

DOCKET NO. 151-SE-0222

STUDENT b/n/f PARENT <i>Petitioner</i>	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER FOR THE
	§	
NORTH EAST INDEPENDENT SCHOOL DISTRICT <i>Respondent</i>	§	STATE OF TEXAS
	§	

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, *** (“the student”), by next friend, ***, (“the parent”) filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) on January 12, 2022. On January 19, 2022, the case was bifurcated, and Docket No. 121-SE-0122-B was set for expedited due process hearing to begin on February 10, 2022. On February 9, 2022, the night prior to the hearing, Petitioner dismissed Docket No. 121-SE-0122-B because of an injury to one of Petitioner’s attorneys. On February 15, 2022, Petitioner refiled the case, was assigned docket No. 151-SE-0222, and sought an expedited hearing. Docket Nos. 121-SE-0122-A and 151-SE-0222 were consolidated into one case with Docket No. 151-SE-0222. Respondent in the complaint is North East Independent School District (“the district”). The matter was set for an expedited hearing within twenty (20) school days of the request for an expedited hearing.

The case came on for hearing on March 16 and 17, 2022, and this decision is timely issued on the tenth school day after the hearing.

Petitioner was represented by Karen Dalglish Seal, attorney with Law Office of Karen Dalglish Seal in San Antonio, Texas and ***, attorney, and the parent in this matter, in San Antonio, Texas. Respondent was represented by Christopher Schulz and Maia Levenson, attorneys with Schulman, Lopez, Hoffer & Adelstein, LLP in Austin, Texas. The hearing was recorded and transcribed by Ann Berry, a duly certified court reporter.

At the close of the hearing, the parties requested the opportunity to file written closing arguments, and the requests were granted by the hearing officer. Both parties timely filed their closing arguments.

Issues for the Expedited Hearing

1. Whether the district had knowledge that the student was a child with a disability eligible for special education and related services prior to a disciplinary action taken by the district against the student on ***, 2021?
2. Whether the district failed to comply with the procedural safeguards requirements under the IDEA related to Prior Written Notice or Notice of Procedural Safeguards, and if so, whether any procedural violations under IDEA resulted in the student being denied a Free Appropriate Public Education (FAPE)?
3. Whether the behavior of the student on ***, 2021, was a manifestation of the student's disability?
4. Whether the behavior of the student on ***, 2021, was the direct result of the district's failure to implement the student's Individualized Education Program (IEP)?
5. Whether the district violated IDEA by assigning the student to its Disciplinary Alternative Education Program (DAEP) for 75 days?

Petitioner's Requested Relief

For relief, Petitioner requests that this Hearing Officer order the district to take the following actions:

1. Document in the student's education record that the student's conduct on ***, 2021, was a manifestation of the student's disability.
2. Set aside the assignment of the student to the alternative school for 75 days.
3. Return the student to Student's previous placement, *** ***, immediately.
4. Within thirty calendar days, complete a Functional Behavior Assessment (FBA) and provide a copy of the FBA to the parent.
5. Within ten school days of completion of the FBA, or by a date agreed to by the parties, convene an Admission Review and Dismissal (ARD) committee to review the FBA and draft a Behavior

Intervention Plan (BIP) for the student, based upon the findings and recommendations of the FBA.

Findings of Fact

1. The student is***-year-old who resides with Student’s parents within the geographical boundaries of the district. Prior to assignment at the district’s Disciplinary Alternative Education Program (DAEP), the student attended *** ***, a *** school in the district.
2. The student is currently not receiving special education and related services.
3. A neuropsychological evaluation of the student was performed in March 2019 by *** (“***”). The student received several diagnoses, including ADHD-Inattentive Presentation, *** Disorder, Other *** Disorder, Social Communication Disorder, and ***. The assessment was completed in March 2019 and provided to the district in November 2020. (J-1:10) (TR 21: 24.-25) (J-5:1)
4. The *** evaluation listed the following DSM-V DIAGNOSES:
 - a. DSM-V-F90.0 ADHD, Inattentive Presentation
 - b. DSM-V-R41.9 *** Disorder (difficulties with set shifting/cognitive flexibility)
 - c. DSM-VF88 Other *** Disorder (auditory and sensory processing deficits, socioemotional dysregulation, fine motor/handwriting difficulties)
 - d. DSM-V-F80.89 Social (Pragmatic)communication Disorder
Rule Out Autism Spectrum Disorder
 - e. DSM-V-F43.23 ***(J-1:10)
5. In more than one domain of the private evaluation, the student’s problems with impulsivity are noted. (J-1:9) The *** evaluation recommended that the student be evaluated for autism. (J-1:12)
6. Following a Section 504 evaluation of the student in October 2020, an initial Section 504 meeting was conducted on November ***, 2020. The parent provided the Section 504 committee with the March 2019 private evaluation from ***. (J-5:2) (TR:21-25) At the meeting, the Section 504 committee reviewed input from the parent, input from the student’s teachers, Student’s academic performance, and a private evaluation from ***.

7. The Section 504 committee, including the parent, determined that the major life activity impaired was Behavioral/Emotional due to Attention Deficit Hyperactive Disorder (ADHD) and, as a result, the student was eligible for Section 504 services.
8. The committee developed a plan for the student with accommodations, including giving extra time for assignments, checking for understanding, and allowing the student to take breaks. (J-5:1-2) The entire Section 504 committee, including the parent, agreed with the Section 504 plan. (J-5:4)
9. The parent received and signed for a copy of Notice of Procedural Safeguards on November ***, 2020. (JR-2:1).
10. The district has served the student through Section 504 as a student with ADHD since the 2020-2021 school year when the student was in the *** grade.
11. ***, the student's primary general education teacher for *** grade, testified that Student was successful with Student's Section 504 accommodations. (TR 294:20-23) She testified that the student performed well academically, that Student made progress in the general education curriculum, and that she never had any concerns that the student might need services beyond what was offered in the general education classroom. (TR 278:8-16, 284:21-24) *** also did not have any behavior concerns with the student, testifying that Student sometimes challenged "the why" of classroom assignments but that this was not uncommon among *** students and that she never had any reason to believe that Student's behavior necessitated special education or related services. (TR 285:1-13, 286:14-17) She testified that the student was able to follow directions and responded to redirection. *** further testified that the student had friends that Student would play with and joke around with, that Student was able to work with other kids on classroom projects, and that she did not suspect that Student had any sort of social skills deficit. (TR 286:18-287:15)
12. At the end of the 2020-21 school year, the student passed Student's classes, including *** math. The student passed the STAAR examinations that year, mastering the content on the STAAR *** assessment and approaching grade level in ***. Despite being in the *** grade, the student took and mastered the ***-grade math STAAR exam. The student mastered many of the other benchmark assessments administered that year. (J-17:1)

13. In the 2021-22 school year the student attended *** as part of the campus' *** program. (J-16:23)
14. The student's Section 504 committee met on November ***, 2021, to revise the student's Section 504 plan. Teachers noted the student likes to push boundaries, is easily annoyed and irritated, speaks out in class often, and needs reminders to stay on task. The committee developed accommodations for staying on task and providing access to a break when the student became frustrated. (J-6:1-2)
15. Before the ***, 2021 disciplinary incident, the student was doing well academically, behaviorally, and socially. Student was earning all As and Bs in Student's classes, including *** classes. Student was also enrolled in ***, called "****." Student's *** teacher, *** ("****"), testified that Student was meeting academic standards for Student's grade level, that she did not have any concerns about Student's behavior or social skills, and did not report that she believed Student needed services and supports beyond those available in the general education curriculum. (TR 235:14-24; TR 563:5-22; TR 567:6-13)
16. The district took no action to initiate a Full and Individual Evaluation (FIE) of the student until after the parent filed for due process hearing in January 2022. The district denied having any knowledge of the *** private evaluation until the disciplinary incident of ***, 2021 when the district informed the parent that the evaluation had been in the district's possession but had been archived. (TR 32:13-14; TR 226-4-10; TR 227:22-24; TR 356: 11-17; TR 442: 2-7)
17. On December ***, 2021, the district's superintendent sent out a message to all parents about threatening statements aimed at classmates and schools. (R-1:1)
18. The superintendent's message was a response to a viral phenomenon on the social media video application TikTok. On ***, 2021, there was a nationwide "challenge" on TikTok ***. The message placed campus administrators and students on heightened alert. The parent stated she explained the TikTok challenge to the student on the way to school on ***, 2021, and told Student to tell someone if Student heard anybody at school talking about ***. The parent testified that the student agreed. (TR 39:9-40; TR 40:24)

19. On that same day, ***.” The student confirmed making the statement. (J-10:1-2)
20. The ***. The *** campus principal, *** (“***”), testified that ***. Counselor *** (“****”) also testified that other students expressed worry or concern as a result of the student’s statement. (TR 401:2-10; 429:18-430:21; 474:2-12)
21. *** determined that the student’s statement violated the district’s Code of Conduct. She recommended that the student be placed in the DAEP for 75 days. At the time of the recommendation, the student had passed all Student’s classes at the end of the Fall 2021 semester. (J-11:2; J-12:1)
22. After the incident, the student’s parent requested a special education evaluation of Student. The campus counselor copied the campus Lead Licensed Specialist in School Psychology (“LSSP”) on an email to coordinate obtaining consent for an evaluation. The parent signed consent for the evaluation on January ***, 2022. The campus LSSP, *** (“****”) is now trying to complete the evaluation prior to the 45-day deadline. *** testified the student has been absent from the DAEP which makes completing the evaluation difficult. (P-3:26) (TR 8-13)
23. The district held a Section 504 Manifestation Determination Review (MDR) meeting on January ***, 2022. The MDR committee determined that the student’s conduct was not a direct and substantial result of the student’s disability, and that the conduct was not the direct result of a failure to implement the Section 504 plan. (J-9:3) (TR 476:3-7)
24. The district also conducted an MDR under the IDEA. That MDR occurred on February ***, 2022. (J-19)
25. The IDEA MDR committee reviewed the details of the incident. The parent asked to read some witness statements she believed were relevant, and was permitted by the committee to do so. (J-19:10)
26. *** (“****”), the district’s expert in school psychology and its Lead LSSP, reviewed the private evaluation from ***. The parent stated in her testimony that the evaluation was reviewed “at length.” (TR 86:22).

27. The committee reviewed information from *** (“****”) and ***, two of the student’s teachers that attended the meeting. *** stated she has not had any concerns with the student in the classroom. *** stated the student works well in a group, but noted the student can make comments at inappropriate times. (J-19:11)
28. The parent stated that the student had issues with “perspective taking.” The committee then asked the teachers if they observed problems with “perspective taking” in class. *** reported not seeing this as a problem. (J-19:11)
29. The parent also had the “Pupil Personnel Student Status Check” forms in her possession at the time of the meeting. The forms require each of the student’s teachers to write Student’s current grade in the class, and report any behavioral concerns. Several teachers reported the student’s behavior was satisfactory in class. (TR 93:20) (J-14:1,3,4,6-8)
30. *** wrote that the student could have “occasional outbursts” and will make “inappropriate comments in class” but that Student works well in groups and is generally a good student.” The parent asked *** if she could ask *** for clarification on her written statements. *** replied, “Please, yes.” *** clarified she meant the student’s comments were during inappropriate times. (J-14:2)
31. *** (“****”) wrote that the student needs a gentle reminder to stay on task but that Student shows a “ton of respect when Student does not feel threatened.” (J-14:3,5)
32. The student testified in the due process hearing that Student enjoyed working on group projects in the *** program. (TR 169:20)
33. The committee also reviewed prior disciplinary incidents. The student only had two prior disciplinary incidents. One was for ***. Another was for leaving class without permission. (J19:5; J-18)
34. Dr. ***, the student’s physician since birth, treats the student for Student’s ADHD. Dr. *** testified that the statement made by the student on ***, 2021, was directly and substantially related to the student’s disability because unless the student was told specifically that Student was not

supposed to ***, Student lacked the abstract thinking ability to make inferences and understand that if Student did ***at school Student would be punished. (TR 180:13-17) (TR 181:12-18) (TR 185:16-23)

35. Dr. *** testified that he would tie the impulsivity directly to the ADHD and that he agreed with the DSM-V that “The essential feature of attention deficit disorder, ADHD, is a persistent pattern of inattention, hyperactivity, impulsivity that interferes with functioning or development . . . and that impulsivity refers to hasty actions that occur in the moment without forethought.” (TR 193:12-16) (TR 192:22-23)
36. The district’s attorney asked Dr. *** if he had additional evaluation data to share with the committee. Dr. *** reported that he did not. (TR 105:8) (J-39)
37. *** did not know if the student knew what the student did was wrong before the student did it. She thinks Student just did it. She doesn’t know that Student thought about it before. Student may have just said it. (TR 434:17-22)
38. On his report of the investigation of the incident of ***, 2021, the investigating law enforcement officer noted that the student may have a mental health issue or a problem, maybe Asperger’s or autism. The officer also noted that the Assistant Director of ***, ***, stated that he also believed that the student was on the spectrum of being autistic but had not been diagnosed. (TR 225:2-4) (TR 225:10-13) (P-13)
39. *** expressed that the current data did not support a direct and substantial link to current disabilities or the suspicion of autism spectrum disorder. *** explained that there was no pattern of behavior for this incident such that it could be tied to the disabilities being evaluated. (J-19:11)
40. At the end of the meeting the parent asked for an additional meeting so the district could complete the FIE. The parent testified the district granted her request. (TR 106:6)

41. The meeting resumed on February ***, 2022. The campus principal attended this meeting because of “disrespect” in the first meeting when district staff were told by the parent’s attorney that “people’s jobs had been lost at North East ISD.” (J-20:1) (TR 357:16)
42. The parent asked the district if *** (“***”), Speech-Language Pathologist, could attend the reconvene meeting. *** was in attendance. (TR 97:15)
43. At the meeting *** and *** reviewed the portions of the FIE that they had completed. (J-20:1-3)
44. The parent also invited a parent of a classmate to attend the MDR meeting and share his observations of the student. He noted that the student ***. (J-20:2)
45. The committee also discussed the student’s alleged issues with perspective taking ***. *** reviewed the specific areas of the rating scales that addressed perspective taking and ***. The parent asked *** administrator *** (“***”) if there were any instances in which the student struggled with perspective taking and *** responded that there was only one disciplinary issue where the student was being sarcastic. (J-20:2)
46. *** led the meeting. The committee reviewed the student’s statement and the statement of *** who reported the incident. The committee also reviewed the *** evaluation and input from the student’s teachers. It discussed the intersection between inattentiveness of the ADHD the student was experiencing and concerns with social interaction and *** disorders. There was discussion through the meeting about the student being impulsive. (TR 513:13-15) (TR 516:23-25) (TR 517:4,13,16-17)
47. The MDR committee determined there was not a direct and substantial link to the student’s suspected disabilities. The committee also determined that there was no failure to implement the Section 504 plan. (J-20:2-3)
48. At the due process hearing Dr. ***, PhD, testified as an expert in School Psychology. She met with the student and Student’s parents on March ***, 2022 for 90 minutes and with the student privately for 20 minutes. Dr. *** testified that she had spoken by phone with Dr. ***, a

neuropsychologist, about the evaluation Dr. *** had performed on the student and Dr. ***'s diagnosis of autism spectrum disorder. (TR 608:1-21)

49. Dr. *** testified that the student was at high risk of *** if Student returned to the alternative school. (TR 610:6-8)

50. At no time after receiving a copy of the *** evaluation that recommended an evaluation of the student for autism did the district issue prior written notice to the parent that the district refused to initiate an FIE of the student.

Discussion

This case requires analysis of two issues. The first issue is whether the district properly convened an MDR under the IDEA and correctly determined that the student's violation of the Code of Conduct was not a manifestation of the student's known or suspected disability. The second issue is whether the district fulfilled its Child Find obligations under the IDEA. As shown below, Petitioner has not met Petitioner's burden of proof on either issue.

A. Petitioner Has Not Met Petitioner's Burden Of Proof On Petitioner's Claims Concerning The District's MDR.

The IDEA creates a presumption in favor of the education plan proposed by the school district, and as such, places the burden of proof at the due process level on the party challenging the IEP or seeking relief under the IDEA. This presumption applies in an expedited case in which a party seeks to overturn a student's MDR and disciplinary placement. *Cypress-Fairbanks Indep. Sch. Dist.*, Dkt. 172-SE-0318A (TX SEA 2018). As a result, Petitioner had the burden to prove that the district did not comply with IDEA in the conduct or the result of the MDR.

1. The MDR committee met twice at parent's request and reviewed all relevant information.

In conducting the MDR, an MDR committee is required to review all relevant information in the student's educational file, including the IEP, teacher observations, and any relevant information provided by parents. 34 C.F.R. § 300.530(e)(1).

At the time of the disciplinary incident the student was not receiving special education services. Thus, the MDR committee did not have a completed school-based evaluation or an IEP to review. In circumstances such as these, the Office of Special Education Programs advises not to delay the MDR to complete the initial evaluation.

[I]t would still be possible for the LEA to convene a group of knowledgeable persons, as determined by the parent and the LEA, who would be able to conduct the MDR even before the LEA has made its eligibility determination, if the LEA cannot conduct the evaluation before the MDR. The group would likely consider the information that served as the LEA's basis of knowledge that the child may be a child with a disability under IDEA, such as concerns expressed by a parent, a teacher or other LEA personnel about a pattern of behavior demonstrated by the child. Based upon its review and consideration of the available information, the group would determine whether the conduct in question was caused by, or had a direct and substantial relationship to the child's suspected disability. There is nothing in IDEA that would prevent the LEA from conducting the MDR in connection with its evaluation and eligibility determination, so long as the MDR is conducted within 10 school days of the decision to change the student's placement due to a violation of a student code of conduct.

Letter to Nathan, 73 IDELR 240 (OSEP 2019).

The district followed this OSEP advice. After conducting a Section 504 MDR, it convened another MDR under IDEA. The IDEA MDR committee reviewed all information in the student's file, including the *** private evaluation. It considered statements from the student's pediatrician and from the father of a friend of the student. It reviewed prior discipline of the student and considered input from the MDR committee members about Student's behavior. And when the parent requested another meeting, the district collected evaluation data and presented this information at the second MDR meeting.

In this instance, Petitioner was not entitled to a reconvened MDR meeting. It is true that typically, a disagreement in an ARD, or as in this case, an MDR committee meeting requires the parties to schedule a reconvened meeting to consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the committee to reach mutual agreement. 19 Tex. Admin. Code § 89.1050(g)(2). However, the Commissioner's Rules also state the "opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program." Id. §

89.1050(g)(1). The district nonetheless granted the parent's request that it collect and review additional evaluation data and hold a reconvened meeting.

At the conclusion of the MDR, the parent did not agree with the district's determination. But the evidence does not show that the district failed to conduct a proper MDR.

2. The evidence does not show that the committee's determination was incorrect.

In conducting an MDR, the committee is required to "analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability." H.R. 779, 108th Cong. At 224-25 (2004); see also *N.E. Indep. Sch. Dist. V. N.B.*, No. SA-10-CA-37-H, 2011 WL 13272730, at *2 (W.D. Tex. Feb. 25, 2011); *Gloria V. v. Wimberley Indep. Sch. Dist.*, No. 1:19-CV-951-RP, 2021 WL 770615, at *9 (W.D. Tex. Jan. 5, 2021), report and recommendation adopted in part sub nom. *Gloria V. as next friend of B.V. v. Wimberley Indep. Sch. Dist.*, No. 1:19-CV-951-RP, 2021 WL 769663 (W.D. Tex. Feb. 26, 2021), *aff'd*, No. 21-50349, 2022 WL 636406 (5th Cir. Mar. 4, 2022).

The evidence did not demonstrate error in the MDR's determination. For instance, *** testified that "given the data and the information that we reviewed, there was not evidence that that behavior occurred across settings and across time." (TR533:17). She further explained that in determining whether there was a direct and substantial relationship she was looking for a "consistent pattern of that same type of behavior . . . something that would be easily predictable[.]" (TR 524:21) *** testified that the information in the Section 504 documents indicated problems with organization, task completion, and some reports of the student becoming overwhelmed. The November 2021 Section 504 Plan indicated the student needed reminders to stay on task "which would be expected given what we know about Student's disability." In the "Pupil Personnel Student Status Check" forms reviewed by the MDR, *** learned that the student's behavior was satisfactory overall, with some behavior concerns, but "not a pattern of behavioral concern across the board."

*** also said that the student's two prior disciplinary offenses were different from this current offense. One was for elopement, and the other was for misbehaving ***, but the current offense was for *** under the district's Student Code of Conduct.

The student's pediatrician, Dr. ***, testified that he was not aware of any behaviors of the student inside or outside of school that would relate to this specific incident. In addition, ***, Petitioner's expert in child psychology, testified that she did not see any behaviors in the record that are similar to commenting or joking about ***. She said, "Nor do I think that this has been a pattern." And *** testified that as a LSSP, she did not see any connection to the past behavioral incidents, and she didn't see a "pattern of behavior."

In sum, none of the experts called by either party testified that the student had engaged in a pattern of behavior that would support a finding that the disciplinary incident on ***, 2021, was caused by, or had a direct and substantial relationship to, the student's suspected disabling condition(s). Accordingly, Petitioner did not prove, as Petitioner had the burden to do, that the district's MDR determination was erroneous.

3. Petitioner's claim that the student's conduct did not violate the Code of Conduct is outside the jurisdiction of a due process hearing.

During the due process hearing, Petitioner attempted to connect the student's misconduct with a suspected disability of autism. Specifically, Petitioner asserted that the student's comment about *** was a joke, that the student's suspected disability of autism precludes Student from making inferences, and that because the student was never expressly told not to make jokes about ***, Student's autism prevented Student from understanding that making such a comment was prohibited.

As already discussed, however, Petitioner did not prove that the student's comment was a manifestation of a known or suspected disability. This part of the claim is therefore without merit.

Petitioner also repeatedly asserted that the student's comment was only a joke and that Student did not intend to ***, and that Student therefore did not violate the Code of Conduct. This assertion does not state a claim within the jurisdiction of this hearing officer. Special Education Hearing Officers have limited jurisdiction. A parent or a public agency may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE. 34 C.F.R. § 300.507(a). The issues under the Hearing Officer's jurisdiction do not involve the application of a school district's Student Code of Conduct. *Danny K. ex rel. Luana K. v. Dep't of Educ., Hawaii*, No.

CIV. 11-00025 ACK, 2011 WL 4527387, at *12 (D. Haw. Sept. 27, 2011) (“Plaintiffs cite no authority, and the Court has found none, to suggest that a manifestation determination team must review the merits of a school's findings as to how a student violated the code of student conduct.”)

The IDEA does not allow a hearing officer to consider or determine an appeal of a finding that a student violated a district’s Student Code of Conduct. As a result, Petitioner’s assertion during the hearing that the student lacked the requisite intent to have *** because Student’s comment was a joke is not properly before this Special Education Hearing Officer.

B. Petitioner Has Not Met Petitioner’s Burden Of Proof On Petitioner’s Child Find Claim.

A child with a disability is not inherently entitled to special education services under the IDEA. In other words, a disability (or condition) alone does not equate to eligibility. To find IDEA eligibility, it must be established that a child: (1) has an enumerated disability that adversely affects the child's educational performance; and (2) by reason thereof needs special education. 20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.7(a). Therefore, in order to establish IDEA eligibility, parents must demonstrate not only a qualifying condition and an educational “need” for special education and related services, but also that the “need” was caused by the qualifying condition(s) and not any other nonqualifying diagnoses or issues in the student’s life. *Alvin Indep. Sch. Dist. v. A.D.*, 503 F.3d 378, 383 (5th Cir. 2007); 34 C.F.R. § 300.8 (a)(1).

In this case, there is no dispute that the student has at least one qualifying disability and that satisfies the first prong of the eligibility requirements. 20 U.S.C. § 1401(3)(A)(i). The evidence is clear that the student has been diagnosed with medical conditions that amount to a disability under the IDEA. The parties agree that the student has ADHD. In addition, Respondent is currently trying to complete a Full and Individual Evaluation to determine whether it believes the student also has autism. Private evaluations indicate that the student has at least a pragmatic language disorder, a social skills disorder, and an executive functioning disorder that manifested as Autism Spectrum Disorder. Moreover, the presence of these deficits was so obvious that the law enforcement officer investigating the ***, 2021, incident noted it in his written report of the incident. Yet despite having in its possession since November 2020 an evaluation of the student recommending that the student be evaluated for autism, the district never proposed conducting an FIE of the student until after the ***, 2021 behavioral incident. However, a

medical diagnosis of autism will not by itself qualify a student for special education and related services. As with other disabilities identified in the IDEA, a student with autism must show that the student needs special education services in order to receive an educational benefit from the educational program.

The central dispute pertains to the second prong: by reason of Student's disabilities, does the student need special education and related services? See *Alvin Independent School District v. A.D. ex rel. Patricia F.*, 503 F.3d 378 (5th Cir. 2007). The evidence does not show that the student has the requisite need. Academically, for instance, the student passed the 2020-21 school year with Bs in all courses, including *** Math. Student also demonstrated mastery on most of Student's Common Formative Assessments in the Spring 2021, mastered most of Student's District Benchmarks that year, and passed the STAAR tests, including mastering the *** assessment which is actually above Student's grade level. In the 2021-22 school year the student passed all Student's classes at the end of the fall semester, with an A in Math *** and an *** in ***. In fall 2021 Student mastered three Common Formative Assessments in math, and scored in the *** percentiles on three different MAP tests in reading and math. This evidence indicates no need for special education in academics. See, e.g., *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 797 (5th Cir. 2021); *A.L. v. Alamo Heights Indep. Sch. Dist.*, No. SA16-CV-00307-RCL, 2018 WL 4955220, at *6 (W.D. Tex. Oct. 12, 2018). Instead, the evidence in the record establishes clearly that the student was academically successful with Section 504 accommodations in a general education setting, and Student's teachers did not report any need for special or related services to master Student's curriculum and proceed to the next grade.

Petitioner argues that the student requires special education services in the form of direct social skills instruction. A student's need for special education and related services is not limited to academics, but includes behavioral progress, and learning appropriate social skills. *Venus Ind. Sch. Dist. v. Daniel S.*, 36 IDELR 185 (N.D. TX 2002). The student in *Venus* performed well academically but Student's behavioral problems clearly affected Student's overall educational performance at school and were sufficient to warrant a finding of a "child with a disability" under the IDEA.

But the record does not support Petitioner's argument. It shows that Student did not have significant behavioral or social deficits. Instead, the testimony and documentary evidence in this case, which have been discussed previously, paint a portrait of a student who is extremely bright and excels at and enjoys school at the ***, who does not have a significant pattern of behavior that disrupts Student's learning or

that of Student's peers, and who has friends and overall positive relationships with Student's teachers and classmates. The student's few disciplinary incidents are insufficient to establish a need for special education and related services.

Accordingly, Petitioner failed to meet Petitioner's burden to establish that the student has a need for special education and related services. Moreover, Petitioner presented no evidence that the student was deprived of educational benefit because of a procedural violation.

Conclusions of Law

1. As the party challenging the district's decisions, the Petitioner failed to meet the burden of proof on any of the claims asserted in this action. *Schaffer v. Weast*, 546 U.S. 49 (2005).
2. Petitioner failed to meet Petitioner's burden to prove that the MDR conducted by the district regarding the student's placement at the DAEP was improper.
3. Petitioner failed to meet Petitioner's burden to prove that the district's MDR determination was erroneous.
4. Petitioner failed to meet the burden of proof to show that the actions of the district in seeking to consider special education placement for the student violated IDEA under the standard of *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983), 20 U.S.C. § 1400, et seq., 20 U.S.C. § 1401(3)(A)(ii); 34 CFR 300.8(a)(1).
5. Petitioner failed to prove that the district violated any procedural rights. 34 C.F.R. §300.503 and 34 C.F.R. § 300.504.

Order

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief sought by Petitioner is **DENIED**.

SIGNED on April _____, 2022.

Sandy Lowe
Special Education Hearing Officer
For the State of Texas