

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
DALLAS INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner brings this appeal, pursuant to the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400 et seq., (hereinafter referred to as "IDEA"), against Respondent (hereinafter referred to as "Respondent" or "School District"). Petitioner (hereinafter referred to as "Petitioner" or "Student") filed a written request for a due process hearing which was received by the Texas Education Agency on February 7, 2012. Petitioner was assisted by Advocate Carolyn Ann Morris of Lancaster, Texas. Respondent was represented by Attorney Joni R. Jalloh of Dallas Independent School District in Dallas, Texas. A due process hearing was held on Monday, March 5 through Tuesday, March 6, 2012, in Dallas, Texas.

Petitioner alleges that Student is a ***-year old in the *** Grade. Petitioner has been receiving special education as a student who has a Specific Learning Disability in Listening Comprehension. Petitioner's Request for Special Education Due Process Hearing and Required Notice raised the following issues regarding this appeal of the Manifestation Determination Review ARD in this expedited Due Process Hearing:

1. Respondent did not provide the Student with a Free Appropriate Public Education ("FAPE") and, before February 6, 2012, failed to explain to the parent her rights related to having a child with a disability;
2. Respondent did not provide an appropriate Manifestation Determination Review ("MDR") pursuant to §300.530 & §300.530(d)(1)(i)(ii) & (e);
3. Respondent did not comply with IDEA, Subpart D Evaluations, Eligibility Determination, by failing to appropriately evaluate Petitioner in all areas of suspected disability;
4. Respondent did not provide Petitioner with an appropriate Functional Behavior Assessment ("FBA");
5. Respondent did not present evidence to support the Petitioner's change of placement;
6. Respondent did not implement the Petitioner's Individualized Educational Program ("IEP") and Behavioral Intervention Plan ("BIP"). Specifically, the teacher which *** and filed the subsequent *** was not informed of the Petitioner's BIP and did not attend the MDR to speak to her understanding of the Petitioner's IEP and BIP; and

7. Respondent did not explain and provide copies of the Petitioner's Full Individual Evaluation ("FIE").

Petitioner's Relief Requested

As relief in this due process hearing, Petitioner requests the following:

1. Grant Petitioner stay-put status pursuant to 34 C.F.R. §300.518;
2. Grant Petitioner a FAPE;
3. Grant Petitioner relief pursuant to 34 C.F.R. §300.530, §300.530(d)(1)(i)(ii) & (e). Specifically, Petitioner requests that the Hearing Officer make a determination whether *** exceed the definition of *** to merit the determinations of the MDR;
4. Direct Respondent to address its failure to address Petitioner's transition plan in the change of placement setting; and
5. Grant the Petitioner an Individual Educational Evaluation ("IEE").

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

1. Petitioner is a ***-year old Student in the *** grade who resides in School District.
2. School District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing the Student a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C.A. § 1400, *et seq.*, and the rules and regulations promulgated pursuant to IDEA.
3. The Student is eligible for special education as a child with a disability who meets eligibility criteria under the following handicapping condition: Specific Learning Disabilities in Listening Comprehension.
4. The Student received a Full and Individual Evaluation ("FIE") on May 5, 2005 and was diagnosed with a Specific Learning Disability in Listening Comprehension while the Student was in *** grade.
5. An Admission, Review, or Dismissal Committee meeting ("ARD") was held on May 9, 2005 on behalf of the Student. The Student's ARD committee ("ARDC") developed an IEP at that meeting. The IEP included two (2) Annual Goals and Short-Term Instructional Objectives for Student progressing into the ***

Grade in the subject areas of Reading and Listening. The IEP contained no provision for behavioral concerns, and the Student's ARDC concluded that the Student would be subject to the school's Code of Student Conduct.

6. An FIE was completed for the Student on May 9, 2008, when the Student was in *** grade. The evaluation was completed using standard procedures. The sources of the data used for the FIE included information from the Student's parents; information from the Student's educational records; a home/language survey; information from the Student's classroom teacher; and a Student interview and observation. The FIE contained additional information on the Student's physical condition from data sources from information for the Student's parents and information from the school nurse.

7. The May 9, 2008 FIE also contained information regarding the Student's emotional/behavioral, sociological, and adaptive behavior functioning using data from the Student's parents, classroom teacher, and Student observation and educational records. The Student's intellectual functioning was evaluated based on information from the Student's parents, teachers and a Comprehensive Test of Phonological Processing ("CTOPP"). The Student was administered the WISC-III/IV diagnostic instrument as well.

8. The May 9, 2008 FIE also reported the Student's educational achievement as measured by the Wechsler Individual Achievement Test II; parent information; teacher information; and information from the Student's education records. There was an additional test observation completed as a supplementary evaluation.

9. The May 9, 2008 FIE reported that the Student had a crystallized intelligence score of ***, which is within the borderline range and not within normal limits. The Student's Short-Term Memory composite score of *** was within the average range and within normal limits. The Student's Auditory Processing composite score of *** was within the average range and within normal limits. The Student's Listening Comprehension score was ***, which was in the borderline range. The FIE concluded that the Student met the criteria as a student with a Specific Learning Disability based on difficulties in Listening Comprehension and crystallized knowledge. The evaluation recommended the Student receive additional interventions, recommendations and accommodations provided through special education.

10. The May 9, 2008 FIE contained no reports of behavioral issues or difficulties which required special education services. There were no behavioral interventions recommended in the FIE.

11. An ARD meeting was convened on the Student's behalf on May 20, 2008. The purpose of the meeting was to review the Student's eligibility for special education services. The Student's parent did not attend the meeting but gave the ARDC permission to hold the meeting without her.

12. The May 20, 2008 ARDC concluded that the Student meets eligibility criteria to receive special education services as a student with a Specific Learning Disability in Listening Comprehension. The ARDC found no need for behavioral intervention because there were no reported problems with the Student's behavior.

13. An ARD meeting was convened on the Student's behalf on February 12, 2009. The purpose of the meeting was to perform an annual review of the Student's special education program and placement. The Student's parent attended the meeting.

14. The February 12, 2009 ARDC reviewed the Student's IEP from the previous annual ARD meeting and continued the Student's program of educational supports and accommodations in a general education setting. The ARDC found unanimously, that there was no need for behavioral intervention because of the Student's behavior.

15. An ARD meeting was convened on the Student's behalf on February 10, 2010. The purpose of the meeting was to perform an annual review of the Student's special education program and placement. The Student's parent did not attend the meeting but gave the ARDC permission to hold the meeting without her.

16. The February 10, 2010 ARDC reviewed the Student's IEP from the previous annual ARD meeting and continued the Student's program of educational supports and accommodations in a general education setting. The ARDC found no need for behavioral intervention because of the Student's acceptable behavior.

17. An ARD meeting was held on February 10, 2011 on behalf of the Student. The Student was in the *** grade, at the time, in *** School. The purpose of the meeting was to perform an Annual Review of the Student's special education program and to review the applicable evaluation and the need for a 3 year re-evaluation. The ARD Committee ("ARDC") determined that no additional data was needed and that the Student continued to meet the eligibility criteria of a Specific Learning Disability. The ARDC made this determination after reviewing the Student's 2008 FIE. The Student's parent was invited to attend the meeting, and did not attend. She gave the ARDC permission to hold the ARD meeting without her.

18. The Student's IEP was revised during the February 10, 2011 ARD meeting. The IEP included five (5) Annual Goals and Short-Term Instructional Objectives for Student's progress into the *** Grade in the subject areas of English Language Arts, Reading, Mathematics, Science, and Social Studies.

19. The February 10, 2011 ARDC determined that the Student could be educated in a general education setting with continued accommodations in subject matter, with tutorials and academic remediation. The ARDC did not find that the Student's behavior required an ARD-adopted individualized behavior management program by specially trained personnel.

20. Based on the Student's May 9, 2008 FIE and the February 10, 2011 REED ARD meeting, the Student's evaluations are current. [34 CFR §300.303(a)(2)]

21. The Student was assigned a Case Manager and inclusion teacher whose assignment is to closely monitor the implementation of the Student's special education program. The Case Manager was assigned to the Student in August of 2011, at the beginning of the 2011 – 2012 school year.

22. During the Fall semester of the 2011-2012 school year, the Student's Case Manager noticed some of the Student's off task misbehaviors in the hallways at *** school. Also, she received some reports from the Student's classroom teachers of some disruptive behavior. The Student's Case Manager attempted to instruct the Student, informally, on how to avoid such misbehavior.

23. The Student's Case Manager contacted the Student's mother about ten times prior to January, 2012 about the Student's misbehavior and teacher complaints. The Case Manager suggested that the Student's mother consider informal counseling for the Student to address non-compliant classroom behavior and ***. The Case Manager was unaware whether the Student's mother had pursued her counseling recommendation.

24. The Student had become truant during the first semester of the 2011-2012 school year. The Student habitually skipped classes and left classes without permission before the class was completed. As a result of the Student's class attendance problems, the District filed a truancy complaint against the Student. A truancy court's order required the Student to obtain the signature of each teacher on a form, showing that the Student completed the class on each school day.

25. The *** School issued four "Principal's Request For a Parent-Conference/Hearing" notices during the Fall Semester of the 2011-2012 school year. These notices included:

1. A September 27, 2011 notice for defiant behavior and refusing to comply with an administrator;
2. An October 4, 2011 discipline referral;
3. A November 1, 2011 notice for *** and attempting to ***;
4. A ***, 2011 *** suspension ***.

None of the referrals related to an inability to control the Student's actions or aggression ***.

26. An ARD meeting was held on January 23, 2012 on behalf of the Student. The purpose of the ARD meeting was to address the Student's disruptive and inappropriate behavior that had increased over the latter portion of the first semester of the 2011-2012 school year. The ARD meeting was requested by the Student's Case Manager; the Student's mother attended the meeting. This was the first ARD meeting convened on the Student's behalf at the Student's *** school.

27. The Student's January 23, 2012 ARDC considered reports of the Student being disruptive in the classroom; of having inappropriate words with some teachers; of interfering with the learning of others; of excessive tardies and absences; and ***. The ARDC had no reports or other notice of *** by the Student.

28. The Student's January 23, 2012 ARDC developed a Functional Behavioral Analysis ("FBA") and a Behavior Intervention Plan ("BIP") based on that FBA. The BIP identified the following targeted behaviors:

- A. Verbal and Physical Aggression ***
- B. Walking out of class and tardies
- C. Non-Compliance, off task behavior.

The BIP identified the following intervention strategies to change the Student's behavior:

- A. Set clearly defined standards
- B. Remind [Student] of rules periodically and use private signals for reminders.
- C. Assign preferential seating near teacher and away from door.
- D. Conference with Student/parent/administrator/case manager/counselor

All of the proposed interventions/strategies developed by the Student's January 23, 2012 ARDC assumed that the Student is capable of understanding and following the school's Code of Student Conduct.

29. The Student's January 23, 2012 ARD meeting ended in unanimous agreement. Other than the BIP, the Student's IEP remained in place, largely unchanged. The Student's mother did not request additional services or evaluations and no additional services were initiated by the ARDC.

30. Prior to the Student's ***, no one, including the Student's mother, suggested orally or in writing that the Student was suspected of having another educational disability other than what was recorded in the Student's IEP.

31. On ***, the Student ***. The class was *** and the Student's regular teacher stepped out of the room to submit paperwork to the office. A teacher was asked to substitute into the class and supervise the students until the Student's regular teacher returned. Shortly after the regular teacher left the room, ***.

32. Petitioner was issued a citation from the Police and Security Services Department of Dallas ISD for the ***.

33. An ARD meeting was convened on February 6, 2012 on behalf of the Student. The purpose of the ARD was for the Student's ARDC to conduct a Manifestation Determination Review ("MDR") of the Student's ***. The Student's mother was present at the MDR.

34. The February 6, 2012 MDR Committee heard reports of the Student's ***. The Student's IEP was present in the room in file form on the table of the meeting room. Also, the Student's IEP was projected on a monitor within the meeting room. The MDR Committee considered the Student's eligibility classification of Specific Learning Disability in Listening Comprehension in the context of the ***. The MDR Committee determined that the Student's *** was not a manifestation of the Student's Specific Learning Disability. The MDR Committee further determined that the *** was not the result of a failure of the District to implement the Student's IEP. The MDR Committee concluded that the Student should be subject to the school's regular school Code of Student Conduct. The Student's mother did not agree with the determination of the MDR Committee.

35. During the February 6, 2012 MDR, the Student's mother related the Student's *** to ***. Without suggesting that the Student's behavior was justified, the Student's mother explained that the Student was still upset about the ***.

36. On February 6, 2012 an ARD meeting was convened on behalf of the Student. This ARD meeting was convened later in the day after the completion of an MDR on the same student. The purpose of the ARD was to review existing assessments on the Student and to consider changes to the Student's IEP. The Student's mother was present at the ARD meeting.

37. During the Student's February 6, 2012 ARD meeting, the Student's ARDC determined that it would be appropriate to perform another FIE on the Student which included a psychological evaluation. The

Student's mother requested input from the Student's general education teachers, who were not present at the ARD meeting. The meeting was closed without complete consensus.

38. On February 7, 2012 the Student was withdrawn from the *** school placement and transferred to a District Discipline Alternative Education Program for more than ten (10) consecutive days. [34 CFR §300.536]

39. An ARD meeting convened on February 8, 2012 at the request of the Student's mother. The Student's general education teachers were present at the ARD meeting and provided input. The Student's parent requested a Psychological Evaluation, Speech Language Evaluation and full re-evaluation of all suspected areas of disability. Petitioner expressed concerns with *** and a *** ARD was also conducted.

40. The February 8, 2012 ARD meeting did not end in agreement because the Student's mother requested an IEE even though the ARDC concluded that the Student would have a new FIE with evaluations as agreed upon by all members of the ARDC, including the student's representatives. The ARDC did not agree that an IEE at the District's expense would be appropriate before the results of an FIE were reviewed by the ARDC. The District has not completed the FIE of the Student that was ordered in the ARD. The ARD meeting was recessed to March 5, 2012.

41. During the February 8, 2012 ARD meeting, the Student's Educational Diagnostician explained the FIE process to the Student's mother and the need to obtain the Student's mother's consent for a psychological evaluation. The Educational Diagnostician provided additional information, including names of other diagnosticians, to the mother to assist in potentially seeking an IEE.

42. The Student's Special Education Teacher for the *** reading program testified at the hearing. The Student's behavior in this teacher's classroom has been frequently disruptive, but never ***. The Student objects to doing work in this teacher's classroom because of fear of being considered "slow." The Student frequently tries to leave the classroom before class is over.

43. The Student's *** teacher testified at the hearing. The Student is frequently absent from the *** class. The Student is disruptive in this class, but is not ***. The Student will respond to the *** teacher's clear calm directives. The *** teacher has observed the Student making clear behavioral choices in his class.

III. Discussion

School Disciplinary Actions Involving Disabled Students

IDEA and its implementing regulations direct the Local Educational Agency in the appropriate handling of a disciplinary infraction committed by a student who has an educational disability. The overall guiding principle is that a student should not be *punished* for exhibiting a disability. If the disability itself *caused* the disciplinary infraction, then the student is not at fault and punishment is unwarranted. Likewise, if the disciplinary infraction happened because the Local Educational Agency failed to implement established and agreed elements of the Student's IEP (usually found in a BIP that has been included in the IEP), then the student

is not considered at fault for the infraction. In either case, the assumption is that a violation of a school Code of Student Conduct caused by a manifestation of a disability should not result in the punishment of a disabled student. Since a change of placement to a disciplinary alternative educational setting is usually a key element of a disciplinary punishment, the guiding principle is that a student should not be removed *as punishment* from the general setting because of a manifestation of a disability.

The sections of IDEA that encompass the aforementioned “guiding principle” are found at 20 U.S.C. §1415, and are further implemented in 34 CFR §§300.530 and 300.532. The statute provides in pertinent part:

“School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 school days... [20 U.S.C. §1415(k)(B)]

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability... the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedure would be applied to children without disabilities... [20 U.S.C. §1415(k)(C)]

...the local education agency, the parent, and relevant members of the [ARD Committee]... shall review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine –

- (I) If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or
- (II) If the conduct in question was the direct result of the local education agency’s failure to implement the IEP.
- (III) Manifestation. If the local educational agency, the parent, and relevant members of the [ARD Committee] determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child’s disability. [20 U.S.C. §1415 (k)(E)]”

The implementing regulations at 34 CFR §300.532 mirrors what is set out in the statute, including the requirement that an appeal of a decision of the MDR Committee being handled as an expedited hearing. [34 CFR §300.532(c)]

The facts of this case applied to the standards established by the foregoing section of IDEA provide clear guidance as to the resolution of this case. The law requires the MDR Committee to relate the violation in question to the disability already determined to apply to the student. The Student’s February 6, 2012 MDR Committee was legally required to determine if a Specific Learning Disability in Listening Comprehension was responsible for the Student’s ***. The persuasive evidence presented in this hearing confirms the determination

of the Student's MDR Committee that the Student's disability did not cause ***. Moreover, the record shows that the MDR Committee appropriately reviewed the Student's existing IEP, including the January 23, 2012 amendment to the Student's IEP that contained no information that the Student's Specific Learning Disability was the source of *** as a targeted behavior. Petitioner's contention that the District failed to implement the IEP or BIP appropriately is not supported by the record.

Suspected Disabilities and Disciplinary Actions

The Petitioner asserts that the District failed to timely identify a suspected disability that applies to the Student. Petitioner's assertion requires the Hearing Officer to evaluate the decision of the February 6, 2012 MDR Committee by looking beyond the existing disability determination of Specific Learning Disability. Petitioner has not suggested a specific suspected educational disability that is recognized by IDEA. However, the testimony offered by Petitioner, including the Student's mother, *implies* that the Student may have an emotional disability that causes the Student's misbehavior generally, and the ***, specifically.

The evidence presented by Petitioner does not support Petitioner's assertions and IDEA requires additional factors that Petitioner did not prove during the hearing. The record indicates that the Student was able to choose when and in what manner misbehavior would be exhibited. At no time prior to *** did the Student's misbehaviors indicate that ***. However, IDEA may itself *require* that a party who challenges an MDR decision by applying a suspected disability that has not been determined by a student's ARDC, must first take specific steps to alert the LEA to what is suspected. Again, IDEA provides, in pertinent part:

“Basis of Knowledge. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, *before* the behavior that precipitated the disciplinary action occurred –

- (i) The parent of the child has 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;
- (ii) The parent of the child has requested an evaluation of the child... or;
- (iii) The teacher of the child, or other personnel of the local education agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.” [20 U.S.C. §1415(k)(H)(5)(B)]”(emphasis supplied)

There is a similar provision in the regulations at 34 CFR §300.534. However, the regulation is more clearly applicable to a student who has not been identified as having an educational disability *at all*. This does not apply to the Student in this case.

This record contains no evidence that the requirements of the foregoing subsection were satisfied. The Student's mother provided no notice to the District, in writing or otherwise, that the Student was in need of additional special education services or an educational evaluation until after the ***. The Student's Case Manager expressed concern about the Student's behavior and requested the January 23, 2012 ARD to develop a

BIP. However, at no time did the Case Manager, the Student's mother, or any other member of the Student's ARDC suggest that the Student had another eligible disability other than the Specific Learning Disability. In fact the Student's entire history of special education services which extends into the Student's years in ***, neither suggests another disability or even contains reports of behavioral problems. The February 10, 2012 apparent diagnosis by a psychiatrist of the student having Post Traumatic Stress Disorder ("PTSD") does not change the legal analysis of this decision. The diagnosis of PTSD, alone, is insufficient to qualify the Student as eligible for additional special education services (There is no such IDEA eligibility classification known as PTSD, *per se*). Also, the diagnosis occurred well *after* the Student's ***. The Student's ARDC has determined that an FIE with a psychological evaluation to determine *if* an additional eligible disability exists. The Student's February 8, 2012 ARDC appears to have taken the appropriate action required by IDEA. Moreover, until the Student's ARDC has reviewed the results of the FIE and the Student's mother disagrees with the FIE, an IEE at District expense is not required. [34 CFR § 300.502(b)(5)]

Finally, the record does not support Petitioner's contention that the District failed to explain to the Student's parent her rights related to having a child with a disability. Petitioner's testimony on this point was vague and unpersuasive. The student's mother did not indicate what additional information the District should have provided her. More importantly, the record establishes that the Student's parent participated effectively on behalf of the student in all ARDs, including the MDR, held in 2012. At the same time, the LEA's Case Manager was also responsive to the Student's special education needs and attempted to offer to the Student's parent additional support services in the form of informal counseling to address the Student's off-task and disruptive behavior and the Student's ***, for the Student which the parent did not access.

For the reasons set out herein, I conclude that Petitioner's appeal of the MDR should be overruled and the requested relief denied.

IV. Conclusions of Law

1. The Student resides within the geographical boundaries of the School District and is eligible for special education services based on the classification of Specific Learning Disability in Listening Comprehension.[20 USC §1400 *et. seq.*; 34 CFR §300.8(a)]

2. Respondent School District has a responsibility to provide the Student with a free appropriate public education. [20 USC §1412]

3. Respondent School District convened a duly constituted Manifestation Determination Review to consider the appropriate disciplinary action following the Student's ***. The determination of the MDR Committee members was appropriately based on the Student's existing IEP and reports of the details of ***. The MDR Committee determinations that Student's *** was not the result of a manifestation of the Student's disability or a failure of the District to implement the Student's IEP is consistent with the law and the facts. [20 USC §1415(k); 34 CFR §300.530; §300.532]

4. Petitioner failed to demonstrate that Respondent failed to provide the Student's parent with her rights and procedural safeguards under IDEA. [34 CFR § 300.504]

5. Petitioner failed to demonstrate, through a preponderance of the evidence, that Respondent failed to provide the Student with a free appropriate public education. [*Cypress Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997)]

6. Petitioner failed to demonstrate that the Student had received a FAPE. [*Bd. Of Education v. Rowley*, 458 U.S. 176, 73 L.Ed 2d 690, 102 S. Ct. 3034(1982), *Cypress Fairbanks ISD v. Michael F.* 118 F.3d 245 (5th Cir. 1997)].

V. Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

SIGNED in Austin, Texas this 20th day of March, 2012.

/s/ Stephen P. Webb _____
Stephen P. Webb
Special Education Hearing Officer

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V.	§	HEARING OFFICER FOR THE
	§	
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SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

Issue: Did Respondent convene and perform an appropriate Manifestation Determination Review meeting to consider whether the *** by a *** year old *** grade student with a Specific Learning Disability in Listening Comprehension was a manifestation of the Student’s disability?

Federal Citation: 20 USC §1415(k)(B); and 34 CFR §300.530; §300.532.

Held: For the Respondent: Respondent held a duly constituted MDR that considered the Student’s IEP, teacher and parent input and established disability as required by IDEA.

Issue: Should the Student’s MDR Committee have suspected an additional disability and considered whether *** was a manifestation of an additional disability, given the Student’s misbehavior prior to the ***?

Federal Citation: 20 USC §1415(k)(H)(5)(B).

Held: For the Respondent: There was insufficient explicit notice to the LEA from anyone, including the Student’s parent, that the Student was suspected of another disability that would affect behavior. The Student’s misbehavior prior to *** was not of the kind or quality that would suggest the existence of another disability that would affect behavior.