his disabilities; however, she stated, “I don’t make my decision until I’ve heard from the whole team.” T vol 4 p 620:10-20 (T of School Psychologist). The Undersigned is unsure what anyone could have said during the MDR meeting to change School Psychologist’s predetermined opinion the behavior was not a manifestation of Student’s disabilities. Further, the Undersigned is troubled School Psychologist determined the student statements showed evidence of planning without ever having *read* the statements herself and just relying on what others told her about the statements. T vol 4 p 624:5-625:1 (T of School Psychologist).
309. Secondary Exceptional Children Director attended Student’s MDR meeting “Because attorneys were involved, and when attorneys are involved we tend to send central office staff as a support to the school to make sure that the law is being followed . . . .” T vol 4 p 685:22-25 (T of Secondary Exceptional Children Director). MDR facilitator is “part of [the] behavior support team” and attended “probably for the same reason that [Secondary Exceptional Children Director] was there.” T vol 4 p 686:6-8 (T of Secondary Exceptional Children Director). EC School Support Lead attended “as support for Special Education Inclusion Teacher because she was a new EC teacher.” T vol 4 p 686:9-14 (T of Secondary Exceptional Children Director). EC Behavior Support because “she is the behavior support staff member who is assigned to that zone.” T vol 4 p 686:20-24 (T of Secondary



Exceptional Children Director). The Undersigned notes none of these four (4) people had ever worked with Student or had any specialized knowledge.

310. The second Connect-Ed message was not sent out because Principal did not believe the statement to be unfounded. This person who refused to believe the statement was unfounded “despite the evidence is then the person who’s in charge of the MDR.” T vol 2 p 322:8-21 (T of Expert Speech Education Witness). The Undersigned finds this is evidence of bias and predetermination.
311. Student’s parents did not receive a copy of the procedural safeguards (“Parents’ Rights Handbook”) prior to the MDR meeting. The invitation [Disciplinary Change in Placement] indicated a copy of the Parents Rights and Responsibilities in Special Education: Notice of Procedural Safeguards was enclosed with the Invitation to the MDR Meeting, but it was not included. Stip. 57. Student’s parents did not receive a copy of the handbook on parents’ rights at the MDR meeting. T vol 2 p 226:21-23 (T of Father of Student); T vol 1 p 54:9-10 (T of Mother of Student). During the MDR meeting, “we wanted to make sure that . . . they had . . . the most recent date of the copies that we had in the school. And [Principal] believe[d] that date is 2016 or 2017 and . . . it matched. And so then we could proceed because they had a copy.” Student was first identified as eligible for an IEP in 2018. T vol 3 pp 465:24-466:8 (T of Principal). Principal testified the MDR team was not “sure if the district had updated the Parents Right Handbook.” T vol 3 p 466:15-16 (T of Principal). Regarding the provision of the Parents’ Rights Handbook during the MDR meeting, Principal testified the MDR team “made sure in that meeting that the copy that they were referencing was the most recent dated copy that we had in the school.” T vol 3 p 388:19-24. However, on cross-examination, the veracity of her statement became questionable as the “most recent copy” was dated 2016, Student did not receive his first IEP until 2018, and Principal was unable to explain why Petitioners might have an outdated copy.
312. Respondent admitted evidence to show Student’s parents received a copy at other times; however, this is insufficient to demonstrate compliance with the IDEA. *See, e.g.*, Resp’t’s Ex. 109 (receipt of Parents’ Rights Handbook in February 2024 when Mother of Student and Father of Student filed a due process petition).
313. The invitation GCS issued to the MDR meeting did not provide the parents with sufficient notice of the reasons for the MDR thereby interfering with and denying their right to parental participation. “There’s not enough information about what the situation was surrounding the threats. There’s not enough information about what those threats were and why they’re a violation of Code of Conduct Rule III-8, which is like an intent to carry out -- oh, what is the word? Like acts of terrorism in the school building.” T vol 2 p 258:17-25 (T of Expert Speech Education Witness); Stip. Ex. 1.
314. Expert Speech Education Witness opined about the importance of parents receiving the procedural safeguards in advance of the MDR meeting as follows:

I think this is important so that they have a clear understanding going into the meeting what the IEP team is supposed to do during that meeting, and

they can recognize how their voice should also be heard in that meeting, and the consideration of all relevant information, all historical information being reviewed in that meeting, as well. I would say the vast majority of students receiving special education services are not sitting in MDR meetings, and so it's not -- it's new, right? Like it's a foreign -- foreign experience for many parents. So I think that's a big part of why that's important.

T vol 2 p 259:11-22 (T of Expert Speech Education Witness)

*GCS's Failure to Discuss the Conduct:*

315. On the Manifestation Determination documentation, Respondent only included the following to “[d]escribe the current disciplinary event, including administrative authority’s written findings and any other details related to the event” documenting the Current Disciplinary Event as:

*Administrator reported, “On Wednesday, 9/18/24 afternoon (after school was dismissed) the parent of a student reported to a district official that their child had told them that he heard [Student] say that he was going to “shoot up the school” and that he was “only going for [student]” one particular student. Then on Friday, 9/20/24 another student reported that on Tuesday, 9/17/24 [Student] said directly to him “I’m going to shoot you”. He said this was said to him after he would not give him answers to an assignment.”*

Stip. 67; Stip. Ex. 20 p 170.

316. The Undersigned notes this language describing the current disciplinary event is copied from the disciplinary paperwork. *Compare* Stip. Ex. 20 p 170 *with* Stip. Ex. 4 p 7.
317. Respondent’s counsel argued Principal’s decision and the nature of the “conduct in question” was not before the Undersigned or before the MDR team. However, the Undersigned must review the school’s disciplinary investigation and consider the underlying facts that bear on the description of the student’s conduct provided to the MDR team to understand the nature of the “conduct in question” and the IDEA does not restrict the Undersigned, nor the MDR team, to considering only the description or findings already made by any disciplinary personnel or investigation.” *Sampson County Board of Education v. Jose Torres*, 717 F.Supp.3d 474, 488 (2024)(citing 20 U.S.C. § 1415(k)(1)).
318. When asked about the discussion of the current disciplinary event, Secondary Exceptional Children Director testified, “I think I think it was probably just read. I don’t remember a very robust conversation about that.” T vol 4 p 648:4-8 (T of Secondary Exceptional Children Director). Mother of Student agreed testifying, “We didn't have discussion. This was read and when my husband and I . . . tried to bring it up, it's my understanding that from a statement that was made by Mr. Saint that we were not there to discuss the incident.”

T vol 1 p 55:4-12 (T of Mother of Student). *See also* T vol 2 p 226:8-15; 229:3-8 (T of Father of Student the team did not discuss the disciplinary event beyond reading the statement as written and “We were informed by Mr. Saint that that was not what we were here for at that meeting.”).

319. When asked about what of the Manifestation Determination document was prepared prior to the MDR meeting, “So I would assume that a majority of this was typed ahead of time, because the current disciplinary event likely would have come from the disciplinary change in placement, his IEP services, which are on page 2 of that, right that would have come straight from the IEP, his grades would have come from PowerSchool. So it's a lot of just data entry and copy and pasting.” T vol 4 p 648:24-649:5 (T of Secondary Exceptional Children Director).
320. It would be predetermination to complete a form prior to an MDR meeting, which is what Student’s MDR team members did. T vol 2 p 340:5-8 (T of Expert Speech Education Witness). The form captures “what was discussed during the manifestation determination review meeting. So why would you, unless you are predicting the future and able to determine what’s going to be talked about at the that meeting, there’s no need to draft it prior to that meeting. It is a recap of what happened in the manifestation determination review meeting.” T vol 2 p 345:18-346:4 (T of Expert Speech Education Witness).
321. The MDR team read the description but did not engage in any discussion regarding the accusations against Student or the impact of his disabilities related to the accusations; even though Student’s parents had just learned of the basis of the allegations against him two (2) days earlier.
322. Science Teacher was present at the MDR meeting when Student’s parents attempted to discuss the incident and explained “he remains steadfast he has not said what he’s been accused of saying.” Stip. Ex. 21 p 174. The Undersigned finds the threats were alleged to have been made during Science Teacher’s class period. It would have been important to discuss during the MDR meeting “to find out did [he] hear the statements. . . . based off the records . . . the teacher did not hear the statements being made.” T vol 2 p 270:16-23 (T of Expert Speech Education Witness). The Undersigned notes GCS called Science Teacher to testify and did not inquire whether he heard Student make any of the threatening statements in his class. In fact, Science Teacher only learned the threats were alleged to have occurred in his classroom when an administrator went to his classroom to inquire where Student was sitting. T vol 4 p 585:1-6 (T of Science Teacher).
323. Secondary Exceptional Children Director confirmed there was no discussion following Student’s parents’ statement that “[Student] remains steadfast that he did not say what he is accused of saying.” T vol 4 p 689:19-690:4 (T of Secondary Exceptional Children Director).
324. It was important for the MDR team to have a discussion surrounding the current disciplinary event:

I think there should have definitely been a discussion about -- well, is it the 9-17 or the 9-18 event. But also, looking at what -- again, what were the antecedents and consequences surrounding that event, were his modifications being implemented, was -- you know, if this is a situation where these comments were said and allegedly said throughout the year in varying degrees, you know, why was an adult not hearing it. I think those would have all been things that would have been really critical to review.

T vol 2 p 263:9-18 (T of Expert Speech Education Witness).

325. Having a conversation about the alleged conduct would have also examined other possible circumstances surrounding the allegations:

I think also having a conversation about if he's continuously stating that he didn't say these -- make these statements, then is there -- are there other underlying factors that might cause the peers to claim he made these statements when in fact he didn't. For example, you know, the second student that came forward didn't do so until after the first student came forward, and then the -- the closure of the threat wasn't sent out to the family. And so that was a -- you know, in the records that I reviewed that was the topic of conversation among peers resulting in kind of this chaos thinking that the threat was still active.

T vol 2 p 271:6-17 (T of Expert Speech Education Witness).

326. Again, none of these conversations occurred during the MDR meeting despite Student's parents' statements that he denied making the statements. Had these conversations occurred, "looking at the behavior, the lack of modified assignments, the lack of . . . teacher hearing the comments being made . . . it would have led the team to determine that it is in fact a manifestation of his disability, especially given the speech evaluation that talks about his deficits [in] perspective taking and theory of mind." T vol 2 p 271:20-272:4 (T of Expert Speech Education Witness).
327. The MDR team documented the behavior had not changed in "frequency duration or intensity" and that "the behavior or similar behaviors associated with the disability [had not] been exhibited this school year." Stip. Ex. 20 p 172. Yet, "according to the second student who came forward, the behavior has been occurring all school year and had increased in . . . intensity." T vol 2 p 273:2-18 (T of Expert Speech Education Witness). Thus, the Undersigned finds if the behavior occurred, it had been occurring all year and increasing in intensity. However, the Undersigned has doubts about whether the behavior actually occurred. The MDR team's selective consideration of the allegations (i.e. that the statement was made but *not* that the behavior had occurred all year or increased in frequency) is further evidence of the team's predetermination it would not find the behavior a manifestation of Student's disabilities.

328. The Undersigned agrees having a discussion of the alleged underlying disciplinary event during the MDR meeting was crucial. These comments were alleged to have been made throughout the school year and intensifying; yet, no adult heard the comments even though Science Teacher's practice was to walk throughout his classroom during the time when the comments were alleged to have been made.
329. The only consequence listed on the Manifestation Determination for the MDR team's consideration was "10-Day Out-of-School Suspension," excluding any information regarding Principal's recommendation for long-term suspension. Stip. Ex. 20 p 170.
330. Expert Speech Education Witness opined as to the importance of the MDR team examining the antecedents and consequences of Student's alleged behavior:

And so I think the -- you know, when we look at antecedents again, if Student said if you don't give me the answers I'm going to mark on you with a highlighter, stab you with a pencil, you know, so then the student gives those answers. What we know about behavior is that when we reinforce it, it will often escalate or deny it something. So if we're trying to gain something, we reinforce the behavior by giving in, giving the person what they're trying to gain, then that behavior will escalate when the person is denied access to the thing they're trying to gain in the future. And so I want the answers. No. Okay, well I'll stab you with a pencil, then we give the answers. As time goes on, if the hard no hits, no, I'm not giving you the answers, then the response -- the behavior in response to that will continue to escalate.

T vol 2 p 264:24-265:14 (T of Expert Speech Education Witness).

331. No speech therapist attended the meeting. Stip. 74. This was a procedural violation for GCS not to have someone present to interpret the evaluation results.
332. When asked whether the conduct in question was caused by Student's disability, Student's parents both said "yes." The school psychologist, and the EC and general education teachers sitting in the room with the school psychologist, responded in the negative. Stip. 75. School Psychologist said she was in the room with the EC and general education teachers because "that was the space that [she] had been told [she] could use that day." T vol 4 p 625:2-6 (T of School Psychologist).
333. When asked if the conduct was related to Student's disability, Student's counsel answered on his parents' behalf "yes." Stip. 76.
334. GCS documented the explanation of why GCS refused to determine that Student's behavior was a manifestation of his disability as follows: "As the LEA, Principal decided that this incident is not a manifestation of [Student]'s disability. She does not see the correlation between this incident and his specific learning disability and Other Health Impairment. The

reasons for this refusal are the same as the reason for why the conduct was not caused or related to [Student]’s disability.” Stip. 77.

**GCS’s Failure to Implement Student’s IEP and  
Failure to Consider the Causal Relationship of its Failure on Student’s Alleged Conduct:**

335. On October 30, 2023, Mother of Student raised concerns via email regarding Student not receiving appropriate support in his science class where he did not have any support from a special education teacher. Pet. Ex. 1, pp. 1-2.
336. Student’s science teacher responded to Mother of Student’s email, with Principal copied, noting she would “partner him up” with another student to sit by him, and Student could ask the other student questions about any assignments in class. Pet. Ex. 1, p. 1.
337. The IEP team met again at the end of November 2023 and added a self-advocacy goal for Student to “ask for assistance when he does not begin a given task after being prompted one time to begin the task.” Resp’t’s Ex. 100 p 787; Resp’t’s Ex. 101 p 793.
338. On August 27, 2024, Father of Student notified Science Teacher, Student’s Science teacher, of Student’s need for assistance with self-advocacy and assignments. Resp’t’s Ex. 120.
339. The record in this case repeatedly emphasizes Student’s need for modified assignments due to his significant deficits in reading and writing. Stip. Ex. 16 pp. 99, 119-121; Resp’t’s Ex. 93 pp 745-47 (October 2023 IEP).
340. Student has “extreme” deficits in reading decoding, encoding, and fluency. Stip. Ex. 16 p 123. Student’s IEP team determined Student’s deficits and regression required Extended School Year (ESY) services during the summer of 2024 in reading, writing, and self-advocacy. Stip. Ex. 15 p 98. The IEP Team also determined Student would receive pull-out services from Special Education Inclusion Teacher to address his Self-Advocacy/Self-Determination goals. Stip. Ex. 15 p 97.
341. Student’s grades at the time of the MDR related to the implementation of his IEP and the “conduct at issue” were Language Arts Advanced – 53 and Science – 73. Stip. Ex. 4 p 14.
342. In addition to Student’s failing grade in Language Arts, Special Education Inclusion Teacher’s documentation further documents the failure to provide specially designed instruction on Student’s IEP goal for Self-Advocacy/Self-Determination, which was to be provided in a separate special education setting. *See* Resp’t’s Ex. 14 pp 225-26 (documenting all specially designed instruction was provided in “Whole Group-General Education”). There was no evidence of modified assignments in the record or that was brought for discussion during the MDR meeting. T vol 2 p 329:13-19 (T of Expert Speech Education Witness).

343. Additionally, there is no data indicating Student received specially designed instruction on his IEP goals to address reading comprehension and written expression in the general education setting, as measured by informal assessments and data sheets. Resp't's Ex. 14 pp 225-26 (no data sheets or documentation of implementation of IEP goals in the general education setting).
344. The IEP At a Glance is designed to inform Student's general education teachers of the special education services and the Supplemental Aids, Services, Modifications, and Accommodations, Student was supposed to receive per his February 2024 IEP. Stip. Ex. 13. The document provides for Student's Case Manager, Special Education Inclusion Teacher, to indicate she has reviewed the IEP, provided a copy of the IEP-At-A-Glance to all Student's teachers, and met with Student's teachers to review the services and support required to participate fully in general education. Stip. Ex. 13 p 92.
345. The document submitted into evidence is unsigned by any general education teachers or Special Education Inclusion Teacher. Stip. Ex. 13 p 92. While Special Education One-On-One Reading Teacher testified that she reviewed this document with Student's teachers, the documentary evidence does not support her testimony. *Compare* T vol 4, p 807:14-808:7 *with* Stip. Ex. 13, Resp't's Ex. 175 (documenting no modified assignments provided).
346. Student's IEP clearly states: "[Student] will receive modified assignments. He may have assignments shortened based on content and time allowed." Stip. Ex. 16 pp 119-121. Despite this unconditional directive in the IEP, Special Education One-On-One Reading Teacher testified that she informed his teachers it was at their discretion. T vol 4, p 807:14-808:7 (T of Special Education One-On-One Reading Teacher).
347. Mother of Student questioned whether Student's assignments were being modified. She questioned it at the MDR meeting because "there were no modifications on any of the work" when she had checked his backpack prior to the suspension and the work sent home for Student to complete during the suspension "didn't have any modifications." T vol 1 p 26:19-24 (T of Mother of Student).
348. When discussing the failure to implement, Respondent had not provided Petitioners with any documentation prior to the MDR regarding the implementation of Student's IEP; however, based on work Student brought home, Mother of Student raised questions regarding the implementation of Student's IEP in all his classes. The MDR team merely reported Student receives the accommodations, modifications, supplementary services, and specially designed instruction in his IEP. Stip. Ex. 21 p 174.
349. Mother of Student raised the issue of whether Student's work was being modified after the MDR meeting and asked for copies of all his modified work with a comparison of the unmodified work. T vol 4 p 657:2-21 (testimony of Secondary Exceptional Children Director). Mother of Student never received what she requested because the work was not being modified; instead, Respondent asked each teacher to provide a typed list of assignments with a justification for why the work was not modified. *See* Resp't's Ex. 175.

350. During the MDR meeting, Mother of Student stated she believed the conduct in question was a manifestation of Student's disabilities and related to GCS's failure to implement his IEP:

Because he -- because of the disabilities, the -- the deficits that he has, you know, we're -- we're putting him in a room at an eighth- grade pace for a child who really is at about a fourth-grade reading comprehension level. And I didn't believe that his accommodations were in place. And, you know, the poor kid to try to be able to keep up, he just -- he just couldn't. Student continues to say and has never changed that he did not do this. Okay. But we have to take into account that he has multiple learning disabilities. And those were, yet again, not being addressed by the school system, and he was just trying to keep up. So, like, if -- if you deem that he could have possibly said something like, how could it not be as a result of his disability?

T vol 1 p 59:6-60:2 (T of Mother of Student).

351. Respondent's Counsel asked Mother of Student a series of questions about whether she brought up different issues throughout the MDR meeting. Notably, many of the issues asked about were included in the September 11, 2024 speech language evaluation. *Compare* T vol 1 p 86:2-87:8 (T of Mother of Student) *with* Stip. Ex. 8. Mother of Student explained "No. Because we were shut down. When we tried to discuss the speech evaluation and we were shut down when we tried to discuss the incident. If we had had the opportunity to discuss both of those things that he's bringing up now would have been discussed. His deficits, his disabilities would have been discussed." T vol 1 p 87:4-8 (T of Mother of Student).
352. Again, GCS engaged in a line of questioning attempting to place the burden on the parents to enforce Student's disciplinary due process rights. Presumably, the inference was that despite GCS's suspension of Student without affording him due process, had the parents called Principal *after* the suspension, somehow GCS would have then offered Student his right to be heard. The Undersigned finds this to be a troubling supposition as GCS has a responsibility to follow the law whether a parent requested it follow the law or not. T vol 1 p 93:5-13 (T of Mother of Student).
353. Contrary to Respondent's line of questioning, procedural rights are not only offered or guaranteed when they are requested.
354. "The MDR team is supposed to review how accommodations and modifications are being implemented to prevent the behavior. [They're] supposed to talk about the IEP goals, the IEP service time, and the accommodations and modifications." T vol 2 p 332:12-16 (T of Expert Speech Education Witness). The line of questioning of Expert Speech Education Witness suggested certain protections are only afforded if parents requested them – this was a concerning trend throughout the hearing: GCS was only going to provide procedures if asked as though it had no obligation to independently provide those to students. Yet, "the



team should have talked about the modifications and whether or not they were being implemented, and teachers knew how to implement them.” T vol 2 p 332:24-333:13 (T of Expert Speech Education Witness).

355. Knowing whether GCS was implementing Student’s IEP and having a discussion about the implementation of the IEP was important for the MDR team to consider:

Well, if the modifications aren't being implemented, I think that's certainly one thing to look at given his deficits in academics, particularly reading. Additionally, looking at antecedents. So, allegedly based on the records that I reviewed, a student reported that he had been making threats of varying degrees throughout the year when trying to get answers to problems or to questions in the classroom. And so the response allegedly was that no, I'm not going to give you the answers, and the behavior that Student exhibited was allegedly making statements of threatening harm. And so there's a clear like skill deficit there of what do I do when -- when I want -- when I don't know how to answer a question in the classroom, or when I don't know how to complete the assignments being given to me.

T vol 2 p 263:21-264:10 (T of Expert Speech Education Witness).

356. A failure to implement a student’s IEP is not limited to the lack of implementation of IEP goals – it is inclusive of a failure to implement the accommodations and modifications. T vol 2 p 284:5-12 (T of Expert Speech Education Witness).

**GCS Incorrectly Determined Student’s Alleged Conduct  
was Not a Manifestation of His Disabilities:**

357. The only specific information considered from these data sources was documented as Student’s eligibility categories of Specific Learning Disability and Other Health Impaired; Student’s diagnoses of Attention-Deficit/Hyperactivity Disorder, Inattentive Presentation, Separation Anxiety Disorder, and Specific Learning Disorders with Impairments in Reading and Written Expression; and Student’s medications. Stip. Ex. 20 pp 170-71.

358. The MDR team did not review any assessment or evaluation from October 19, 2023. *Compare* Stip. Ex. 21 *with* Resp’t’s Ex. 90. To the extent, Respondent is referring to the Eligibility Determination held on October 19, 2023, the summaries of all the data were not discussed by the MDR team. The minutes from the meeting also note School Speech Language Pathologist’s speech screenings were discussed. Resp’t’s Ex. 92 p 726. Expert Speech Pathologist Witness explained the difference between a speech screening tool and an evaluation:

A screening instrument is a brief, less sensitive version of an evaluation. In terms of what is evidence based, we don't use screeners to exclude a student from either further evaluation or eligibility or treatment. Usually what a . . . screening tool is used for is positive identification of the need for further

evaluation. If you're going to evaluate a student, you have to do a full evaluation that includes both standardized evaluation measures, and dynamic assessments, and a language sample.

T vol 1 p 163:22-164:4 (T of Expert Speech Pathologist Witness).

359. When the MDR team discussed the 2023 evaluation, the MDR team documented the definition of executive functioning as “the mental organization processes associated with initiating, implementing, monitoring, and revising strategies and plans of action.” Yet, School Psychologist would only discuss how it would apply to academic tasks, and the team did not discuss how it would impede Student developing, much less carrying out, the elaborate plan described by Student 1. Stip. Ex. 21 p 174.
360. “When asked about working memory in relation to non-academic tasks, having a back-and-forth conversation and being able to process and use that information during the conversation,” there was no discussion documented. Stip. Ex. 21 p 174. Principal also did not consider the impact on non-academic tasks and noted Student’s working memory “was focused on his academics and organization for task completion.” Resp’t’s Ex. 128 p 896.
361. The MDR team reported Student’s grades, without discussion, and documented his two (2) lowest grades were in Language Arts – 53, where he was supposed to receive push-in support on his reading and writing goals in his IEP from Special Education Inclusion Teacher, and Science – 70, where the alleged incidents transpired. Stip. Ex. 20 p 171; Stip. Ex. 21 p 174.
362. The MDR team reported it “reviewed the speech/language evaluation report from Expert Speech Pathologist Witness,” but the only review reported in the one (1) paragraph of the Prior Written Notice from the meeting is Petitioners’ counsel directing the team to the findings showing the impact of his language disability. In response, Principal “highlighted the section in the report where [Father of Student and Mother of Student] shared how [Student]’s temperament changes to a more socially motivated and outgoing presentation when engaging with friends and peers.” Stip. Ex. 21 p 174.
363. Principal failed to mention her own assessment of Student as lacking interpersonal skills, being socially withdrawn, and not easily interacting with others in the school setting. *Compare* Stip. Ex. 21 p 174 *with* Stip. Ex. 4 pp 33-34.
364. Principal had never served as the LEA Representative at an IEP meeting prior to Student’s IEP. T vol 3 p 449:4-6 (T of Principal). Principal refused to acknowledge she had no formal training on how to conduct an MDR meeting despite her prior testimony that she had to ask questions about She did not know “the process of an MDR meeting” or “what would be happening during an MDR meeting.” T vol 3 pp 433:13-18, 448:22-449:3 (T of Principal).
365. Special Education Inclusion Teacher was also inexperienced with MDR meetings, and she “was tasked with completing all the paperwork.” T vol 3 p 434:3-5 (T of Principal).

366. If the behavior had been found to be a manifestation of Student’s disabilities, he would have then returned to school and the school would have then conducted a functional behavior assessment. T vol 2 p 301:7-302:6 (T of Expert Speech Education Witness).
367. Student’s anxiety is connected to the alleged behavior. He was asking for answers to questions and when denied those answers, he allegedly made a threat to the person who denied to answers. That correlates to his need to correctly answer the questions. T vol 2 p 316:15-317:10 (T of Expert Speech Education Witness).
368. Principal explained she “read through [Expert Speech Pathologist Witness’s speech evaluation]” to prepare but did not review any prior IEPs or the 2023 evaluation. T vol 3 p 434:17-25 (T of Principal).
369. Principal saw no “correlation between making threats and [working memory, planning, organizing, task monitoring, and organization of materials].” T vol 3 p 438:3-7 (T of Principal). She saw no correlation between Student’s anxiety, separation anxiety, and “making threats to shoot up the school or shoot other students.” T vol 3 p 438:14-20 (T of Principal). She found no recommendations “for aggressive or threatening type of behaviors” in the 2023 evaluation, “[a]nd at no point did we write IEP goals for aggressive or making threats towards his peers.” T vol 3 pp 438:24-439:2 (T of Principal).
370. In justifying her decision in the MDR, Principal noted Student had never been “at risk for threatening to shoot people” and “never been verbally aggressive towards his peers.” T vol 3 p 439:5-13 (T of Principal). Yet, Principal failed to consider his unique circumstances when whether a change in placement was appropriate for his alleged violations of the code of student conduct.
371. Principal testified she “relied heavily on the information presented in [the speech evaluation] as part of the MDR decision.” T vol 3 p 440:17-18 (T of Principal). Yet, the parts of the evaluation she referenced were the same parts of the background information regarding his communication with peers during online gaming, which she found “was evidence of him being able to hold that conversation with Student 1 and Student 3.” T vol 3 p 441:8-16 (T of Principal). Principal is not a licensed speech language pathologist. T vol 3 p 447:15-17 (T of Principal).
372. Rather than consider Expert Speech Pathologist Witness’s findings regarding Student’s inability to “sequence pictures” and retell a narrative, Principal discounted these findings “because there was evidence that he indeed did state, had a plan . . . for how he was going to get to Student 4 that was very clear and succinct.” T vol 3 pp 442:22-443:4 (T of Principal). Principal failed to consider whether Student had the ability to formulate a plan - the violation for which he received a disciplinary change in placement.
373. Because Expert Speech Pathologist Witness did not make recommendations in her speech evaluation “for goals centered around aggressive behavior, making threats,” Principal discounted the relevance to the MDR. For unknown reasons, she also found it noteworthy

“this speech language evaluation took place prior to the documented reported threats on September 17th and 18th.” T vol 3 p 443:17-22 (T of Principal).

374. Principal explained “his inattentive type ADHD and separation anxiety are not correlated to making threats to shoot up the school and shoot two students.” T vol 3 p 446:2-4 (T of Principal).

375. “But when you look at Student’s diagnoses, that he's receiving counseling for anxiety, that the threats become increasingly more intense over time as he's denied the answers that he's asking for, and the statements that he has the significant need to control and the behavior rigidity, and coupled with the language deficits that he has, the deficits of theory of mind, yes, those all together are -- it is directly related to that disability.” T vol 2 p 317:18-25 (T of Expert Speech Education Witness).

376. An MDR team can add goals and services for a student.

I think that if the behavior that is being discussed at the MDR is related to the student's disability, it's certainly open for discussion to add goals and interventions and accommodations to help prevent the behavior from continuing to occur, especially if the plan is for the student to return to school the next day, because it's a manifestation of their disability. We would want to prevent that behavior from happening again and again and again.

T vol 2 p 319:16-320:1 (T of Expert Speech Education Witness).

377. “[I]t's important to note that the first threat that was made, the first student that reported the threat, that threat was unfounded, at the MDR is about the second student that reported.” T vol 2 p 321:3-17 (T of Expert Speech Education Witness).

378. Further documenting the MDR team’s failure to consider Expert Speech Pathologist Witness’s evaluation or Student’s parents’ protestations regarding his innocence, the MDR team noted “Parent does not have any additional information at this time.” Stip. Ex. 20 p 171.

379. Although the Manifestation Determination directed the MDR team to “[d]escribe how the accommodations, modifications, and supplementary services included in the student’s IEP are being implemented,” the MDR team merely repeated verbatim the information in Student’s IEP. Stip. Ex. 20 p 171.

380. The MDR team refused to acknowledge the behavior pattern based on the allegations and the “change over time (e.g. increase in frequency, duration, and/or intensity).” Stip. Ex. 20 p 172. The MDR team refused to acknowledge the two (2) unrelated allegations as separate reports. Principal opined it was “a one-time event” and “these behaviors have not been associated with his disability in the past.” Stip. Ex. 21 p 174.

381. The only refusal documented was “[t]he LEA refused that this was a manifestation of [Student]’s disability” with this rationale: “As the LEA, Principal decided that this incident is not a manifestation of [Student]’s disability. She does not see the correlation between this incident and his specific learning disability and Other Health Impairment. The reasons for this refusal are the same as the reason for why the conduct was not caused or related to [Student]’s disability.” Stip. Ex. 21 p 175. “No other options were considered at this meeting.” Stip. Ex. 21 p 176.
382. Over the parents’ objections, the IEP team determined the conduct in question was not caused by Student’s disability; did not have a direct or substantial relationship to Student’s disability; and was not the direct result of the school district’s failure to implement Student’s IEP. Stip. Ex. 20 p 172.
383. School Psychologist and Respondent’s Expert Witness both testified they had spoken previously regarding School Psychologist’s determination the conduct was not related and how to best present the information to the MDR team.
384. School Psychologist, who had never met Student, led the discussion and explained to the MDR team that she “[did] not see how the ADHD/inattentive type and separation anxiety caused this behavior.” She directed the school-based members of the team to “the areas related to executive functioning that would relate to this incident” and explained that “were in the typical range on the BRIEF.” School Psychologist did not explain to what “areas related to executive functioning” she was referencing. Based on her explanation, the school-based members of the MDR team agreed “it was not caused by [Student]’s disability.” Stip. Ex. 21 p 174.
385. The Undersigned finds School Psychologist’s consideration solely of impulsivity as part of Student’s ADHD diagnosis to be limited and shows her failure to consider all components of Student’s diagnoses and how those diagnoses interact with each other. *See* T vol 4 p 606:9-22 (T of School Psychologist).
386. As she testified, School Psychologist she could “make a connection” between Student’s alleged conduct and his disabilities, but “it’s just not the strong relationship” she needed to see. T vol 4 p 617:25-618:2 (T of School Psychologist). School Psychologist then overstated her belief of the lack of causal connection testifying “there’s a lot of different ways he has responded in the past to his frustration. It wasn’t because of that difficulty that he had in his classroom that he definitely had to act in this way.” T vol 4 p 618:25-619:5 (T of School Psychologist.) The Undersigned notes School Psychologist did not testify about different ways Student had responded to past frustrations. Further, the question for an MDR team is not whether a student’s disabilities meant they “had to act in that way” but rather if there the behavior was caused by or had a direct and substantial relationship to the disability.
387. When discussing whether “the conduct was related to his disability,” Petitioners’ counsel pointed again to the deficits noted in Expert Speech Pathologist Witness’s speech

evaluation, Student's deficits in executive functioning, working memory, and language deficits. Stip. Ex. 21 p 174.

388. In response, "School Psychologist shared that she sees evidence of planning in this incident as evidenced by the witness statement." School Psychologist did not explain the deficits identified in the 2023 evaluation would have precluded Student from planning such an incident. *Compare* Stip. Ex. 21 p 174 *with* Pet. Ex. 7 p 28. Notably, School Psychologist testified Student "has a difficult time in his learning and using his working memory. He has a difficult time in planning and organizing things . . ." T vol 4 p 610:24-611:10 (T of School Psychologist). Yet during the MDR meeting, "School Psychologist shared that she sees evidence of planning in this incident as evidenced by the witness statement," which she had not read. Stip. Ex. 21 p 174.
389. Science Teacher testified he had not read any witness statements prior to the MDR. T vol 4 p 585:20-586:1 (T of Science Teacher he only received a copy of Student's IEP prior to the MDR). Yet School Psychologist said the witness statements showed evidence of planning. Stip. Ex. 21 p 174. Yet, following School Psychologist's statement regarding her assessment there was evidence of planning, Science Teacher agreed he, too, "did not see the relationship between the incident and [Student]'s disability." Stip. Ex. 21 p 174.
390. The Undersigned finds School Psychologist conflated her analysis of the BRIEF-2 scales and their relevance to the school environment. Notably, she first testified "the questionnaire has things that are really applicable to the school environment, like how they complete homework and . . . how they respond in certain situations." She went on to say, "So examples of that would be like a statement that says is able to understand when a classmate – or when another person doesn't understand what they're saying." T vol 4 p 609:15-610:8 (T of School Psychologist). Yet, she then explains this is "based on parent report," and there was no evidence presented Student's parents had observed him in the school setting. T vol 4 p 610:11 (T of School Psychologist).
391. The Undersigned finds School Psychologist's consideration solely of impulsivity as part of Student's ADHD diagnosis to be limited and shows her failure to consider all components of Student's diagnoses and how those diagnoses interact with each other. *See* T vol 4 p 606:9-22 (T of School Psychologist).
392. School Psychologist testified that she could "make a connection" between Student's alleged conduct and his disabilities, but "it's just not the strong relationship" she needed to see. T vol 4 p 617:25-618:2 (T of School Psychologist). School Psychologist then overstated her belief of the lack of causal connection testifying "there's a lot of different ways he has responded in the past to his frustration. It wasn't because of that difficulty that he had in his classroom that he definitely had to act in this way." T vol 4 p 618:25-619:5 (T of School Psychologist.) The Undersigned notes School Psychologist did not testify about different ways Student had responded to past frustrations. Further, the question for an MDR team is not whether a student's disabilities meant they "had to act in that way" but rather if the behavior was caused by or had a direct and substantial relationship to the disability.

393. During the MDR, school-team members focused on the absence of goals to “address those areas.” Stip. Ex. 21 p 175. It is unclear to the Undersigned from the evidence in the record what “those areas” were. Principal opined she “[did] not see that him making a statement about shooting a student being a result of the school’s failure to implement the IEP.” *Id.* Mother of Student explained Principal said during Student’s MDR meeting “that he never had a goal of not shooting someone . . . which was really inappropriate.” T vol 1 p 60:4-9 (T of Mother of Student). The Undersigned notes this shows Principal’s misunderstanding of MDR meetings; further, Principal did not deny making this comment during the MDR meeting.
394. It is not a requirement for a student to have behavior goals in his IEP for a behavior to be a manifestation of his disabilities. T vol 2 p 282:3-7 (T of Expert Speech Education Witness).
395. When considering whether a behavior is a manifestation of student’s disability, the MDR team is not limited to the student’s eligibility categories – for Student, those were other health impairment and specific learning disability. “IEP teams are supposed to consider all information when making that decision.” T vol 2 p 286:22-287:5 (T of Expert Speech Education Witness).
396. The behavior in question was “directly related to [Student’s] deficits in reading and writing, as well as his anxiety, because the behavior allegedly occurred after he asked a student for answers and the student said no. He’s asking for answers because he doesn’t know the answers, or he doesn’t know how to do the answers.” T vol 2 p 283:5-16 (T of Expert Speech Education Witness).
397. If Student made the statements at issue, “these are the statements of a student who did not know how to ask for help, did not know how to advocate for himself, and did not understand the consequences of his messages, and that point to pragmatic language impairment.” T vol 1 p 153:19-23 (T of Expert Speech Pathologist Witness). Student believed he was supposed to ask classmates for help when he did not know the answers. T vol 2 p 283:17-19 (T of Expert Speech Education Witness). The Undersigned notes Student’s operative IEP contained self-advocacy goals, one of which was specifically directed at asking for assistance—a goal for which he should have been receiving specially designed instruction in the special education setting. *See* Stip. Ex. 16 p 119. The goal was to be progress monitored through the use of data sheets; however, none were provided to the Undersigned.
398. The behavior in question was a manifestation of Student’s disabilities and a direct result of GCS’s failure to implement his IEP. T vol 2 p 289:23-290-8 (T of Expert Speech Education Witness).
399. Only three (3) of the school-based MDR participants had ever met Student (i.e., Principal, Special Education Inclusion Teacher, and Science Teacher). Stip. Ex. 20 p 172. Special Education One-On-One Reading Teacher was “not invited to be a part of the IEP team at

that point of the MDR.” T vol 4 p 801:13-21 (T of Special Education One-On-One Reading Teacher). When individuals attend IEP and/or MDR meetings, “they bring with them their experiences of the student,” yet multiple attendees at Student’s MDR meeting had no experience with him and had never met him. T vol 2 p 330:23-332:3 (T of Expert Speech Education Witness).

September 27, 2024:

400. After the MDR, Principal met again with district personnel on September 27, 2024. Again, the district personnel did not recommend long-term suspension, but rather reassignment to SCALE. Resp’t’s Ex. 128 p 898. Nonetheless, Principal pursued the long-term suspension at the hearing with the Hearing Officer.
401. Student’s parents notified GCS they were appealing the recommendation for long-term suspension. Stip. 78.

October 28, 2024, IEP Meeting - Annual Review

402. Student’s IEP team convened on October 28, 2024, to conduct his annual review. Expert Speech Pathologist Witness attended the IEP meeting and reviewed her evaluation from September 2024 with the IEP team. Stip. 79.
403. Secondary Exceptional Children Director attended Student’s October 2024 IEP meeting and served as the LEA representative for that meeting. She explained Student already had a self-advocacy goal, “So there was more around the conversation of is he just withdrawn and quiet and shy, or a speech deficit. And so the goals were added.” When questioned about why those goals were added, Secondary Exceptional Children Director explained “The team put a lot of stock and weight into that evaluation. . . [GCS] did not do a formal speech eval. This was an independent eval, and that was the information we were reviewing.” T vol 4 p 675:9-25 (T of Secondary Exceptional Children Director).
404. School Speech Language Pathologist completed a speech report for Student in September 2023. She pulled him two days “because [she] wasn’t seeing the same – the concerns that his parents had with his production of the R, I wasn’t really seeing that in the evaluation.” T vol 4 p 826:24-827:7 (T of School Speech Language Pathologist). Her evaluation “really just focused on this articulation of speech sounds.” T vol 4 p 827:15-19 (T of School Speech Language Pathologist).
405. Notably, School Speech Language Pathologist did not conduct a language evaluation of Student. T vol 4 p 849:10-16 (T of School Speech Language Pathologist). Thus, the first assessment of Student’s language skills was through Expert Speech Pathologist Witness’s September 11, 2024 evaluation. Stip. Ex. 8.
406. Expert Speech Pathologist Witness found it odd School Speech Language Pathologist did not want to find Student eligible for speech language services at school was because “his teachers had reported no difficulty with him using reading or using language to either



understand or tell stories. . . . I recall myself disagreeing with them because he had dyslexia. . . . So by definition he is not accessing the language of the curriculum in the same that his non-disabled peers would be. . . . That data point that was shared by [School Speech Language Pathologist] was surprising to me because . . . that was not coherent to me.” T vol 1 p 166:5-23 (T of Expert Speech Pathologist Witness).

407. Expert Speech Pathologist Witness participated in the October 2024 IEP meeting where Student was found eligible to receive specially designed instruction for speech language services. The team developed goals for the production of “R”, social communication, and narrative language. T vol 1 p 157: 3-13 (T of Expert Speech Pathologist Witness).
408. During the October 2024 IEP meeting, one teacher recounted a story where “Student approached her and appeared as though he was seeking something or wanting to ask a question, but didn't know what to say, and didn't know how to explain that he either didn't understand something or was having a problem. And -- and we were all – Mother of Student and the other participants were all able to connect that episode back to, yeah, wait a minute, he actually doesn't really do a good job of retelling events. And so, based on that data that was shared by the teacher in that meeting, we all agreed that he did need some kind of a narrative language or retelling event.” T vol 1 p 157:19-158:1 (T of Expert Speech Pathologist Witness).
409. Mother of Student explained why they filed the contested case petition and pursued a hearing following the MDR meeting:

Because what's happened to our son is wrong. He was not given his due process. He was not told of what the true allegations were by Student Number 1 but asked to defend himself. He did. He tried with his, you know, his communication issues which were held against him because he can't communicate like non-disabled children do. He was not given any opportunity when Student 3 -- we weren't told what happened. He was guilty and he was long-term suspended. He was not given the opportunity to even know what happened or be able to, you know, answer questions about it. Up until that Tuesday, which is when we were on long-term -- which was when we were on the 10-day suspension, until we got that packet, we didn't know what was going on. We didn't know what was happening or what the truth was. When you're accused of something, you're allowed to know what you're accused of and have the opportunity to defend yourself before a decision is made. He was discriminated [against].

T vol 1 p 64:20-65:13 (T of Mother of Student)

### **CONCLUSIONS OF LAW**

Based on the above Findings of Fact, relevant laws, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

## General Legal Framework

410. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate public education (“FAPE”) pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* (2004) and implementing regulations, 34 C.F.R. Part 300; specifically 20 U.S.C. § 1415 and N.C. Gen. Stat. § 115C 109.6(a) control the issues to be reviewed. Stip. 2.
411. This Final Decision incorporates and reaffirms the conclusions of law contained in previous Orders in this litigation.
412. The IDEA is the federal statute governing education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Part 300. Stip. 3.
413. The controlling State law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9. Stip. 5.
414. To the extent the forthcoming Findings of Fact contain Conclusions of Law, or the Conclusions of Law are Findings of Fact, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep’t of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).
415. The student’s name is Student. He is thirteen (13) years old and was born on February 16, 2011. Student’s mother is Mother of Student, and his father is Father of Student. Student resides with his parents. Stip. 6.
416. Respondent, Guilford County Board of Education, is a local education agency (“LEA”) as defined by the IDEA and receiving monies pursuant to the IDEA. Stip. 4. Respondent is subject to the provisions of applicable federal and State laws and regulations, specifically 20 U.S.C. § 1400, *et seq.*, 34 C.F.R. § 300, *et seq.*, and N.C. Gen. Stat. § 115C-106, *et seq.*
417. The Petitioners Student, along with parents, Mother of Student and Father of Student, and Respondent Guilford County Board of Education, are correctly designated, the Parties received proper notice of the hearing, and venue is proper.
418. As the Party requesting the hearing, the burden of proof lies with Petitioners, and the standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); N.C. Gen. Stat. § 150B-25.1(a).

## Jurisdiction

419. “Subject matter jurisdiction, more specifically, is ‘the power to pass on the merits of [a] case.’” *Matter of A.P.*, 371 N.C. 14, 17, 812 S.E.2d 840, 842 (2018) (quoting *Boyles v. Boyles*, 308 N.C. 488, 491, 302 S.E.2d 790, 793 (1983)); *see also* 6A Strong’s North Carolina Index 4th: Courts § 8, at 423-27 (2013) (discussing subject matter jurisdiction generally). The jurisdiction of a court over the subject matter of an action depends upon the authority granted to it by the Constitution and laws of the sovereignty, and is fundamental.” *Henderson Cty. v. Smyth*, 216 N.C. 421, 422 (1939).
420. Parents who disagree with any decision regarding a change in their disabled child’s placement due to a violation of the code of student conduct under 34 C.F.R. § 300.530(a), disciplinary assignment to an interim alternative educational setting under 34 C.F.R. § 300.531, or a manifestation determination under 34 C.F.R. § 300.530(e), may appeal the decision to a hearing officer. 34 C.F.R. § 300.532(a).
421. Whenever such a hearing is requested, the hearing is expedited and “must occur within 20 school days [of] the date of the complaint requesting the hearing,” and the hearing officer “must make a determination within 10 school days after the hearing.” 34 C.F.R. § 300.532(c).

#### **Professional Judgment and Due Regard to Educators**

422. The IDEA “requires great deference to the views of the school system rather than those of even the most well-meaning parent[s].” *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004). “[D]eference is based on the application of expertise and the exercise of judgment by school authorities.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017).
423. When disagreements arise between parents and schools over the provision of FAPE, “[b]y the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement.” *Andrew F.* 137 S. Ct. at 1001-02. Therefore, a “reviewing court may fairly expect” the school district “to be able to offer a cogent and responsive explanation for their decisions . . .” *Id.*
424. As explained in the Credibility of Witnesses section and throughout the Findings of Fact, *supra*, some school authorities in this case are not given due regard despite their professional expertise as educators. This decision does not come lightly and takes into consideration numerous inconsistencies in the testimony of Principal and the hyperbolic descriptions of their expertise to interpret speech language evaluations by Respondent’s Expert Witness and School Psychologist.

#### **Parental Participation and Predetermination**

425. The LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) comprise the team that conducts a Manifestation Determination Review (“MDR”). 34 C.F.R. § 300.530(e)(1).

426. When Congress passed the IDEA, it placed great importance in the role of parents in crafting an adequate and individualized education for each disabled student. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 205-06 (1982).
427. “The grammatical structure of IDEA’s purpose of protecting ‘the rights of children with disabilities and parents of such children,’ § 1400(d)(1)(B), would make no sense unless ‘rights’ refers to the parents’ rights as well as the child’s. Other provisions confirm this view. *See, e.g.,* § 1415(a).” *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 517 (2007).
428. “IDEA grants parents independent, enforceable rights. These rights, which are not limited to certain procedural and reimbursement-related matters, encompass the entitlement to a free appropriate public education for the parents’ child.” *Id.* at 533.
429. The IDEA’s procedural requirements are purposefully designed to ensure that parents can meaningfully participate in the process of developing an IEP for their child. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 205-06 (1982) (“It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.”); *see also* 34 C.F.R. § 300.322(a); N.C. Gen. Stat. § 115C-109.3(a) (guaranteeing the parent the right “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child”).
430. Parents are denied their right to meaningfully participate in the development of their child’s IEP when a school district predetermines the child’s placement prior to an IEP meeting. *See, e.g., Spielberg ex rel. Spielberg v. Henrico Cnty. Public Sch.*, 853 F.2d 256 (4th Cir. 1988) (finding the school district’s decision to change a student’s placement before the IEP meeting violated the Education for All Handicapped Children Act, the predecessor to the IDEA); *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) (“Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team.”).
431. Courts have found predetermination where there is evidence supporting an inference the school district determined the student’s educational path in advance and did not allow for consideration of alternatives. For instance, in *Deal v. Hamilton County Board of Education*, the court found predetermination where the school district had an unofficial policy of refusing certain types of programs, refused to consider the parents’ request for certain programs (in part by prohibiting the parents from asking questions during an IEP meeting), and made its determination based on primarily financial considerations rather than the child’s unique needs. 392 F.3d 840 (6th Cir. 2004). In *Spielberg*, the school district wrote letters stating its intent to change a student’s placement before developing an IEP. The court found the district “resolved to educate [the child] at [one school], and then developed

an IEP to carry out their decision.” 853 F.2d at 259; *see also J.G. ex rel. N.G. v. Kiryas Joel Union Free Sch. Dist.*, 777 F.Supp.2d 606, 649 (S.D.N.Y. 2011).

432. “[A]ny pre-formed opinion the state might have must not obstruct the parents’ participation in the planning process. Parental ‘[p]articipation must be more than a mere form; it must be meaningful.’ It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *R.L.*, 757 F.3d at 1188 (quoting *Deal* at 858).
433. During a meeting, an IEP Team’s responses to a parent’s position “should be meaningful responses that make it clear that the state had an open mind about and actually considered the parents’ points. This inquiry is inherently fact-intensive but should identify those cases where parental participation is meaningful and those cases where it is a mere formality.” *R.L.*, 757 F.3d at 1188-89.
434. “To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents’ opinions and support for the IEP provisions they believe are necessary for their child.” *R.L.*, 757 F.3d at 1188 (citing *Deal*, 392 F.3d at 858). A school board predetermines a student’s placement where it was “clear that ‘there was no way that anything [the student’s parents] said, or any data [they] produced, could have changed the [Board’s] determination of’ the appropriate placement.” *Id.*
435. A few factors would not have necessarily risen to the level of predetermination. In this case, the culmination of numerous factors, listed *supra* in the Findings, evidenced predetermination of the manifestation determination decision that denied Mother of Student and Father of Student meaningful participation in the decision-making process.

#### **Authority of School Personnel and Student’s Entitlement to a Manifestation Determination Review**

436. The federal regulations give school personnel the authority to “consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.” 34 C.F.R. § 300.530(a).
437. Any removal of a child with a disability for more than 10 consecutive school days or a series of removals totaling more than 10 school days that constitute a pattern is a change of placement. 34 C.F.R. § 300.536(a).
438. School districts must provide parents a copy of the procedural safeguards “[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct.” 34 C.F.R. § 300.530(h). The Parent Rights & Responsibilities in Special Education: NC Notice of Procedural Safeguards<sup>3</sup> (hereinafter “*Parents’ Rights Handbook*” or “*PRH*”) is the procedural safeguards required by the IDEA. 34 C.F.R. § 300.504.

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<sup>3</sup> <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dpi.nc.gov/parent-rights-handbook/download> (last visited December 31, 2024).

439. The Parents’ Rights Handbook informs parents that “[a] **removal** is usually called an out-of-school suspension (OSS), but it may also include any time the school calls and asks you to pick up your child before the end of the school day because of disciplinary reasons.” *PRH* at 18. (emphasis in original). Any day a child is not “afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement” constitutes a day of removal. 71 Fed. Reg. 46715 (2006).
440. “Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) must review all relevant information in the student’s file. . . 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.” 34 C.F.R. §300.530(e). 20 U.S.C. § 1415(k)(1)(E).
441. Although Respondent contends Student was not suspended for ten (10) days and presumably was not entitled to an MDR, the Disciplinary Change in Placement and other evidence in the record did not support this argument. *See, e.g.*, Stip. Ex. 1 p 1 (“Today, school personnel determined that the student listed above is subject to a disciplinary removal that will constitute a change in placement”); Stip. Ex. 2 p 4 (“As a result your student is suspended for 10 days, starting on Monday, September 23, 2024, with a recommendation to the Superintendent for long term suspension for the remainder of the school year”); Stip. Ex. 4 p 7 (notifying Father of Student and Mother of Student of the “Actions Taken” to include a “10-Day Out-of-School Suspension and Informal Conference” with ten (10) dates from September 23, 2024, through October 4, 2024, indicating Student was suspended for “Full Day” on each date); Resp’t’s Ex. 6 p 128 (printed on October 7, 2024, and noting Student was suspended from September 23, 2024, through October 4, 2024); Resp’t’s Ex. 155 (decision of the Hearing Officer dated October 8, 2024).
442. As outlined in the Findings of Fact, *infra*, the Undersigned concludes Respondent did change Student’s placement because of a violation of the code of student conduct, he was entitled to an MDR, and his parents are appropriately seeking to appeal Respondent’s decisions in this Tribunal.

#### **Authority of the Hearing Officer in an Appeal of a Manifestation Determination Review**

443. “The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 [the violation of the code of student conduct] and 300.531 [the interim alternative educational setting for services], or the manifestation determination under § 300.530(e) . . . may appeal the decision by requesting a hearing.” 34 C.F.R. § 300.532(a).

444. The hearing officer “makes a determination regarding an appeal” of the violation of the student code of conduct, the interim alternative educational setting for services, or the manifestation determination. 34 C.F.R. § 300.532(b)(1).
445. “Because the hearing officer’s authority includes a determination regarding 34 CFR §300.530 and that provision includes references to removal from the current placement of a child with a disability *who violates a code of student conduct*, there may be instances where a hearing officer, in his discretion, would address whether such a violation has occurred. The IDEA and its implementing regulations neither preclude nor require that a hearing officer determine whether a certain action by a student with a disability amounts to a violation of the school district’s Student Code of Conduct.” *Letter to Ramirez*, OSEP (Dec. 5, 2012), 60 IDELR 230 (emphasis in original).
446. Where the hearing officer “makes findings regarding the procedures by which the MDR team determined the conduct in question and the accuracy of its description of the conduct in question, this has bearing directly on whether the procedural requirements of the statute were followed in the MDR process.” *Torres*, 717 F.Supp.3d at 488.
447. A hearing officer’s “findings regarding the nature of the ‘conduct in question’ may be a critical part of evaluating the procedural and substantive appropriateness of the manifestation determination.” *Torres*, 717 F. Supp. 3d at 489.
448. “In addition, IDEA does not restrict the ALJ to adopting the description of the ‘conduct in question’ already made by the MDR team, or by a disciplinary official, upon review in a due process hearing. [20 U.S.C. § 1415(k)(1)(E).] Indeed the statute directs the ALJ to make “a decision ... on substantive grounds” and it gives the parties “the right to present evidence and confront, cross-examine, and compel the attendance of witnesses.” *Torres*, 717 F. Supp. 3d at 488 (quoting 20 U.S.C. §§ 1415(f)(3)(E)(i) and (h)(2)).
449. Notably, the statute does not carve out the “conduct in question” as a topic on which the parties have no “right to present evidence.” 20 U.S.C. § 1415(h)(2). Where the statute requires a determination whether ‘the conduct in question was caused by’ a disability, *Id.* § 1415(k)(1)(E), it follows that the ALJ properly may consider underlying facts bearing upon the description of the conduct in question, if it is relevant to the manifestation determination review.” *Torres*, 717 F.Supp.3d at 488.
450. In *South Lyon Community Schools*, the hearing officer voided the decision of the MDR team and determined the student’s false claim of possessing drugs on school property was a manifestation of her disabilities. The hearing officer further concluded that the student’s statement, without more, did not warrant her removal to an interim alternative educational placement. 50 IDELR 237 (SEA MI 2008) (voiding the MDR team’s decision where the team identified the misconduct as attempting to sell drugs, but student’s actual behavior as determined by the principal and superintendent was passing a note that said, “I have pillz,” with no further intent found).

451. The hearing officer in a due process hearing is not only authorized but may be obligated to make a determination of the student’s actual conduct and “is not required to adopt every characterization attached to, or inference drawn from, the conduct as described by the District.” *Id.*, 50 IDELR 237. This holds especially true when hearing an appeal under 20 U.S.C. § 1415(k). *Id.*
452. Facts in the present case indicate the MDR Team did not consider the entire behavioral act that resulted in the recommendation of Student’s removal from the educational environment. The MDR Team refused to discuss the “conduct in question” and, thus, were unable to consider the antecedents of the alleged behavior and how it related to Student’s known disabilities. Additionally, the MDR Team failed to consider how his known deficits would have impacted his ability to develop the plan of which he was accused. Rather, the MDR Team ignored his executive functioning deficits, ignored his narrative language deficits, ignored his working memory deficits, and found “evidence of planning.”
453. Additionally, Respondent originally listed Students 1, 2, 3, and 4 and their parents using pseudonyms on its witness list in the Pre-trial Order. During the pre-hearing conference, Petitioners objected to the use of pseudonyms and asked they be identified and submitted a Proposed Order requesting the Undersigned order their identification. *See* December 6, 2024, Proposed Order to Disclose Information of Students. The Undersigned allowed Respondent to remove the unnamed witnesses rather than identify them. *See* December 9, 2024, Order to Disclose Information. Petitioners’ counsel objected multiple times during the administrative hearing to the hearsay testimony regarding statements of these witnesses and Petitioners’ inability to cross-examine them or have them before the Undersigned to observe their demeanor and assess their credibility. At one point in the hearing, Respondent’s Counsel attempted to have a teacher testify about Student 1 for the purpose of “the credibility of the student.” T vol 4 p 575:5-19 (T of Science Teacher). The Undersigned sustained Petitioners’ Counsel’s objection but notes the inherent problem of Respondent’s failure to provide the names of the students and their parents. The Undersigned will not give weight to any testimony which is not supported by documentary evidence in the record or that was not included in Stipulated Exhibit 4.
454. Contrary to Respondent’s assertions during the administrative hearing, the Undersigned has authority to review the appeal of both the school personnel’s decision making related to the violation of the code of student conduct and the manifestation determination review.

### **The Manifestation Determination Review**

455. During the MDR, “the LEA, the parent, and relevant members of the child’s IEP Team (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 . . .**” 34 C.F.R. § 300.530(e) (emphasis added). However, this list is “not exhaustive” because it would be “impractical to list all the possible relevant information that may be in a child’s file.” The criteria are “broad and flexible, and would include such factors as the inter-related and individual challenges



associated with many disabilities.” 71 Fed. Reg. 46, 719-20 (2006); *see also In re: Student with a Disability* 52 IDELR 239 (SEA WV 2009).

456. Under IDEA 2004, the key question is whether the child’s conduct was caused by or had a direct and substantial relationship to his disability. The behavior is considered a manifestation (1) “if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability,” or (2) “if the conduct in question was the direct result of the LEA’s failure to implement the IEP.” 34 C.F.R. § 300.530(e)(1).
457. The IDEA is “sufficiently clear that decisions regarding the manifestation determination must be made on a case-by-case basis” because “the child should not be punished for behaviors that are a result of the child’s disability.” 71 Fed. Reg. 46720 (2006).
458. Punishment is not the goal of an MDR proceeding; the focus is the education of a disabled student who needs specially designed instruction. When Congress reauthorized the IDEA in 2004, it revised the manifestation provisions to provide a “simplified, common sense manifestation determination process” to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented.” 71 Fed. Reg. 46720 (2006).
459. Evidence of a direct connection between the child’s misconduct and disability results in a finding that the child’s misconduct was a manifestation of her disability. *See District of Columbia Pub. Schs.*, 114 LRP 3336 (SEA DC 12/19/13) (student’s emotional disability caused her to be impulsive and combative, which triggered her to elope from class and start a fire on school grounds).
460. “In setting forth “manifestation determination” procedures, IDEA requires the MDR team to review “all relevant information in the student’s file,” and “any relevant information provided by the parents,” to determine “if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability,” or “failure to implement the IEP.”” *Torres*, 717 F. Supp. 3d at 488 (2024) (citing 20 U.S.C. § 1415(k)(1)(E) (emphasis in original). Understanding the nature of “the conduct in question” is thus an integral part of the manifestation determination. *Id.* Notably, by its plain terms, the statute is worded broadly, requiring consideration of “all relevant information” and “any relevant information provided by the parents,” *id.*, and it does not restrict the MDR team to considering only the description or findings already made by any disciplinary personnel or investigation. *See id.*
461. “To remove consideration of the description of the “conduct in question” from parental input at the stage of the MDR determination, and again at the stage of the due process hearing, runs contrary to the central purposes of the statute.” *Id.*
462. A manifestation determination is “not simply a reflection of the Student’s special education classification or a determination that the student knew right from wrong. Also, the relevant information must be recent enough to afford an understanding of the student’s current behavior. Further, at a minimum, the group making the determination must include persons

knowledgeable about the child and the meaning of the evaluation data.” U.S. Dep’t of Education OCR letter to Luciano Re: Complaint #04-14-1594.

463. “When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, . . . the importance Congress attached to these procedural safeguards cannot be gainsaid.” *Rowley*, 458 U.S. at 205. “[T]he congressional emphasis upon full participation of concerned parties . . . , demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.” *Id.* at 206; *Torres*, 717 F. Supp. 3d at 488.
464. When “the MDR violate[s] the procedural requirements of IDEA and these violations ‘resulted in the loss of an educational opportunity,’ this alone is a sufficient basis to invalidate the MDR and long-term suspension.” *Torres*, 717 F. Supp. 3d at 499 (citing *MM ex rel DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 533 (4th Cir. 2002)).
465. “With regard to the participation of noncontributing observers at IEP Team meetings, generally, attendance at IEP Team meetings should be limited to individuals who would contribute to decisions about the appropriate services to be included in the child's IEP. The legislative history of the Education for All Handicapped Children's Act, the predecessor statute to IDEA Part B, suggests that ‘attendance at IEP meetings should be limited to those who have an intense interest in the child.’” *Letter to Haller*, OSEP, 74 IDELR 172 (May 2, 2019) (quoting Cong. Rec. § 10974 (June 18, 1975) (remarks of Sen. Randolph)). Of the nine (9) school-based MDR participants present, only three (3) had ever met Student (i.e., Principal, Special Education Inclusion Teacher, and Science Teacher). Stip. Ex. 20 p 172.
466. “Absent parental consent, a person who does not have knowledge and special expertise regarding the child and who is not requested to be present at the IEP Team meeting by the parent or public agency would not be permitted to be a member of the IEP Team or be permitted to attend the IEP Team meeting as an observer unless he or she meets one of the parental consent exceptions in 34 C.F.R. § 300.622 or 34 C.F.R. § 99.31. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 FR 46540, 46670-46671 (Aug. 14, 2006) and OSEP Letter to Gran (November 12, 2012).” *Letter to Haller*, 74 IDELR 172.
467. If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—
  - I. conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

II. in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

III. except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

20 U.S.C. § 1415(k)(1)(F)(i)-(iii); *see also* 34 C.F.R. § 300.530(f)(1)-(2).

468. A parent who disagrees with the results of the manifestation determination may request, and is entitled to, an expedited due process hearing, which must occur within twenty (20) days of receipt of the complaint. 34 C.F.R. § 300.532(a) & (c). Petitioners obviously disagreed with the MDR results and hence, the reason for this case.
469. Under 34 CFR §300.532, a hearing officer in an expedited hearing regarding discipline, decides whether to return the child with a disability to the placement from which the child was removed if the removal was a violation of 34 CFR §300.530 or the child's behavior was a manifestation of the child's disability; and decides whether to order a change of placement to an appropriate interim alternative educational setting for not more than 45 school days if maintaining the current placement is substantially likely to result in injury to the child or to others.
470. Respondent failed to consider the nature and combined effect of all of Student's disabilities. Principal, as the LEA Representative, "decided that this incident is not a manifestation of [Student]'s disability. She does not see the correlation between this incident and his specific learning disability and Other Health Impairment." Stip. Ex. 21 p 175.
471. Respondent did not provide for a speech language pathologist to attend the MDR. Stip. 74. School Psychologist was not competent to interpret the evaluation data provided by Expert Speech Pathologist Witness. Even if she were competent, the MDR Team documented it did not consider the September 11, 2024, speech language evaluation. Stip. Ex. 20 p 170.
472. Based on the findings outlined *supra*, the Undersigned finds the credible evidence proffered by Petitioners proved by a preponderance that the "conduct in question" was a manifestation of Student's known disabilities, including but not limited to his pragmatic and narrative language deficits and anxiety and Respondent's failure to implement Student's IEP had a direct causal relationship to his conduct.
473. Had the MDR been correctly decided, Student would have returned to Middle School on September 27, 2024, and would not have lost access to his education for the remaining days of the suspension, missed his specially designed instruction, or been assigned to an alternative learning program. Respondent's failure to find the conduct in question was a

manifestation of Student's disabilities resulted in the loss of educational opportunity and denied Student a FAPE.

**State Law Relevant to the "Conduct in Question"  
and the Manifestation Determination Review**

474. Three (3) State statutes relate to the "conduct in question" and the administrative authority exercised by Principal in suspending Student and recommending his long-term suspension. Section 115C-390.5 authorizes a principal to impose a short-term suspension "on a student who *willfully* engages in conduct that violates a provision of the Code of Student Conduct authorizing short-term suspension." N.C. Gen. Stat. § 115C-390.5(a) (emphasis added). Section 115C-390.7 authorizes a principal to "recommend to the superintendent the long-term suspension of any student who *willfully* engages in conduct that violates a provision of the Code of Student Conduct *that authorizes long-term suspension.*" N.C. Gen. Stat. § 115C-390.7(a) (emphasis added). Merriam-Webster defines "willfully" as "deliberately" and "intentional."
475. For Student to willfully violate Rule III-3 Acts of Terror, Respondent would need to have evidence that Student. (1) made a threat and (2) "the threat [was] intended to cause, or actually cause[d], a significant disruption to the instructional day or a school-sponsored activity." Resp't's Ex. 3 p 117.
476. The Hearing Officer found Student "did not have the subjective intent to carry out the threats, nor did he bring a weapon to school." Resp't's Ex. 155 p 1030.
477. Without citing any evidence from the long-term suspension hearing, the Hearing Officer found Student's "comments caused a serious disruption at Middle School and caused at least two students fear and discomfort at school," and "[t]he evidence demonstrated that [Student] is capable of understanding the impact of threats of shooting at school, regardless of whether he truly intended to carry out such a threat." Resp't's Ex. 155 p 1030. Based on the evidence presented in this administrative hearing, the Undersigned respectfully disagrees.
478. The only evidence Respondent presented regarding a disruption to school was Principal's testimony; however, Respondent did not establish that Student caused the disruption rather than the ConnectED message sent before anyone spoke to Student or began an investigation. Furthermore, the evidence regarding Student's language deficits raises the question of whether Student did understand the impact of such threatening statements, and Respondent presented no evidence that anyone had asked Student to state his understanding.
479. Even if Student made the statements of which he was accused, which the Undersigned finds unlikely based on "all relevant information" in Student's record, which was not considered by the MDR team, the Undersigned finds Respondent did not present sufficient evidence Student willfully made these alleged threats, intended to cause, or actually caused,

a significant disruption to the school as they relate to the “conduct in question,” which was the basis for the MDR.

480. The third relevant statute, Section 115C-390.6 prohibits the imposition of a short-term suspension “without first providing the student an opportunity for an informal hearing with the principal. . . . The student has the right to be present, to be informed of the charges and the basis for the accusations, and to make statements in defense or mitigation of the charges.” N.C. Gen. Stat. § 115C-390.6(a).
481. Respondent conducted a threat assessment on September 19, 2024; however, Student was never informed of the “charges and the basis for the accusations” against him. *See* T vol 1 p 35:8-13 (T of Mother of Student they were still talking about buses, and “no one . . . was correcting us”); T vol 3 p 394:13-395:24 (T of Principal no additional information provided); and T vol 2 p 217:18-21 (T of Father of Student that no one shared what the allegations were). Furthermore, the Parties stipulated that after Student 3 made allegations against Student on September 20, 2024, Principal did not inform Student about these new allegations from Student 3 or provide him with an opportunity to respond before issuing her recommendation for Long-term Suspension on September 20, 2024. Stip. 54.
482. Respondent’s policy requires principals to “comply with the due process requirements of North Carolina law, including providing an informal hearing to the student and all required notices to parents/caregivers, prior to imposing the short-term suspension.” Resp’t’s Ex. 4 p 121.
483. The Hearing Officer also found Student “did not have a full opportunity to provide any explanation or context to these statements at the time they were reported by his classmates.” However, the Hearing Officer discounted this due process violation, as “Student has continued to deny making any statements about shooting or having knowledge of the conversations his classmates have reported, therefore he has not had any explanation or context to provide.” Resp’t’s Ex. 155 p 1030. The Undersigned disagrees that providing the first and only opportunity to respond *after* the MDR meeting and during a disciplinary hearing, which should never have taken place, is sufficient to rectify a due process violation.
484. While any violation of Student’s due process rights is not before the Undersigned, it is directly relevant to the MDR team’s refusal to discuss the “conduct in question” and consider Student’s disabilities as it related to the conduct of which he was accused. It is further evidence of Respondent’s procedural violations in this case, which contributed to Student’s loss of educational opportunity and the denial of FAPE.

#### **Guilford County Schools Policies Relevant to the Manifestation Determination Review**

485. Student was accused of and suspended for violating GCS Board Policy 4300-R1, Resp’t’s Ex. 3.
486. Respondent adopted the following definition for Rule III-8 Acts of Terror:

No student shall threaten to commit an act of terror on school property or at the site of a school activity that is designed to cause, or is likely to cause, serious injury or death to another person, ***when the threat is intended to cause, or actually causes, a significant disruption to the instructional day or a school-sponsored activity.*** No student shall make a report that they know is false, that an act of terror designed to cause, or likely to cause, serious injury or death to another person on school property or at the site of a school-sponsored activity is imminent, when that report is intended to cause, or actually causes, a significant disruption to the instructional day or a school-sponsored activity.

Resp't's Ex. 3 (Policy 4300-R1) p 117 (emphasis added); Stip. 62.

487. For Level III infractions, like Rule III-8, Respondent's policy contemplates consequences ranging from a verbal warning to an out-of-school suspension lasting up to ten (10) days or reassignment to an alternative learning program or school. *Id.* p 114. Respondent's policy does not include a recommendation for a long-term suspension for Level III violations; however, Respondent provides principals, like Principal, with "the discretion to impose different, less severe, or more severe consequences that are the appropriate pedagogical and safety response to the situation at hand." *Id.* p 108 (emphasis in original). Respondent directs principals "to consider and be guided by the following mitigating and aggravating factors":

Mitigating Factors: The principal or designee may choose to reduce the level of the violation when mitigating factors exist, which include but are not limited to:

- The student did not and would not be expected to understand the full impact of their decision due to the age, grade level, and/or cognitive ability of the student;
- The student has not engaged in the type of conduct before;
- The student has no record of violating the Code of Student Conduct before;
- The student acknowledges the violation and indicates an understanding that they will not repeat the conduct;
- The conduct had a minimal impact on the educational environment;
- The conduct did not harm other students or staff; and/or
- Imposing a lower level of disciplinary intervention will not cause disruption to the educational environment or threaten the safety of other students at the school.

Aggravating Factors: The principal or designee may choose to increase the level of the violation when aggravating factors exist, which include but are not limited to:

- The student is in high school;
- The student is of an age and grade level that they are expected to understand the impact of their decision;
- The student has engaged in the type of conduct before;
- The conduct involved a combination of multiple rule violations;
- The student has violated the Code of Student Conduct before;
- The student does not acknowledge the violation;
- The conduct impacted the learning of other students;
- The conduct caused harm to other students or staff;
- The conduct disrupted the educational environment;
- Continued presence of the student on campus is likely to cause disruption or unsafe conditions; and/or
- The student incited others to engage in dangerous or disruptive conduct.

*Id.* pp 108-09.

488. Although Student did not have any disciplinary history, was not in high school, and did not harm anyone, Principal chose to seek a more severe consequence than what was contemplated by Respondent’s policy. Stip. Ex. 2 p 4 (suspending Student for 10 days with recommendation for long term suspension for the remainder of the year). Principal also reported the allegations to law enforcement on September 23, 2024. Stip. Ex. 4 p 7.
489. The Undersigned finds almost every single factor—except that Student maintained his innocence—applied to this situation. Had Principal considered the mitigating factors, the disciplinary consequence would have been less severe and obviated the need for Respondent to conduct an MDR.
490. Furthermore, Principal did not note a single aggravating factor in the Notice of Disciplinary Action or Notice of Recommendation for Long-term Suspension. Stip. Ex. 2; Stip. Ex. 4 p 7.

### **GCS’s Involvement of the School Resource Officer (SRO)**

491. Respondent obligates school officials “to notify law enforcement of certain conduct.” Resp’t’s Ex. 3 p 107. Student’s alleged conduct does not meet these criteria outlined. *Id.* (requiring reporting for e.g., sexual offense, rape, kidnapping, possession of a weapon in violation of the law).

492. The policy permits school officials to “collaborate with law enforcement to protect the safety of students and staff by notifying them of any safety concerns arising on school property.” *Id.* Respondent chose to notify the SRO and utilize the SRO for its investigation and delivering information to Student’s parents. Stip. 31, Stip. 32; Stip. Ex. 4 p 7.
493. Respondent is required to “ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.” 34 C.F.R. § 300.535(b). Respondent offered no evidence it provided the SRO with a copy of Student’s IEP when it reported the threats and asked him to go to Student’s home to investigate.
494. Following the SRO’s visit to the G.’s home, Father of Student and Mother of Student understood the SRO was going to let Middle School know he “did not see this as a credible threat.” T vol 2 p 214:22-215:3 (T of Father of Student); T vol. 1 p 33:8-13 (T of Mother of Student).

### **ISSUES FOR DECISION**

#### **Issue 1: Whether the Manifestation Determination Review conducted on September 26, 2024, was procedurally appropriate?**

1. Based on the Findings of Fact and Conclusions of Law, as well as the evidence in the record and credible testimony, the Petitioners proved by a preponderance of the evidence that the MDR was procedurally inappropriate, denied Father of Student and Mother of Student meaningful participation in the decision-making process and denied Student a FAPE.
  - a. *Whether GCS failed to follow the procedures of the IDEA and State law related to the MDR and the disciplinary event?*
2. The Parties stipulated Respondent did not provide Father of Student and Mother of Student a copy of the Parents’ Rights Handbook on September 20, 2024, when Respondent decided to remove Student constituting his change of placement because of a violation of the code of student conduct as required by 34 C.F.R. § 300.530(h). Stip. 57.
3. While Respondent attempted to establish it offered Father of Student and Mother of Student a copy of the Parents’ Rights Handbook at the MDR meeting, this is insufficient to comply with the IDEA. A copy of the Procedural Safeguards is required to be given in certain situations, e.g. initial referral or parent request for evaluation, upon receipt of a State complaint upon request of a parent and in accordance with the discipline procedures in § 300.530(h). 34 C.F.R. 300.504(a). Upon a removal which constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in § 300.504.



4. Respondent failed to follow the procedures in State law for issuing a short-term and recommending a long-term suspension by failing to notify Student of the basis of the allegations against him and failing to give him an opportunity to respond to those allegations prior to issuing the Notice of Suspension. Respondent further failed to establish that Student willfully violated Rule III-8 Acts of Terror – Communicating Threats as required by State law for both a short-term and long-term suspension.
5. Respondent failed to follow its own policies for suspending students by failing to establish Student violated Rule III-8 Acts of Terror—Communicating Threats as there were no witnesses to Student making the alleged threats, and Student denied making them. Student 3 only reported the threat after speaking with Student 1. His statement was contradicted by his parents, continued to change each time he was questioned, and was also not heard by any witness at the same table. Yet, it was due to his report that Student was deemed in violation of Rule III-8 Acts of Terror.
6. Respondent also failed to consider any mitigating factors, as required by its Policy, prior to suspending Student and recommending his long-term suspension.
7. Respondent’s failure to comply with the IDEA, State law, and its own Board Policy were all procedural violations that caused Student a loss of educational opportunity and a denial of FAPE.

*b. Whether GCS failed to consider all relevant and necessary information when conducting the MDR?*

8. A procedural violation resulted when the MDR team did not consider all relevant and necessary information, including facts surrounding the behavioral incident in question, the speech language evaluation conducted by Expert Speech Pathologist Witness, the Board Policy for Rule-III Acts of Terror, Student’s intent surrounding the “conduct in question,” whether Student’s IEP was being implemented, how Student’s disabilities impact his behavior rather than focusing solely on his disability categories and the impact on his academics. This procedural violation significantly impeded Father of Student and Mother of Student’s right to meaningfully participate in the MDR decision-making process and also led to a substantive violation when Student was removed from his educational placement as the result of the MDR team’s improperly reached decision. 34 C.F.R. § 300.530(e).
9. The MDR Team refused to discuss the behavioral incident in question. This procedural violation significantly impeded Mother of Student and Father of Student’s right to meaningfully participate in the MDR decision-making process and led to a substantive violation when Student was removed from his educational placement because the information provided to the MDR Team was incomplete and did not include the necessary information regarding the requirement of intent in the policy. The MDR Team did not have the opportunity to consider all relevant information about Student’s disabilities and the impact of his disabilities on being able to develop the plan alleged by Student 1, particularly as only a select few had information—provided by Principal—regarding the statements of

Student 1 and Student 3. The MDR Team was unaware that no one else seated at the table nor the classroom teacher, who sat next to Student, heard Student communicate the threats. The MDR Team was unaware and unable to consider Student 3's failure to report any of the threats until after speaking with Student 1.

10. The Manifestation Determination reflects Expert Speech Pathologist Witness's speech evaluation was not used to consider whether the conduct in question was a manifestation of Student's disability. Stip. Ex. 20 p 170; Stip. 68. Respondent did not even acknowledge the evaluation noting on the Manifestation Determination – "Parent does not have any additional information at this time." Stip. 70. Respondent did not provide a speech language pathologist to attend the meeting to interpret the evaluation results. Stip. 74.
11. The Current Disciplinary Event did not provide sufficient information to the MDR Team regarding what was required for violation of the code of student conduct Rule III-3 Acts of Terror – Communicating Threats. Stip. 67. Therefore, the MDR Team was unable to consider whether Student had the requisite intent or whether Student caused a significant disruption to the instructional day as required by the Policy.
12. A procedural violation occurred when the MDR Team failed to investigate whether Student's IEP and the accommodations therein were actually being implemented and what effect the failure to implement his IEP had on his conduct, despite Petitioners raising the issue.
13. A procedural violation occurred when Principal, as the LEA Representative, made the final determination based on her inability to see how Student's eligibility categories—Specific Learning Disabled and Other Health Impaired—could cause him to make threats. The MDR Team did not discuss the impact of Student's deficits in working memory and executive functioning and narrative language in a non-academic context, despite being asked to do so by Petitioners' counsel.
  - c. *Whether GCS impeded Student's parent's abilities to meaningfully participate in the September 26, 2024, MDR by predetermining Student's behavior was not a manifestation of his disability?*
14. Respondent's predetermination that Student's behavior was not a manifestation of his disability impeded Father of Student and Mother of Student's abilities to meaningfully participate in the September 26, 2024, MDR and resulted in a denial of FAPE to Student.
15. Respondent refused to allow discussion of the "conduct in question" and refused to consider Expert Speech Pathologist Witness's speech evaluation, which were both integral to the manifestation decision.
16. The MDR Team relied heavily upon School Psychologist's analysis of the one evaluation considered – the 2023 evaluation – despite School Psychologist failing to talk to the evaluator who conducted the evaluation or review the protocols, never meeting Student, and forming her opinion prior to the MDR meeting.

17. Principal inserted herself as the LEA Representative at the MDR despite never serving as an LEA Representative and not even understanding “the process” or what to expect at an MDR. Principal also assumed the role as the lead investigator, despite not having responsibility for the discipline of eighth (8th) grade students. She defied her supervisor’s directive to notify parents the threat was unfounded and continued to find ways to establish Student had threatened the school despite the absence of any witnesses and her decision not to inform him of the allegations against him or give him an opportunity to respond. Principal chose not to consider mitigating factors, such as Student’s absence of any disciplinary history, and instead chose to seek an even more severe punishment than what was contemplated by the Policy.
18. It was Principal as the LEA Representative that made the final decision on all three (3) questions posed during the MDR and determined based on the goals in Student’s prior IEPs and his disability categories that the behavior was not a manifestation of his disabilities. There was nothing Mother of Student or Father of Student could have said or data they could have provided that would have changed her decision.

**Issue 2: Whether the Manifestation Determination Review conducted on September 26, 2024, was substantively appropriate?**

*a. Whether GCS failed to implement Student’s IEP and failed to consider the causal relationship of such failure on Student’s alleged conduct?*

19. Although GCS informed Petitioners the IEP was being implemented at the MDR, it was not. Only after the fact, when Mother of Student asked for copies of Student’s modified work did it come to light that no work in fact was being modified for him.
20. The testimonial and documentary evidence in the record supports the work was not modified and Student’s IEP was not being implemented in the general education setting. *See Resp’t’s Exs. 14, 175.*
21. Expert Speech Education Witness testified the failure to implement the IEP and provide the accommodations Student needed, directly caused Student’s alleged conduct.
22. The MDR Team’s provision of inaccurate and misleading information regarding the implementation of the IEP, and Principal’s focus as the LEA Representative solely on the goals in Student’s IEP led to an incorrect outcome at the MDR, which caused Student a loss of educational opportunity and resulted in a denial of FAPE.

*b. Whether GCS’s procedural violations significantly impeded Student’s parents’ right to meaningfully participate in the MDR and resulted in educational harm to Student and a denial of FAPE?*

23. As discussed *supra*, GCS’s procedural violations not only significantly impeded Father of Student and Mother of Student’s right to meaningfully participate in the MDR decision-

making process, but they led to an incorrect outcome because the MDR Team failed to consider all relevant information and predetermined the outcome, which resulted in Student's removal from his educational placement, thereby denying him a FAPE.

24. Despite their best efforts, Mother of Student and Father of Student were precluded from meaningfully participating in the MDR as Respondent refused to discuss the "conduct in question," refused to consider Expert Speech Pathologist Witness's speech evaluation, and provided inaccurate information regarding the implementation of his IEP. Principal was the final decisionmaker, and she had gone to great efforts to ensure Student was long-term suspended prior to the MDR – including defying her supervisors, contacting the hearing officer who would have made the decision at the long-term suspension hearing during the course of her investigation, and preventing Student from being able to defend himself against the allegations.
25. Petitioners met their burden of proof in establishing the predetermination of the outcome of the MDR, which resulted in educational harm to Student and denied him a FAPE.
  - c. *GCS incorrectly determined that Student's alleged conduct was not a manifestation of his disability?*
26. A substantive violation occurred when Student was denied a FAPE because the MDR Team incorrectly determined that Student's alleged conduct was not a manifestation of his disabilities. Respondent failed to consider all of Student's disabilities and how they manifest and failed to consider the antecedents to the behavior when it refused to discuss the "conduct in question."
27. Respondent never properly investigated the incident to determine whether Student was capable of communicating the threats of which he was accused or even informed him of the allegations until after his disciplinary change in placement was made.
28. Respondent erred in not presenting any information to the MDR Team regarding the incident to enable a proper consideration of the impact of his disabilities and instead focused on his disability categories and School Psychologist's predetermined opinion based on the evaluation completed over a year earlier and refusing to consider Expert Speech Pathologist Witness's evaluation completed the week prior.
29. Expert Speech Pathologist Witness opined Student's conduct was a manifestation of his constellation of disabilities.
30. Expert Speech Education Witness also opined the conduct in question was a manifestation of Student's disabilities.
31. Petitioners met their burden in establishing and proving Student's conduct, even as described by Respondent, was a manifestation of his disabilities.

### **FINAL DECISION**

**BASED** upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Petitioners met their burden of proof, by a preponderance of the evidence.

1. The manifestation determination decision is REVERSED.
2. Respondent failed to comply with the procedural and substantive requirements of the IDEA resulting in a denial of FAPE to Student and a denial of any participation in in the IEP process to Student or his parents.
3. Within six (6) months of this Final Expedited Decision, the following individuals employed by Respondent shall undergo training related to disciplinary investigations, conducting MDRs, appropriate documentation of MDR decisions, appropriate evaluation techniques, and parental participation in the MDR process:

Principal, 8th Grade Assistant Principal , Special Education Inclusion Teacher, MDR facilitator, EC Behavior Support, Secondary Exceptional Children Director, EC School Support Lead, School Psychologist, Respondent’s Expert Witness and Science Teacher

4. Within twenty (20) school days of this Final Expedited Decision, or agreed upon by the Parties, Respondent is ORDERED to conduct a Functional Behavior Assessment (“FBA”) of Student, at public expense, with a behavior specialist of Petitioners’ choice. The behavior specialist shall conduct the FBA, including all observations, record reviews, and interviews with school staff and family, as needed in his/her discretion. If needed, the behavior specialist shall draft the FBA report and Behavioral Intervention Plan (“BIP”) for Student. An IEP meeting shall convene within ten (10) school days, or as otherwise agreed upon by the Parties, to review and revise the Behavioral Intervention Plan for Student Respondent shall bear all costs associated with the behavior specialist’s preparation of the FBA, the BIP, and training of school staff.
5. Respondent is ORDERED to immediately place Student back into Middle School.
6. Within 5 (five) school days of this Final Expedited Decision, Respondent is ORDERED to correct Student’s records to show that his misconduct was a manifestation of his disabilities and his suspension and disciplinary removal were reversed.
7. Petitioners are the prevailing party on the manifestation determination review issue.

### **NOTICE OF APPEAL**

In accordance with the Individuals with Disabilities Education Act and North Carolina’s Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision.

**Any party aggrieved by the findings and decision of an Administrative Law Judge may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.**

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

This Final Decision is immediately enforceable by the State Board of Education unless and until the party aggrieved timely applies to a reviewing court, State or federal, and the reviewing court grants an order staying the enforcement of this Final Decision pending the outcome of the review. N.C. Gen. Stat. § 150B-48.

**IT IS SO ORDERED.**

**This is the Redacted Final Expedited Decision- redacted for publication and, entered, on this the 10th day of March, 2025.**



David F Sutton  
Administrative Law Judge

## CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

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This the 10th day of March, 2025.



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