

**SOAH DOCKET NO. 701-23-10445.IDEA
TEA DOCKET NO. 151-SE-0123A**

<p>STUDENT, B/N/F PARENT AND PARENT, Petitioner</p> <p>v.</p> <p>WOODSBORO INDEPENDENT SCHOOL DISTRICT, Respondent</p>	<p>§ § § § § § § § §</p>	<p style="text-align: right;">BEFORE A SPECIAL EDUCATION HEARING OFFICER FOR THE STATE OF TEXAS</p>
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DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friends *** and *** (Parents or, collectively, Petitioner), brought an expedited action against Woodsboro Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401-1482, and its implementing state and federal regulations. The main issue in this case is whether the District had knowledge that Student was a child with a disability before the behavior that precipitated a disciplinary action.

The Hearing Officer concludes the District did not have knowledge Student was a child with a disability before the behavior that precipitated the disciplinary action occurred and Student is thus not entitled to the IDEA’s disciplinary protections.

Legal Representatives

Petitioner was represented throughout this litigation by legal counsel, Jordan McKnight of the Law Office of Jordan McKnight. Respondent was represented throughout this litigation by legal counsel, Christina Henshaw with Walsh, Gallegos, Treviño, Kyle & Robinson.

II. DUE PROCESS HEARING

The due process hearing was conducted on February 17, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Jordan McKnight. Petitioner's advocate, Debra Liva, assisted Mr. McKnight. *** and ***, Student's parents, attended the hearing.

Respondent continued to be represented by Christina Henshaw. ***, the *** principal, attended the hearing as the party representative. Both parties timely filed written closing briefs. The Decision in this case is due on March 6, 2023.

III. ISSUES

Petitioner confirmed the following IDEA issues for decision in this case:

1. Whether the District had knowledge that Student was a child with a disability before the behavior that precipitated the disciplinary action occurred.
2. Whether the District wrongly determined the conduct in question was not caused by, or had a direct and substantial relationship to Student's disability.

IV. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. An Order overturning the Section 504 Manifestation Determination Review (MDR) Committee decision.
2. An Order that Student is removed from the Disciplinary Alternative Education Program (DAEP).
3. An Order finding that placement in the DAEP was not appropriate.

V. FINDINGS OF FACT

1. Student is a *** grader at *** in the District. Student receives services under Section 504 of the Rehabilitation Act as a student with Attention Deficit Hyperactivity Disorder (ADHD). Student was diagnosed with ADHD in March 2022.¹
2. Student lives with Parents ***. Student is a bright child with a good heart, and Student likes to help people.²
3. The District observed that most students had difficulty coming back to a classroom after COVID-19. Students across the board struggled with the rigorous school work required to catch up and became frustrated, which manifested itself with behavior issues. The District used conflict resolution, circle time, and pull-out time with counselors to address these frustrations. The assistant principal brought in one child or groups of children to counsel them with behavioral supports to correct the behaviors. Student was included in these types of interventions beginning in the 2020-21 school year, Student's *** grade year.³
4. In *** grade, Student had *** disciplinary incidents recorded in the assistant principal's log. Most of the incidents involved being disruptive, disrespectful to the teacher, or ***

¹ Petitioner's Exhibit (PE) 9 p. 1; PE 48; Transcript (Tr.) 215-16; PE 2 p. 1; Tr. 70.

² Tr. 64, 75, 88, 172, 184.

³ PE 7; Tr. 180-81.

***. A few incidents involved ***. Student received ***, in school suspension (ISS), or a talk with the assistant principal as punishment. The District informed Parents of these incidents. Multiple *** made bullying allegations against each other. The assistant principal and principal had multiple talks with ***, including Student, about bullying and District personnel discussed when students are mean to each other it's not bullying, but being mean.⁴

5. On May ***, 2021, Student stated Student was ***. The principal emailed the *** counselor requesting an assessment, which included a screening to identify Student's level of risk. *** is a grant program funded by the state to bring counselors to districts.⁵ The *** counselor met with Student and determined no actual risk existed based on Student's comment. Student made the comment to leave class to talk with the counselor and she discussed other ways for Student to speak with her.⁶

***** Grade (2021-22 School Year)**

6. On November ***, 2021, Student's initial Section 504 Committee met. The Section 504 Committee determined Student needed a Section 504 plan due to "probable ADHD." Parents indicated Student had *** issues, was easily frustrated, and would easily shut down or produce continual movement. The Committee discussed Student's missing assignments, lack of concentration, and struggles with classroom behavior. Student had been working with the assistant principal on verbalizing Student's *** and the Committee determined Student used these conversations as a means to leave the classroom. One of Student's teachers indicated she was "out of options for handling Student's behavior," which referenced Student being off task and not focusing. The District's solution was to develop a Section 504 plan for Student.⁷
7. The initial Section 504 Committee determined teachers needed to complete new Vanderbilt screeners and Parents would take the data to Student's doctor to inquire about

⁴ PE 7; Tr. 188-89.

⁵ Tr. 190.

⁶ PE 21 p. 1; PE 24; Tr. 191, 192, 190, 198.

⁷ Respondent's Exhibit (RE) 12 p. 1, 2; Tr. 217-18.

an ADHD diagnosis. Accommodations included oral administration for tests as applicable and State of Texas Assessments of Academic Readiness (STAAR) test accommodations.⁸

8. During Student's *** grade year, Student had *** total disciplinary incidents. Only *** incidents resulted in office referrals; however, all incidents were recorded in the assistant principal's log. After most of the incidents, the assistant principal spoke to Student about Student's behavior and mentored Student, working with Student to learn that behaviors have consequences and how to correct the behaviors.⁹
9. Most disciplinary incidents involved Student ***. One incident involved Student ***. The consequences for the incidents ranged from a talk with the assistant principal called a principal time out (PTO) or a ***. The *** official office referrals involved in school suspension and ***.¹⁰

***** Grade (2022-23 School Year)**

10. On September ***, 2022, the principal emailed the counselor and asked the counselor to pull in Student to check on Student due to a concern things were happening outside of school and affecting Student.¹¹
11. On October ***, 2022, Student's mother emailed the principal and asked if Student was on "any Section 504 or anything for Student's ADHD". Student's mother emailed the principal in November and stated Student doesn't want to be at school anymore and asked for Student to talk to someone. She sent emails to teachers and the counselor because she was concerned about Student's grades. When the District emailed Student's mother regarding Student's behavior or missing assignments, she said she would address it with Student at home.¹²

⁸ RE 12 p. 2, 4.

⁹ PE 8; RE 15 p. 11; PE 48; Tr 178-79, 181.

¹⁰ PE 8 p. 14-17; RE 8; Tr. 179.

¹¹ PE 27.

¹² PE 26; PE 28; PE 29; PE 31; PE 36; PE 39; PE 40.

12. On November ***, 2022, the Section 504 Committee met for Student's annual review. Student now had an ADHD diagnosis. Student's accommodations were modified to include content mastery for assistance as needed after direct instruction. During deliberations, Parents brought up her concern Student may have dyslexia. The Committee determined to delay dyslexia testing until after the interim STAAR testing data was received.¹³
13. During the *** of Student's *** grade year, Student had *** incidents on Student's discipline record, including the incident which led to the Section 504 MDR. Most of the incidents involved being disrespectful to teachers, talking back to teachers, refusing to do schoolwork, and being off task. *** incidents involved peer conflict: ***. Student received ISS for the *** incident.¹⁴
14. One of the *** incidents occurred on September ***, 2022. Student stated, "****." The incident was investigated and found to be a low-level threat. Student was frustrated about math prior to the incident and upset about things going on at home ***. The statement, however, was a violation of the District's Code of Conduct for use of threatening language. Student received out of school suspension for one day.¹⁵
15. On December ***, 2022, Student's mother informed the District via email that Student's doctor made an adjustment to Student's ADHD and *** medications. Parents never provided any medical records from the doctor to the District.¹⁶
16. On or about December ***, 2022, Student engaged in conduct classified by the District as bullying when Student ***. Student was ***. Later the same day ***. Student continued to draw attention to the other student.¹⁷

¹³ PE 2 p. 1; PE 9 p. 3; RE 13.

¹⁴ PE 9.

¹⁵ PE 9 p. 4, 17; PE 22 p. 1; Tr. 146-47.

¹⁶ PE 42; Tr. 88.

17. On January ***, 2023, the District held a Section 504 MDR Committee meeting. In attendance were Parents and their advocate, counsel for the District, a general education teacher, two campus administrators, and the Section 504 coordinator/counselor. The Section 504 MDR Committee reviewed Student's disciplinary history, including for the current and prior school years (only the *** official office referrals), the discipline incident which served as the basis for the Section 504 MDR meeting, parents' input, staff input, and Student's current Section 504 accommodations.¹⁸
18. Parents informed the Section 504 MDR Committee that Student had ***. Parents' advocate raised concerns of an emotional/behavioral disorder and possible autism. The District informed Parents and the advocate it had no reason to believe Student needed specially designed instruction, but it would conduct a Full and Individual Evaluation (FIE) for special education services if Parents requested one. The District also offered to conduct a Functional Behavior Assessment (FBA). Parents did not respond to either proposal. Student's mother left the meeting early to return to work. Student's father and the advocate left the meeting before it concluded.¹⁹
19. The Section 504 MDR Committee determined the behavior was not a manifestation of Student's disability of ADHD.²⁰ Parents disagreed with the Section 504 MDR determination. The District determined the incident in question involved bullying and Student's past behaviors of task refusal and talking back did not include any history of bullying. Student was assigned to the DAEP for 10 school days.²¹
20. After Parents and the advocate left the meeting, the remaining Section 504 MDR Committee members discussed whether Student's behavior was substantially related to any suspected disabilities of Emotional Disturbance, ***, or autism. Student's *** issues typically manifest themselves as Student being upset or crying, not bullying or targeted behavior toward another student. Student seeks adult attention, approval, and positive praise. The District noticed a change in Student's behavior recently with an increase in work refusal, which it attributed to something occurring outside of school. The District

¹⁸ PE 15, p. 3, 25; PE 3 p. 6.

¹⁹ PE 3 p. 6; PE 48.

²⁰ PE 3 p. 6.

²¹ PE 48; PE 3 p. 6; PE 20 p. 3.

planned to speak with the other school counselor, who sees Student weekly, for more information.²²

21. The remaining Section 504 MDR Committee members added behavioral supports to address task refusal and disruptive behavior to Student's Section 504 accommodations and planned to monitor the effectiveness of the supports to see if further supports, such as a Behavior Intervention Plan were necessary. The added accommodations were: ignore minor behavioral infractions; opportunity for cool-down time when necessary upon teacher approval; positive reinforcement and praise for behaviors that are beneficial to increase; and reminders to stay on task.²³
22. After the Section 504 MDR Committee meeting, a District counselor emailed parents and requested consent to speak with Student's medical doctor(s) and/or private counselor(s). Additionally, the District indicated its willingness to conduct a special education evaluation. Parents have not responded to the District's offer to evaluate Student.²⁴
23. After the incident, Student's teachers were asked to complete input forms about Student's behavior and mark the three primary concerns. Most teachers indicated disruption of classroom, refusal to follow adult direction, and bothering other students. No specific descriptions were given regarding any of the behavior concerns.²⁵
24. On January ***, 2023, Parents informed the District of their intent to withdraw Student from school and homeschool Student. At the time of hearing, the District continues to believe Student does not need a special education and related services.²⁶

²² PE 3 p. 6; PE 48.

²³ PE 3 p. 4, 6; RE 15 p. 6.

²⁴ RE 15 p. 1; Tr. 92.

²⁵ PE 4; Tr. 50-51.

²⁶ PE 47; Tr. 120-21.

VI. DISCUSSION

A. Protections for children not determined eligible for special education and related services.

Under the IDEA, school districts have the authority to discipline students with disabilities if the student engaged in behavior that violated the code of student conduct. 34 C.F.R. § 300.530. Students not currently eligible for special education services may assert the protections of the IDEA if the school district had knowledge the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 34 C.F.R. § 300.534(a). A school district is deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred:

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or
- (3) The teacher of the child, or other personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

Id. at (b)(1-3).

Little case law exists interpreting this section of the federal regulations. In interpreting statutes, Courts look to the plain language and construe the text in light of the statute as a whole. *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019) (citing *Molinet*, 356 S.W.3d at 411). Therefore, the Hearing Officer will look at the plain language of the statute to analyze the facts of the case.

B. Three prong analysis (34 C.F.R. 300.534(b)(1-3))

First, Petitioner presented no evidence demonstrating Parents expressed concern in writing to administrative personnel or a teacher that Student needed special education and related services. In emails between District personnel and Parents, Student’s mother notified the District of Student’s *** or mentioned she would address behavior/missing homework issues at home. In November 2022, she emailed the District wanting help for Student because Student did not want to attend school; however, she never indicated in writing she felt Student needed special education services.

Second, Petitioner failed to present evidence indicating Parents requested a special education evaluation. Parents raised concerns about dyslexia at Student’s annual Section 504 Committee meeting and the Committee decided to wait to receive Student’s STAAR test results to determine if an evaluation was necessary. Parents, through their advocate, also raised concerns about emotional issues and *** at the Section 504 MDR Committee meeting but did not answer when asked by District personnel if they would consent to an FIE or FBA. To date, the District has offered to conduct an FIE multiple times since the incident and Parents have declined to answer the offer.

Third, Petitioner presented no evidence showing a teacher or other District personnel expressed specific concerns about a pattern of behavior demonstrated by Student directly to the director of special education or any supervisory personnel of the District. Quite the opposite, the District continues to believe Student can be adequately served under Section 504 and that the behavior on the day of the incident—bullying—was vastly different from Student’s prior peer conflict issues. The only prior discussion of bullying by the District was when *** were taught being mean to each other was not bullying, but being mean.

Student had multiple behavioral incidents during Student’s *** grade years

and the *** of *** grade. Of the *** disciplinary incidents during this time period, most involved being off task, being disruptive, being disrespectful, or talking back. Approximately *** incidents involved some type of peer conflict; however, they did not involve ***, like the behavior which gave rise to the Section 504 MDR. The prior incidents of peer conflict involved ***. For example, in *** grade, Student's two peer conflict incidents prior to the bullying incident involved ***. The difference between the prior incidents of peer conflict and the bullying incident that precipitated the Section 504 MDR is significant. In the December 2022 incident underlying the Section 504 MDR, Student's behavior ***. Then the same day, ***. This is substantially different from prior incidents of peer conflict because, instead of being a single incident, it was ***. The December 2022 incident and the prior peer conflict situations did not rise to a pattern of behavior because the behaviors were entirely different.

In Petitioner's closing brief, Petitioner points to the principal's testimony answering in the affirmative when questioned about whether a teacher expressed concerns about a specific pattern of behavior to meet the requirement of 34 C.F.R. §300.534(b)(3). While Petitioner quotes the witness correctly, Petitioner's argument mischaracterizes the entirety of the witness's testimony. The principal repeatedly indicated Student was not in need of special education, Student's Section 504 plan was addressing Student's needs, and the bullying incident was different than Student's prior behavior incidents. Additionally, Petitioner asks the Hearing Officer to determine Student's prior discipline incidents involving peer conflict were a pattern of behavior that gave the District a basis of knowledge that Student was a student in

need of special education services. While the Hearing Officer finds the increase from *** incidents each year in *** grade to *** incidents in just the *** of *** grade concerning, as discussed above, these incidents do not rise to a pattern of behavior the District categorizes as bullying. While these facts may be relevant to Petitioner's Child Find claim, the hearing officer concludes these facts do not support the District had the basis of knowledge required under 34 C.F.R. § 300.534.

In this case, even if the Hearing Officer found the disciplinary incidents involving peer conflict constituted a pattern of behavior, Petitioner failed to present sufficient evidence that the District's basis of knowledge met the IDEA's regulatory requirements because no teacher or District personnel have ever expressed specific concerns regarding a pattern of behavior to the special education director or supervisory personnel as the statute requires. The email sent by the principal in September 2022, requesting the school counselor to speak to Student, was related to a concern something was occurring in Student's life outside of school and not a specific concern about a pattern of behavior of Student. The email was general, it did not mention bullying or any specific behavioral concerns. The District discussed Student's behavioral needs related to being off task and difficulty focusing during Student's initial Section 504 Committee meeting in November 2021 but did not otherwise discuss behavior in Student's annual Section 504 review in November 2022 or modify Student's Section 504 plan to address behavioral concerns. In fact, behavioral accommodations were not added to Student's Section 504 plan until after the incident. The District has held firm in its opinion Student's needs can be met under Section 504 and Student does not need special education services, which is inconsistent with expressing a specific concern about a pattern of behavior.

Petitioner failed to present sufficient evidence that the District had a basis of knowledge under 34 C.F.R. § 300.534(b)(1-3). No evidence was presented that Parents expressed concern in writing that Student needed special education services, that Parents requested an evaluation, or that a teacher/staff expressed specific concerns about a pattern of behavior to the director of special education or other supervisory personnel. While teachers and staff were aware of Student's behaviors and their recent increase, no evidence was presented they expressed a specific concern about a pattern of behavior. The plain language of the statute is specific and unambiguous and none of the three requirements were met to conclude the District had a basis of knowledge.

Section 504 MDR

Petitioner's second issue concerns whether the District wrongly determined the conduct in question was not caused by or had a direct and substantial relationship to Student's disability. In this case, the District conducted a Section 504 MDR Committee meeting to determine if the behavior exhibited by Student on or about December ***, 2022, was caused by, or had a direct and substantial relationship to Student's disability of ADHD or if the conduct in question was the direct result of the District's failure to implement Student's Section 504 plan. The District answered no to both questions. Student was assigned to the DAEP after the Section 504 MDR and has not returned to school since. Because this Hearing Officer finds the District had no basis of knowledge Student needed special education services and Student was not entitled to the IDEA's disciplinary protections, further analysis of the MDR is unnecessary. Moreover, the Hearing Officer lacks jurisdiction over issues arising under Section 504. 34 C.F.R. §§ 300.503 (a)(1)-(2); 300.507 (a); 300.532 (a); 19 Tex. Admin. Code §§ 89.1151(a); 89.1191.

VII. CONCLUSIONS OF LAW

1. Petitioner is not entitled to protections under the IDEA because Respondent did not have a basis of knowledge that Student is a child with a disability before the behavior that precipitated the disciplinary action occurred. 34 C.F.R. § 300.534.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

SIGNED March 6, 2023.



Kasey White
Special Education Hearing Officer
For the State of Texas

VIII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).