**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re:    Helena[[1]](#footnote-1) and Norwood Public Schools                                BSEA **#**2501731

**DECISION**

 This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

An expedited hearing was held on August 21, 2024, before Hearing Officer Amy Reichbach. With the consent of both parties and agreement of all participants, it was held in a hybrid format, with some participants on Zoom and others in-person at the Bureau of Special Education Appeals (BSEA). Those present for all or part of the proceedings were:

Mother

Student

Rory Cartland Guidance Counselor, Norwood High School

Lori Cimeno Director of Student Services, Norwood High School

Hugh Galligan Principal, Norwood High School

JuanManuel Gonzales Assistant Principal, Norwood High School

Brian Dezurick, Esq. Attorney for Parent

Tom Mela, Esq. Attorney for Parent

Brett Sabbag, Esq. Attorney for Norwood Public Schools

Janine Solomon, Esq. Observer

Carol Kusinitz Court Reporter

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits P-1 to P-24[[2]](#footnote-2); documents submitted by Norwood Public Schools and marked as Exhibits S-1 to S-20; a thumb drive submitted jointly and marked as Exhibit J-1[[3]](#footnote-3); one day of oral testimony and argument; a digital recording of this testimony and argument; and a one-volume transcript produced by a court reporter. At the parties’ request, the record was held open through August 26, 2024 for submission of written closing arguments. Closing arguments were received and the record closed on that date.

1. **INTRODUCTION**

On August 5, 2024, Parent filed an *Expedited Hearing Request* against Norwood Public Schools (Norwood, or the District) on behalf of Helena, alleging that the educational services available to Helena are inadequate, resulting in her harm. According to Parent, on May 29, 2024, Helena was involved in a fight at school, during which a staff member was injured. She was expelled permanently for assault, though after a Superintendent appeal, her punishment was reduced to a suspension[[4]](#footnote-4) lasting from May 31, 2024 through the end of Term 1 of the 2024-2025 school year in November 2024.[[5]](#footnote-5) Parent contends that Helena received no instruction or tutoring from May 29, 2024 through the end of the 2023-2024 school year, despite her request for alternative educational services, and as a result Helena failed math. This summer she repeated the same math course online but experienced significant difficulty completing assignments without a teacher. According to Parent, Helena’s disability had a direct and substantial relationship to the fight that led to her long-term suspension and Norwood failed to prevent this harm by failing to refer Helena for a special education evaluation, despite several indicators that the District should have done so. As relief, Parent requested: (1) a finding that Norwood violated its obligation under Child Find to refer Helena for a special education evaluation; (2) a finding that the May 29th incident that resulted in Helena’s suspension was a manifestation of her disability and, accordingly, that Helena’s suspension is an improper change in placement; (3) compensatory education services to make up for Norwood’s failure to provide Helena with a free appropriate public education (FAPE) from November 29, 2023, when the District was made aware of Helena’s pediatrician’s recommendation to consider her for a special education evaluation; and (4) compensatory education services to make up for the time Helena was out of school from May 29, 2024 through the end of the 2023-2024 school year.

An expedited hearing was scheduled for August 21, 2024.

On August 16, 2024, Norwood filed its *Response to Parent’s Expedited Hearing Request*, denying that it had violated Helena’s rights under applicable state and federal law. Specifically, the District contends that during the fight on May 29, 2024, Helena assaulted another student while at least four staff members tried to separate them, that Helena refused to release her grasp on the other student, and that, as a result, a staff member suffered a broken leg trying to break up the altercation. Helena was removed on an emergency basis and during the expulsion hearing, Parent did not mention her ADHD diagnosis nor did she request testing or accommodations of any kind. This information was only shared, formally, during the appeals hearing with the Superintendent (held in July 2024). Norwood cannot be deemed to have knowledge that Helena was a child with a disability who would qualify for protection under the Individuals with Disabilities Education Act (IDEA) at the time the discipline was initially imposed. As such, Norwood did not err in disciplining her as a general education student. Alternatively, even assuming Helena qualified for protection under the IDEA, Norwood did not err in disciplining and excluding her for up to 45 school days without regard to whether the behavior was determined to be a manifestation of her disability, as Helena inflicted serious bodily injury upon another person while at school. Finally, Parent’s assertion that Helena was deprived of a FAPE is unavailing, as Norwood offered her tutoring and other support to assist her with her summer Algebra course, but the District did not receive a response from Helena or Parent. As such, Norwood has not violated its obligations under the IDEA, nor did it deny Helena a FAPE.

The issues for Hearing were set forth as follow:

1. Whether Norwood Public Schools had an obligation to refer Helena for a special education evaluation under Child Find, 34 C.F.R. §300.111;
2. Whether Norwood Public Schools had an obligation to hold a Manifestation Determination Review (MDR) prior to Helena’s tenth day of exclusion from school under 34 C.F.R. §300.530 because the District “shall be deemed to have knowledge” that she is a child with a disability, pursuant to 34 C.F.R. §300.534(b);
3. If the answer to (2) is yes, whether it is appropriate in these circumstances for the BSEA to determine whether Helena’s behavior on May 29, 2024 was a manifestation of her disability, and
	1. If so, was such behavior a manifestation of Helena’s disability;
4. Alternatively, whether Norwood Public Schools lawfully excluded Helena for dangerous behavior pursuant to 34 C.F.R. §300.530(g); and
5. Whether Norwood must provide Helena with any educational services during the pendency of her suspension from school?
6. **FINDINGS OF FACT**[[6]](#footnote-6)
7. Helena, who is fifteen years old, lives with her mother, maternal grandmother, and two siblings in Norwood, Massachusetts. (S-3; Mother)
8. Helena attended two different middle schools in Boston, Massachusetts between sixth and eighth grades. She was not involved in any disciplinary incidents during middle school. Her grades, however, suffered during the COVID-19 pandemic, and she had difficulty understanding the material and paying attention in class when a teacher was not physically present. Although she earned some failing final grades in sixth grade (2020-2021 school year), Helena passed all classes in seventh and eighth grades. (P-22; S-3; Mother)
9. Helena’s family moved to Norwood in June 2023, and she attended Norwood High School (NHS) for ninth grade during the 2023-2024 school year. (S-3; Mother)
10. Helena experienced some stress and trauma early in life, particularly associated with her parents’ relationship. They divorced when she was 10 years old, but custody disputes around that time and since then led to domestic violence committed by her father against her mother and restraining orders against her father, who is not really involved in her life right now. Helena witnessed the domestic violence committed by her father against her mother, which continued until the time she moved to Norwood. Parent observed that during this period, she witnessed Helena become angry and anxious, and her grades, which had begun to improve following the pandemic, began to suffer again. Helena’s ability to focus in school declined toward the end of eighth grade, a decline that continued into the beginning of high school. (P-22; Mother)
11. On or about August 1, 2023, Parent received from the office of Helena’s pediatrician, Dr. Laura Reis, a copy of a form entitled Massachusetts School Health Record, Health Care Provider’s Examination (School Health Record form), which was based on Dr. Reis’s examination of Helena on November 16, 2022. Dr. Reis marked “Other,” in the box for “This student has the following problems that may impact his/her educational experience,” and in the space for Comments/Recommendations, she wrote, “Consider eval for IEP. They report worsening grades/struggling.” This form had initially been provided to Boston Public Schools while Helena was enrolled there. In connection with her enrollment in Norwood, Mother also brought the form to a District office shortly after she received it on August 1, 2023. (P-2, P-3; Mother)
12. In Norwood, Student Health Record forms are directed to and maintained in each school building by the school nurse. They might also be received by administrative assistants for the Athletic Department, but the administrative assistants are trained to pass the forms on to the relevant personnel without reviewing them themselves. Nurses, on the other hand, might raise concerns based on the content of a Student Health Record form, such as a new diagnosis, a change in medication, or a physical injury requiring support under section 504. (Cimeno)
13. Helena’s transition to Norwood was difficult. The school was bigger, and classes and assignments were hard. Helena told Parent she was having trouble concentrating. (Mother)
14. Helena’s first quarter progress report, issued on October 6, 2023, reflected this difficulty. She received an F in Spanish, with a note that she was working below potential and demonstrated inconsistent performance. In English and Algebra, she received grades of D+, with notations that she was in danger of failing and needed to improve test/quiz grades. For English, she also received a comment that she needed to improve homework assignments, and for Algebra, her additional comment stated that she needed to put in more effort. Helena received a C in Physical Science; an A- in World History/Culture; grades of A+ in Marketing and Art; and a B- in Wellness. (P-4; Mother)
15. At the end of the first quarter, on or about November 11, 2023, Helena received an F in Algebra; a D+ in English; an A in Spanish; a C in Physical science; a C+ in World History/Culture; a B in Marketing; an A in Art; and a B- in Wellness. (P-5; S-7; Mother)
16. Also in November, Parent met with Helena’s teachers to discuss her poor grades and ask whether there was anything she could do to support her daughter. Helena’s math teacher suggested that Parent either hire a private tutor or speak with the Guidance Counselor to request free tutoring by National Honor Society students. Parent reached out to Helena’s Guidance Counselor about the peer tutoring a few times but did not receive a response. Parent also decided to have Helena evaluated for Attention Deficit Hyperactivity Disorder (ADHD), as Helena was reporting that she still could not focus. (Mother)
17. On or about November 22, 2023, Helena again saw Dr. Reis, at which time Parent shared with her that Helena was still complaining about difficulty with concentration and that her grades were poor. They discussed having Helena evaluated for ADHD. On the section of the School Health Form associated with this appointment labeled, “This student has the following problems that may impact his/her educational experience,” Dr. Reis did not mention ADHD or check any of the boxes. She did, however, note in the space labeled Comments/Recommendations associated with this section, “Consider eval. for IEP if indicated.” (P-6; Mother)
18. Parent provided this form to an administrative assistant within the NHS Athletic Department on or about November 29, 2023, in connection with Helena’s participation on the school’s track team. (P-6; S-4; Mother; Cimeno)
19. In December 2023, Dr. Reis evaluated Helena and diagnosed her with ADHD. Helena began medication at this time, but she did not take it consistently, due to associated stomach pain and nausea. Parent has spoken with Helena’s pediatrician about her stomach pain but had not asked if Helena could try a different medication. (Mother)
20. On her second quarter progress report, issued December 15, 2023, Helena received an F in Algebra; an F in Physical Science; a C- in English; an A- in Spanish; an A in World History/Culture; a C in Marketing; an A- in Art; and a B- in Wellness. (P-7; Mother)
21. On or about January 5, 2024, Helena received her first disciplinary referral of the school year. She had received after-school detention with her teacher for arriving to class tardy, but she failed to attend the detention. As Helena then “piled up a few referrals” in a short time span, approximately five referrals within two to three weeks, NHS Assistant Principal JuanManuel Gonzales reached out to her to inquire as to what was going on. These referrals were for what Mr. Gonzales referred to as relatively less serious infractions, such as failing to report to detention for coming to class late and missing class during WIN block.[[7]](#footnote-7) He assigned Helena one after-school detention rather than five, “cutting her a break” as it was her first referral, and he did not want to be as punitive. (S-6; Gonzales)
22. Mr. Gonzales is entering his third year as Assistant Principal at NHS. Prior to this position, he spent approximately eight years as a teacher and nine years as a school administrator. As an Assistant Principal at NHS, Mr. Gonzales is responsible for approximately 300 students in ninth through eleventh grades. He is tasked primarily with school discipline for these students. (Gonzeles)
23. During the 2023-2024 school year, Mr. Gonzales received over 2000 discipline referrals, or an average of 11 referrals a day, for infractions ranging from tardiness to (or absence from) class, to fights, drugs, and vaping. According to Mr. Gonzales, when an infraction occurs, the teacher enters it into the District’s Aspen system, which notifies the appropriate school administrator with a referral. Once he receives a referral, Mr. Gonzales determines the appropriate consequence. He testified that at times, he also gets involved with a student’s grades, in addition to his or her attendance and behavior, particularly if the student is referred for missing class. (Gonzales)
24. Mr. Gonzales reached out to Parent in early January to discuss Helena’s disciplinary referrals and the consequences he had assigned, which Parent and Helena both accepted. During this call, Parent shared with Mr. Gonzales that in December 2023, Helena had been diagnosed by her pediatrician with ADHD and was being treated for it with medication. (Mother; Gonzales)
25. During this conversation, Parent asked Mr. Gonzales whether there was anything else she needed to do or anyone else she needed to speak with. Parent does not recall being asked to provide documentation of Helena’s diagnosis, nor did she provide such documentation.[[8]](#footnote-8) No one from Norwood reached out to her to follow up. Parent assumed that informing Mr. Gonzales that Helena had been diagnosed with ADHD would lead the school to provide her with extra help and/or do any necessary evaluations. Parent did not, however, explicitly request an evaluation for special education.[[9]](#footnote-9) (Mother)
26. Mr. Gonzales testified at Hearing that learning of an ADHD diagnosis, by itself, would not necessarily prompt him to seek a special education evaluation if a parent had not requested one, nor would the types of behaviors Helena was displaying (such as skipping WIN block and after-school detention). Mr. Gonzales might, instead, reach out to a colleague to try to flesh out what might be going on with the student and to develop a plan, including tracking progress and trying out some interventions to see how they worked. (Gonzales)
27. Mr. Gonzales also testified that he memorialized in his notes from his early January conversation with Parent that he should speak to the counselor regarding Helena’s ADHD diagnosis so they could come up with a plan to see “what we would do from there.” Mr. Gonzales does not, however, recall ever speaking with Helena’s Guidance Counselor, Rory Cartland, about this. (Cartland; Gonzales)
28. Toward the end of second quarter, Helena came to the attention of Ms. Cartland, because she was failing math. Ms. Cartland is entering her thirteenth school year as a Guidance Counselor at NHS. In this capacity, she serves as a liaison between families, teachers, and students, and provides academic counseling and post-secondary planning support for students. Ms. Cartland has a caseload of approximately 240 students, including Helena. (Cartland)
29. In January 2024, Ms. Cartland reached out to Helena’s math teacher regarding her failing math grade. Her teacher expressed that he did not think the course level was the problem; he believed Helena was capable of doing well but needed more effort and a little extra support. Based on this conversation, Ms. Cartland believed it would be helpful to add Math Strategies to Helena’s courseload. Math Strategies, which is taught by a math teacher, meets twice a week to provide extra support during the school day. It is a flexible program; students may ask for help on new concepts they are learning or ask for homework help. (Cartland; Gonzales)
30. Ms. Cartland testified that because adding Math Strategies to Helena’s schedule would require that she lose a “minor,” she reached out to Parent to discuss this change.[[10]](#footnote-10) On or about January 30, 2024, Math Strategies was added to Helena’s schedule for the second semester. (S-9; Cartland)
31. Helena’s final grades for second quarter were issued the next day, February 1, 2024. She received an F in Algebra; a C- in English; an A- in Spanish; a C- in Physical Science; a B+ in World History/Culture; a C- in Marketing; a B in Art; and a C in Wellness. (P-8; S-7)
32. Ms. Cartland testified that a failing grade in one class warrants a conversation with a teacher and exploration of Tier 1 supports such as Math Strategies, but does not necessarily require consideration of a special education evaluation. No teachers other than Helena’s math teacher reached out to Ms. Cartland with concerns about Helena’s academics or her behavior. (Cartland)
33. On February 27, 2024, Helena again failed to report to detention with her teacher for being late to class, but she served that detention the following day. On March 1, 2024, Helena failed to report to detention with her teacher for tardiness, but later served that detention with her teacher on March 5, 2024. Also on March 1, 2024, Helena failed to attend another teacher-assigned detention, which had been assigned for an unexcused tardy to class; causing classroom disruptions; escalating classroom disruptions; disrespectful behavior; reluctance to do the class assignment; and an uncharged Chromebook. (S-6; Gonzales)
34. On her third quarter progress report, issued March 6, 2024, Helena received an F in English; an A- in Spanish; a B in Math Strategies; a D+ in Algebra; a C in Physical Science; a B in World History/Culture; an A in Art; and an F in Wellness. Helena’s English teacher commented that she had work missing, was working below potential, and displayed inconsistent performance. (P-9; Mother)
35. Helena’s final grades for third quarter, issued April 11, 2024, were a C- in English; a B- in Spanish; a B- in Math Strategies; a D+ in Algebra; a C- in Physical Science; a B+ in World History/Culture; a B in Art; and a D in Wellness. (P-10; S-7; Mother)
36. On her fourth quarter progress report, issued May 15, 2024, Helena received an F in English; an F in Algebra; an F in Physical Science; a B in Spanish; a C+ in Math Strategies; a C- in World History/Culture; a D+ in Art; and an A- in Wellness. Helena’s Algebra teacher noted that she was currently failing, needed to put in more effort, and may fail for the year. Her Physical Science teacher commented that she was currently failing, had work missing, and needed to improve test/quiz grades. Helena’s World History/Culture teacher commented that she was working below potential and needed to put in more effort, and her Art teacher noted that she was in danger of failing, had work missing, and needed to complete projects/reports on time. (P-11; Mother)
37. Ms. Cartland testified that she would normally follow up on a student she had referred for additional Tier 1 support after the subsequent quarter to see whether it was helping, but she was on maternity leave after March 2024. She explained that a long-term substitute served as Helena’s Guidance Counselor while she was out on leave. Ms. Cartland also testified that Guidance Counselors would not necessarily check grades after progress reports, but that they knew to run failure reports at the end of each quarter and reach out to parents to discuss failing grades. Finally, Ms. Cartland explained that if a teacher indicated a student might fail a class for the year, the Guidance Counselor would generally reach out to the parent, but she is not aware whether anyone did this regarding Helena. (Cartland)
38. On May 29, 2024, Helena was involved in a physical altercation in the cafeteria with another student (“S”). S approached Helena at her lunch table where she was sitting. It appears that words were exchanged while S was standing at the end of the table.[[11]](#footnote-11) S walked away, and Helena followed her. At one point, S turned around and it appears that further words were exchanged. Then Helena grabbed S’s hair from behind and pulled. The two students fell to the ground and a fight ensued. Several staff members intervened, attempting to separate the students. (J-1; P-24; S-11; Gonzales)
39. NHS School Adjustment Counselor (SAC) LT was among the staff that intervened in the fight. She and one other staff member, a larger male,[[12]](#footnote-12) were focused on pulling Helena back to separate her from S. LT fell to the floor while attempting to pull Helena away from S. The male staff member then pulled Helena (and, as a result, also pulled LT) across the floor away from S and ultimately into a standing position, at which point Helena attempted to re-engage with S. The male staff member succeeded in preventing this.[[13]](#footnote-13) (J-1; S-1; Galligan; Gonzales)
40. LT appeared to be in pain by the time the male staff member pulled Helena away. She required assistance to stand and to walk. LT was taken to the hospital following the fight, at which time she was emotional and upset. Her lower leg was fractured in two places. LT missed the remainder of the school year due to her injury and was only cleared to return to remote duty for the last week of the 2023-2024 school year. Although she usually works as a SAC during Norwood’s extended school year programming, she did not report to work in the summer of 2024 because of her injury. (J-1; S-11; Cimeno; Galligan; Gonzales)
41. At Hearing, NHS Principal Hugh Galligan, who was present at the time of the altercation and was involved in trying to break it up, testified that he could not speculate as to exactly how LT was injured, other than that it happened when she was trying to separate the two students. Dr. Galligan acknowledged that there is no allegation that Helena hit, kicked, or otherwise struck LT during the altercation. (Galligan)
42. Helena had not taken her ADHD medication the morning of May 29th. She had not been taking it consistently since it had been prescribed, due to stomach pain she associated with it. (Mother).
43. Parent picked Helena up from school on May 29, 2024. Both Mr. Gonzales and Helena called her to request that she do so. Helena was upset when she called. When Parent arrived and picked her up, Helena told Parent that she had been shocked when the other student had screamed at her, and that she could not think. She acknowledged that she had grabbed the other student’s hair impulsively and pulled. Helena said she was feeling guilty and sorry about the situation. (Mother)
44. On May 29, 2024, Parent received an Emergency Removal Notice, informing her that Helena had been charged with a disciplinary offense alleging fighting and had received a two-day “emergency temporary removal” from school, based on NHS Assistant Principal Gonzales’ conclusion that Helena posed a danger to persons and property or material that could substantially disrupt the order of the school. Parent was also informed that there may be an opportunity for a hearing in accordance with long-term or short-term suspension procedures before the expiration of the two-day temporary removal; that a decision would be rendered orally on the day of the hearing; and that a written decision would issue no later than the following day. The Notice did not specify a date on which Helena could return to school, and Parent believed that Helena was required to stay out of school until she received a phone call or was otherwise informed that Helena was allowed to return. (P-12; S-12, Mother; Gonzales)
45. On May 31, 2024, Parent received a written Notice of Long-Term Suspension/Expulsion Hearing (Hearing Notice) from Dr. Galligan, noting that Helena had assaulted a student and fought, and also assaulted a staff member on school premises; that the Assistant Principal had determined that her continued presence at school would pose a danger to persons or property and materially and substantially disrupt the order of the school; and that she had, therefore, received a two-day emergency removal pursuant to M.G.L. c. 71, §37H ¾. The Hearing Notice informed Parent that Helena might be suspended up to 90 school days under M.G.L. c. 71, §37H ¾ for assaulting a student and fighting, and that she could receive a long-term suspension or expulsion from school for assault on school staff, under M.G.L. c. 71, §37H. The Principal’s Hearing was scheduled for June 3, 2024. (P-13; S-13)
46. Dr. Galligan has a Bachelor’s degree in English and Secondary Education, a master’s degree in Curriculum and Instruction, and a Doctorate in Education. He is entering his seventh year as a principal at NHS. Previously, Dr. Galligan served as Assistant and Associate Principal at Hanover High School for seven years, and before that, he taught English and special education within Boston Public Schools. As NHS principal, Dr. Galligan is responsible for overall programing for a student body of just under 1,000 and a staff of over 100. He administers and implements programming and supports that move forward the District’s Strategic and School Improvement Plans; works with all stakeholders, including teachers, department chairs, the central office, the school committee, and families and students; and oversees supervision and evaluation of all staff as well as academic programming in all departments and, to some extent, extra-curricular programming. Dr. Galligan did not have any personal interaction with Helena until the May 29th incident. (Galligan)
47. Dr. Galligan testified that preparation for a Principal’s Long-Term Suspension/Expulsion Hearing (Principal’s Hearing) involves continuing to investigate the incident; gathering information and evidence that may be presented at the Hearing; communicating with the family; and preparing a letter to explain the Hearing and relevant details. He explained that he would generally look at the Student Information System to learn about a student’s attendance, grades, conduct, schedule, family contact information, and language preference, but that this system does not include the student’s health records. Dr. Galligan testified that he would also typically speak with other teachers and administrators if he believed they had information relevant to the incident. (Galligan)
48. Before Helena’s Principal’s Hearing, Dr. Galligan viewed the video of the incident with Mr. Gonzales to review what had happened and discuss the information that had been gathered from S and other witnesses. Mr. Gonzales shared with Dr. Galligan that Helena had accumulated a few disciplinary referrals on the lower priority end prior to the May 29th incident. (Gonzales)
49. Helena was not represented by Counsel at the Principal’s Hearing, which was attended only by Helena, Parent, Dr. Galligan, and NHS Associate Principal Cynthia Derrane. Neither Helena nor Parent mentioned her ADHD diagnosis to Dr. Galligan, nor did they inform him that Helena was on medication but was taking it inconsistently. At the BSEA Hearing, Dr. Galligan testified that at the time of the Principal’s Hearing, he was not aware of any disciplinary issues prior to the May 29th incident involving Helena,[[14]](#footnote-14) nor was he aware of any other violent or aggressive behavior, or any concerns Parent had about her adjustment to Norwood. During the Principal’s Hearing, Dr. Galligan did not ask Helena or Parent about any learning disabilities or other disabilities she might have. During the proceeding, Parent did make him aware that Helena had been having some difficulty with S. At the BSEA Hearing, Dr. Galligan testified that he would not usually be aware of disciplinary issues for minor infractions, and that those alone would not cause concern leading to a special education evaluation. (S-14; Mother; Galligan)
50. On June 4, 2024, following the Principal’s Hearing, Parent received the Principal’s Determination Notice, informing her that Dr. Galligan had determined that Helena had committed the disciplinary offenses with which she had been charged, specifically, assaulting a peer, fighting, and assaulting a staff member on campus. Dr. Galligan indicated that he remained concerned about the “violent nature” of Helena’s behavior and had decided to expel Helena from the District, effective that day. The Notice informed Parent of her appeal rights and stated that Helena would have the opportunity to receive education services and make academic progress toward meeting state and local requirements, through the School-Wide Education Service Plan. (P-14; S-14)
51. Attached to the Principal’s Determination Notice that Parent received on June 4, 2024 was a letter from Norwood’s Director of Student Services, Lori Cimeno, informing Parent of education services available through the School-Wide Education Service Plan. Specifically, the letter referenced Enrollment in TECCA Online Academy; Tutoring; and Online Coursework. Nothing in the letter explained that Parent should mention Helena’s expulsion if and when she reached out to Ms. Cimeno. (P-15; Mother; Cimeno)
52. Ms. Cimeno has a master’s degree in Severe Special Education and an Education Specialist degree in Special Education Administration. She is entering her sixth school year as Norwood’s Director of Student Services and worked in the same capacity in other school districts for the preceding seven years. As Director of Student Services, Ms. Cimeno provides oversight at all levels (Pre-K to 12+) of special education, nursing, and guidance departments. As to special education, she oversees compliance, implementation, programming, and the supervision and evaluation of most staff. (Cimeno)
53. Parent sent an email to Ms. Cimeno on June 4, 2024, the same date she received the Principal’s Determination Notice and the letter from Ms. Cimeno, to inquire about enrolling Helena in the alternative services mentioned in her letter. Specifically, Parent wrote, “Please I need to get my daughter enrolled.” (P-17; Mother) Parent never received a response from Ms. Cimeno and was not offered any of the educational services listed in Ms. Cimeno’s letter. (Mother) Ms. Cimeno, who was not familiar with Helena and her family, interpreted Parent’s email as a request for initial enrollment in the District and forwarded it to the District Registrar, who is responsible for enrolling new students. In fact, Ms. Cimeno testified that she was not aware of Helena as a Norwood student until she received the BSEA Hearing Notice in August 2024. No one at NHS had reached out to her before then to notify her that Helena needed to be enrolled in any School-Wide Education Service Plan services. (Cimeno)
54. Also on June 4, 2024, Parent emailed Dr. Galligan to request Helena’s student records and the video of the fight. (P-16)
55. At some point in June 2024, Dr. Reis wrote a letter regarding Helena, explaining that she had first been diagnosed with ADHD in December 2023 and had not yet been adequately treated. Dr. Reis explained that without adequate treatment, “ADHD can contribute to impulsive or reactive behaviors,” and she asked that this be taken into consideration in a determination as to whether Helena should be expelled, or subject to a different course of disciplinary action. The letter is not addressed to anyone in particular, and it is not clear whether it was provided to NHS in connection with Helena’s disciplinary proceedings. (P-19)
56. Following her expulsion and through the end of the school year, Helena was given the opportunity to complete class assignments through Google classroom. She did not have access to a teacher, however, or to any additional support. (Mother)
57. In mid-June, Assistant Principal Gonzales contacted Principal Galligan and Helena’s teachers to ensure that Helena would have the opportunity to complete her final examinations and other final assessments for the semester. (S-10) Parent received the dates of these exams and assessments approximately two days beforehand. The only way for Helena to prepare was to review her assignments on Google classroom, as she had no access to teachers or classes. This was particularly difficult, as she has difficulty accessing online learning. (Mother) Final exams were administered at NHS in the mornings; all students had half days during this time, but staff remained for the full day. Helena was permitted to take her final exams and assessments at NHS in the afternoons, after school had been dismissed for the day. (Gonzales)
58. Following her long-term suspension, on June 25, 2024, Helena received the following fourth quarter grades: Fs in English, Algebra, Physical Science, World History/Culture, and Art; a B- in Spanish; a C in Math Strategies; and an A- in Wellness. (P-20; Mother)
59. Helena’s final grades for the 2023-2024 school year were an F in Algebra; a D+ in English; a B+ in Spanish; a C+ in Math Strategies; a D+ in Physical Science; a C+ in World History/Culture; a C+ in Art; and a C+ in Wellness. (P-20)
60. Including May 29, 2024, the date on which she was removed from school on an emergency basis, Helena was excluded from school for a total of 16 days during the 2023-2024 school year.[[15]](#footnote-15) (S-2)
61. As she had failed a full year of Algebra, Helena was offered the opportunity to take a summer Algebra class, completely online, which is comprised of lessons or tutorials on various topics that students move through at their own pace. Helena struggled with this course throughout the summer. (Mother; Gonzales)
62. On June 25, 2024, Helena emailed Assistant Principal Gonzales to express confusion about the math work she was to complete. Mr. Gonzales responded the next day, indicating that it looked like Helena had started, but not finished, the student orientation and looked through the online syllabus; and that she should be able to start the actual lessons soon and could work at her own pace until the closing date of August 21, 2024. Mr. Gonzales also wrote that she should let him know if she had any questions or needed help with anything. (P-21; Mother)
63. On June 29, 2024, Helena again emailed Mr. Gonzales to express that she was having difficulty with the math work, as the online course kept assigning her fractions and she did not “know how to do fractions at all.” Mr. Gonzales responded the next school day, July 1, 2024, explaining that it looked like Helena had started with the pretest, which does not reflect her final grade; that she had completed only six minutes of the tutorial lesson so should make sure she completed the lesson; that taking notes might be helpful; and that she should reach out if she continued to experience “issues with the curriculum.” (S-17; Mother)
64. Also on July 1, 2024, Parent reached out to Mr. Gonzeles by email to remind him that she had informed him in January of Helena’s December 2023 ADHD diagnosis. She explained that she had believed the summer course would teach Helena Algebra from the beginning, but that Helena was having difficulty completing assignments online, and she asked for a different approach. (S-17; Mother)
65. On July 8, 2024, Mr. Gonzales sent an email to Helena and Parent explaining that the online Summer School Credit Recovery course in which Helena was enrolled was offered to all students and was her only option. He noted that many students were experiencing a higher level of learning and success with the program, which was new that year. Mr. Gonzales observed that it appeared Helena had been moving through assignments very quickly and that she should spend time doing the tutorials and taking notes and consider using Khan Academy (an online platform) as a resource. He also explained that the Associate Principal would be available for extra help at NHS the next two Monday mornings (in Mr. Gonzales’ absence, as he usually administered the Monday sessions) and that Helena could work in the main office conference room at NHS with the Associate Principal. Finally, Mr. Gonzales invited Helena to let him know if she wanted him to reopen any assignments on which he had earned under 65%, and/or if she would like to work with a strong math student through the National Honor Society for free tutoring. (S-17)
66. Helena did not access any of Mr. Gonzales’ suggested options until she attended a Monday extra help session on August 19, 2024. She was already struggling with online learning and found it frustrating, so Parent did not believe continuing with online tutorials or using Khan Academy (which Helena had not tried before) would be helpful. Parent also believed until then that despite Mr. Gonzales mentioning the Monday extra help sessions at school, Helena could not attend, as her expulsion included a “no trespass” order. (S-14; Mother) Mr. Gonzales had actually obtained permission for Helena to attend these sessions in the office, away from other students. He did not state this explicitly in his email, but he believed Helena would understand that she could go to school since he had offered her the Monday sessions. (Gonzales) Ultimately, Mr. Gonzales reopened assessments on which Helena had not attained a passing grade to permit her to work through the related tutorials and take them again. This required Helena to repeat lessons with which she had already struggled, and Parent believed they were too difficult for her to retake without assistance. (Mother; Gonzales) Mother testified that she did not follow up on Mr. Gonzales’ suggestion to work with National Honor Society students for free tutoring because of her previous experience asking the Guidance Counselor about this but receiving no response. (Mother)
67. On or about July 22, 2024, Child & Adolescent Psychiatrist Suhal Shah, D.O., of Tufts Medical Center Outpatient Behavioral Health, met with Helena and her mother for a one-hour virtual Telehealth office visit intake. In her Progress Notes, Dr. Shah referred to the reason for visit/chief complaint as a psychiatric evaluation. Dr. Shah’s Progress Notes indicate that Helena was feeling very irritable and stressed; she expressed remorse about the May 29th incident and the teacher’s injury. Helena shared that although her prescribed medication had helped with distractibility in school, she did not take it on the day of the fight. Parent reported to Dr. Shah that Helena’s pediatrician expressed concern about a potential high-functioning autism spectrum disorder diagnosis. Parent also reported that Helena’s teachers were refusing to complete Vanderbilt assessments.[[16]](#footnote-16) Dr. Shah diagnosed Helena with ADHD – unspecified; Anxiety Disorder – unspecified; and Depressive Disorder – unspecified. She prescribed an SSRI and recommended weekly therapy, noting that additional medications should be considered “if impulsivity/aggression continue to be an issue.” It is unclear from the evidence whether this document was ever presented to Norwood. (P-22; Mother)
68. At Hearing, Parent testified that Helena’s medication dosage had been increased since the May 29th incident. (Mother)
69. A Superintendent Appeal Hearing of Dr. Galligan’s June 4, 2024 expulsion determination occurred on July 22, 2024.[[17]](#footnote-17) Helena was represented by Counsel, and her ADHD diagnosis was discussed during the proceeding. (P-23; S-15; Galligan)
70. Following the Superintendent Appeal Hearing, Norwood Superintendent Timothy Luff issued a Superintendent Appeal Decision on July 26, 2024. Mr. Luff modified Helena’s expulsion to a suspension to conclude at the end of Term 1 of the 2024-2025 school year.[[18]](#footnote-18) Helena’s return to school is also contingent upon the completion of an anger management class, counseling, a restorative practice program, and the development of a safety plan. (P-23; S-15; Mother)
71. To date, neither Parent nor Helena has received any additional information regarding how to meet the conditions she is required to meet in order to return to school. (Mother)
72. On July 29, 2024, Mr. Gonzales emailed Helena and Parent to inform them that Helena had not logged in to her math course since July 4, 2024 and had completed only 38% of her coursework. He requested that Helena “let us know if you are still having issues” with the content, as the August 21, 2024 deadline to complete the course was approaching. (S-18)
73. Helena has never shown violent or aggressive behavior toward her mother and has never been in a fight at school, other than on May 29, 2024. (Mother)
74. At Hearing, Mr. Gonzales testified that he was surprised Helena had been in a fight with this particular student, because he knew them to be good friends, and though he was aware that the other student was involved in fights outside of school, he was not aware of Helena engaging in any aggressive or disruptive behavior outside of school. (Gonzales)
75. According to Ms. Cimeno, teachers bring forward concerns about students frequently, but such concerns do not always rise to the level of triggering a special education evaluation. Other measures that might be explored include schedule adjustments and an inquiry into whether non-disability reasons might be the cause of a student’s academic difficulties. (Cimeno)
76. In Norwood, a request for a special education evaluation usually goes to the Team Chair who covers the relevant grade level, and the Team Chair then processes the paperwork with facilitators. Norwood tracks such requests and referrals on an Excel spreadsheet. Asked to provide an overview of how the process comes to the Team Chair, Ms. Cimeno testified that “if any staff member in the Norwood Public Schools engages with a parent, either verbally or in a written notice, they go to the Team Chair for their building. They also notify the principal, and the process begins.” None of this occurred with Helena prior to the May 29th incident. (Cimeno)
77. Helena was not offered any services through the end of the 2023-2024 school year and summer of 2024 other than the opportunity to complete her assignments on Google classroom, participate in final assessments, and retake math through an online course, with the supports offered by Mr. Gonzales in his email responses to her requests for help, supports that were also offered to any general education student who was retaking this math course online over the summer. Ms. Cimeno testified that she was not aware that Helena was in need of any other services. (Cimeno)
78. As Helena has been suspended for the first term of the upcoming school year, her options for making educational progress during her suspension include tutoring; enrolling in an online class (and potentially accessing tutoring in connection with that class); or applying to TECCA, which is its own local educational agency. (Cimeno)
79. At some point during the summer, Parent requested a special education evaluation for Helena. According to Ms. Cimeno, who testified on August 21, 2024, a consent form would be sent out by the end of that week and, upon receipt of Parent’s signed consent, Helena’s evaluation will begin on the first day of school, September 4, 2024. (S-1; Cimeno)
80. **DISCUSSION**

This Hearing involves several legal issues connected to the May 29th incident, its antecedents, and its aftermath: whether Norwood violated its child find obligations by failing to refer Helena for a special education evaluation prior to May 29, 2024; whether Norwood had knowledge, prior to May 29, 2024, that Helena is a child with a disability under the relevant standards and therefore was obligated to hold a MDR prior to her eleventh consecutive day of exclusion from school; whether, if Norwood was obligated to hold the MDR, it is appropriate for the BSEA to make this determination in the first instance and if so, whether Helena’s behavior was, in fact, a manifestation of her disability; whether Norwood lawfully excluded Helena for dangerous behavior notwithstanding any status she may hold as a child with a disability; and whether Norwood was, and is, obligated to provide Helena with any educational services during her suspension from school.

I address each of these issues in turn, incorporating the factual findings above by reference.

1. Child Find

As Parent alleges that Norwood has violated its responsibilities under child find, she bears the burden of proof on this claim.[[19]](#footnote-19)

i. *Legal Standard*

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”[[20]](#footnote-20) To effectuate this aim, “state and federal laws require schools to identify children who qualify as disabled or whom the schools reasonably suspect may qualify as disabled, experience adversity in educational performance due to their disability, and need special education and related services by reason of their disability.”[[21]](#footnote-21)

The IDEA outlines, at 20 U.S.C. §1412(a), what is commonly referred to as a school district’s child find duty. Child find reflects “Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services.”[[22]](#footnote-22) Pursuant to child find, each State must have in effect policies and procedures to ensure that:

“All children with disabilities residing in the State, . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.”[[23]](#footnote-23)

 The corresponding federal regulations are substantially similar,[[24]](#footnote-24) though they add the following:

“Other children in child find. Child find also must include –

1. Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade.”[[25]](#footnote-25)

Massachusetts special education law corresponds to this mandate, requiring that

each school district:

 “shall identify the school age children residing therein who have a disability, . . . diagnose and evaluate the needs of such children, propose a special education program to meet those needs, provide or arrange for the provision of such special education program, maintain a record of such identification, diagnosis, proposal and program actually provided and make such reports as the department may require.”[[26]](#footnote-26)

A parent may trigger a school district’s child find obligation by indicating a need for special education services or requesting an evaluation of her child, even if the request is not explicit.[[27]](#footnote-27) A parent need not make such a referral under child find, however, as the “obligation applies to a school district regardless of whether the parent (or anyone else on behalf of the student) has actually requested special education eligibility or services.”[[28]](#footnote-28) Generally, “courts have held that a state’s child find duty is ‘triggered’ when it ‘has a reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability,’”[[29]](#footnote-29) though the United States Court of Appeals for the Third Circuit recently issued a decision that focused on the first prong of this analysis, noting that child find “requires school districts to evaluate ‘all students who are reasonably suspected of having a disability under the [IDEA].‘”[[30]](#footnote-30)

Child find does not, however, require a school district to evaluate a student whose parent has not requested such evaluation, even if the district is aware of the student’s disability, if the district has insufficient reason to believe the disability has an adverse impact on the student’s educational performance, such that the student needs special education and related services because of the disability.[[31]](#footnote-31)

Section 504 of the Rehabilitation Act of 1973 (Section 504) also requires a school district to “establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards.”[[32]](#footnote-32) Under Section 504, as under the IDEA, school districts have continuing child find obligations “to identify and evaluate all students who are reasonably suspected of having a disability.”[[33]](#footnote-33)

ii. *Application: Norwood Had an Obligation Under Child Find to Evaluate Helena Prior to May 29, 2024*

When Parent provided Helena’s then most recent School Health Record form to the District in or about August 2023, in connection with Helena’s enrollment in Norwood, Helena’s pediatrician had checked a box under, “This student has the following problems that may impact his/her educational experience,” and a notation that an evaluation for an individualized education program (IEP) should be considered, as the family was reporting “worsening grades/struggling.” Although this form did not constitute a request for evaluation, and it was presumably reviewed and maintained by the building nurse rather than submitted to a special education or building administrator, this School Health Record put Norwood on notice that Helena’s medical provider believed an evaluation might be appropriate. Nevertheless, by itself, this may not have been enough to trigger child find.[[34]](#footnote-34)

Helena experienced academic difficulty, reflected in at least some of her grades as early as the first quarter of the 2023-2024 school year, and by November Parent was concerned enough to reach out to Helena’s math teacher, who recommended tutoring. By late January, Helena’s Guidance Counselor was also concerned about Helena’s math grade, enough so that she approached Helena’s math teacher (who recommended extra support) and added Math Strategies to Helena’s schedule. Around the same time, Parent shared Helena’s December 2023 ADHD diagnosis with the Assistant Principal, Mr. Gonzales, and asked whether there was anything else she needed to do; Parent believed that informing the Assistant Principal was sufficient for the school to take whatever steps were necessary for Helena to access support for her ADHD. Mr. Gonzales flagged this diagnosis as something that should be shared with Helena’s Guidance Counselor, Ms. Cartland. Yet Mr. Gonzales was receiving an average of 11 disciplinary referrals a day, and there is no evidence that he ever spoke with Ms. Cartland about Helena, inquired as to her academic performance, or followed up with Parent regarding Helena’s ADHD diagnosis. Ms. Cartland, who was aware of Helena’s academic struggles, never learned of her ADHD diagnosis, and Mr. Gonzales, who was aware of her ADHD diagnosis, never learned of her failing grades and other academic struggles. By this point, no later than January 30, 2024, there is no question that Norwood had reason to believe that Helena is a child with a disability given the confluence of the School Health Records in the District’s possession, Helena’s ADHD diagnosis, and her poor academic performance. These factors, in tandem, could be sufficient to trigger Norwood’s child find duty.[[35]](#footnote-35)

Helena continued to receive poor grades, including in math, receiving a D+ in Algebra for the third quarter even with the Math Strategies class that had been added to her schedule. The Guidance Counselor who would have followed up and tracked her grades by the close of third quarter on or about April 11, 2024 was out on leave, and it is unclear whether the substitute Guidance Counselor did so. At this point, there was reason to believe that Helena’s disability (ADHD), about which Norwood had been informed, was having an adverse impact on Helena’s educational performance, and/or “reason to suspect that special education services may be needed to address that disability.’”[[36]](#footnote-36)

Parent has met her burden to establish that Norwood violated child find by failing to evaluate Helena despite being aware of her ADHD diagnosis, her doctor’s recommendation that she be considered for a special education evaluation and possibly an IEP, and her failing grades despite general education interventions. The District should have initiated an evaluation process when Helena’s third quarter grades were issued on April 11, 2024, and, failing that, no later than the date on which her fourth quarter progress report was issued on May 15, 2024, reflecting three failing grades.

1. Exclusion From School

To determine whether Norwood properly excluded Helena from school following the May 29th incident, I must consider three sets of legal standards: those governing procedural protections for students with disabilities facing school discipline; those applicable where a student has not been found eligible for special education; and those governing exclusions regardless of a student’s eligibility for special education.

1. *Legal Standards: Procedural Protections for Children with Disabilities Facing School Discipline – The Manifestation Determination Review*

The IDEA and its implementing regulations prohibit school districts from changing the placement of a student with a disability for disciplinary purposes (i.e., via suspension or expulsion) if the conduct triggering the discipline is a manifestation of the student’s disability.[[37]](#footnote-37) In other words, if the student’s conduct was caused by or has a direct and substantial relationship to her disability or disabilities, or if the conduct was the direct result of the school district’s failure to implement the student’s IEP, the school district may not change her placement because of that conduct.[[38]](#footnote-38) Federal law defines a change in placement for purposes of removal of a child with a disability from the child’s educational placement as occurring, in pertinent part, if the removal is for more than 10 consecutive school days.[[39]](#footnote-39)

Within 10 days of a decision to change the placement of a child with a disability because of a violation of a code of student conduct, as described above, the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) “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 [school district]’s failure to implement the IEP.”[[40]](#footnote-40) If the district, the parent, and the relevant members of the Team determine that either of these factors is applicable to the child, “the conduct shall be determined to be a manifestation of the child’s disability,”[[41]](#footnote-41) which triggers additional steps the Team must take.[[42]](#footnote-42) Moreover, with the exceptions enumerated in Section II(C) below, when the conduct is determined to be a manifestation of the child’s disability, the school district must “return the child to the placement from which the child was removed, unless the parent and the local educational agency [school district] agree to a change of placement as part of the modification of the behavioral intervention plan.”[[43]](#footnote-43)

If the student’s conduct is determined not to be a manifestation of her disability, the relevant disciplinary procedures applicable to children without disabilities may be applied in the same manner and for the same duration as the procedures would be applied to children without disabilities.[[44]](#footnote-44) The school district, however, must still provide the student with FAPE, though this may occur in an Interim Alternative Educational Setting (IAES).[[45]](#footnote-45)

1. *Application: Helena Had Not Been Identified as a Child with a Disability Before the May 29th Incident*

It is undisputed that at the time of the May 29th incident, Helena had not been

evaluated by Norwood for eligibility under the IDEA or Section 504. However, a “child who has not been determined to be eligible for special education and related services under [the IDEA] and who has engaged in behavior that violates a code of student conduct, may assert” the IDEA’s protections if the school district “had knowledge . . . that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.”[[46]](#footnote-46) Therefore, the requirement to conduct a MDR, as outlined in section II(B)(i), above, applies only if Norwood had knowledge that Helena was a child with a disability before the May 29th incident. As the moving party on this claim, Parent bears the burden of proof.[[47]](#footnote-47)

1. *Legal Standard: Circumstances* *in Which a School District is Deemed to Have Knowledge that a Child is a Child with a Disability*

A child who has engaged in behavior that violates a student code of conduct, but has not been determined to be eligible for special education and related services, may assert protections under the IDEA if the school district “had knowledge” that the child was a child with a disability before she engaged in the conduct underlying the disciplinary measures.[[48]](#footnote-48)

The IDEA sets forth three conditions, or sets of circumstances, that call for a mandatory inference that the school district had such knowledge. Specifically, a school district "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 –

1. 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;
2. the parent of the child requested an evaluation of the child pursuant to section 1414(a)(1)(B) of [the IDEA]; or
3. the teacher of the child, or other personnel of the [school district], 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.”[[49]](#footnote-49)

If a school district is deemed to have knowledge that a particular student is a child with a disability at the time the behavior that led to disciplinary action occurred, it is required to conduct a MDR in connection with any change in placement, such as removal from school beyond 10 consecutive days.[[50]](#footnote-50)

Pursuant to 20 U.S.C. 1415(k)(5)(C), a school district “shall not be deemed to have knowledge” that the child is a child with a disability if the parent has not allowed an evaluation of the child or has refused special education services, or if the child has been evaluated and it was determined that the child was not a child with a disability. In these circumstances, where the school district did not have knowledge that the child is a child with a disability prior to taking disciplinary action against her, the child may be subjected to the same disciplinary measures as children without disabilities engaging in comparable behavior.[[51]](#footnote-51) If a request to evaluate the child for special education and related services is made during the time period in which the child is excluded from school for a violation of a code of conduct, the school district must conduct the evaluation “in an expedited manner.”[[52]](#footnote-52) “Pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.”[[53]](#footnote-53)

1. *Application: In the Unique Circumstances of this Case, Norwood is Deemed to Have Knowledge that Helena is a Child with a Disability*

Parent contends, first, that had Norwood complied with child find, it would have been required to refer Helena for a special education evaluation, and – whether the District had completed the evaluation and found her eligible or was still in the process of completing its evaluation – Norwood would then have been required to conduct a MDR prior to excluding Helena from school for more than ten consecutive days during the 2023-2024 school year.

Second, Parent asserts that even though the IDEA and its accompanying regulations enumerate three specific conditions (or prongs) under which a school district is deemed to have knowledge that a child is a child with a disability entitled to the protections of the IDEA, the plain language of this provision does not preclude other situations in which a district could be deemed to have such knowledge. Parent argues that in the present matter, Norwood should be deemed to have had knowledge that Helena is a child with a disability for the purposes of 20 U.S.C. §1415(k)(5)(A) and 34 C.F.R. §300.534(b), on the basis of the District’s actual knowledge of her ADHD diagnosis through Parent’s phone call with a school administrator, and Norwood’s receipt of two separate Massachusetts School Health Record Forms that contained Helena’s pediatrician’s written recommendations that Norwood consider evaluating her for special education.

The District, on the other hand, focuses on the three criteria set forth in 20 U.S.C. §1415(k)(5)(A) and 34 C.F.R. §300.534(b), and contends that Parent cannot show that she has satisfied any of them. Specifically, Norwood argues, providing School Health Record forms to the front office and to an administrative assistant in the Athletic Department, and sharing Helena’s ADHD diagnosis with Mr. Gonzales, does not constitute Parent expressing her concerns to supervisory or administrative personnel that Helena is in need of special education and related services.[[54]](#footnote-54) Nor, as Parent acknowledges, did she ever request an evaluation of Helena.[[55]](#footnote-55) Finally, no teacher or other personnel expressed specific concerns about a pattern of Helena’s behavior directly to Norwood’s director of special education or other supervisory personnel.[[56]](#footnote-56) Relying on *In Re: Greater Lowell Technical High School*, Norwood asserts that because Parent cannot prove that one of these conditions is satisfied, the District cannot be deemed to have had knowledge at the time of the behavior that gave rise to her exclusion from school that Helena is a child with a disability for these purposes.[[57]](#footnote-57)

In a 2002 decision, the United States District Court for the District of Massachusetts liberally construed the conditions setting forth a mandatory inference of knowledge in an earlier version of 34 C.F.R. §300.534(b), finding that where the student had failed all of her classes the previous year and her health record contained the notation that she took medication at home for ADHD, this should have raised the possibility that she had a learning disorder.[[58]](#footnote-58) The court concluded that, drawing all inferences in parents’ favor, the allegations were sufficient to state a claim that the school district had knowledge that the student had a disability at the time it decided to expel her.[[59]](#footnote-59) Changes made to this provision since that time, however, reflect a narrowing of the circumstances in which a school district must be deemed to have knowledge that a student is a child with a disability protected under the IDEA.[[60]](#footnote-60)

 I am persuaded by Norwood’s argument that Parent failed to prove that her actions satisfied fully any of the discrete conditions of 34 C.F.R. §300.534(b) that would, under the regulation, require me to conclude that Norwood had knowledge that Helena is a child with a disability for the purposes of protection under the IDEA in connection with school discipline. Moreover, I do not read the existing conditions broadly, as doing so would lead to a mandatory inference, in potentially unintended circumstances, that a school district has knowledge that a student is a child with a disability for purposes of the IDEA.[[61]](#footnote-61)

 I am also persuaded by Parent’s contention that in the unique circumstances of this case, it is appropriate to consider whether – given the totality of the circumstances – Norwood may be deemed to have knowledge of Helena’s status as a child with a disability, entitled to a MDR prior to discipline beyond 10 consecutive school days of exclusion from school.[[62]](#footnote-62) I have already concluded that Norwood violated its child find obligations by mid-April or, at the latest, mid-May 2024, at which time a school administrator was aware of Helena’s ADHD diagnosis and thought it significant enough to bring to her Guidance Counselor’s attention; Helena’s Guidance Counselor was concerned enough about her math grade that she had spoken with a teacher and added a Tier 1 support to her schedule, noting that she would generally follow up after the next quarter to see whether that support was sufficient; by the end of third quarter, Helena was earning a D+ in Algebra, even with Math Strategies; and on her fourth quarter progress report, received May 15, 2024, Helena was either failing, or had warnings that she was in danger of failing, four classes (including Algebra). Moreover, although Parent had not delivered them to the special education department or a school administrator, she had provided the District with two School Health Record forms indicating that Helena’s pediatrician recommended considering her for a special education evaluation. Taken together, particularly in light of Norwood’s child find violation, these factors are sufficient to establish that in the totality of the circumstances of this unique case, Norwood is deemed to have had knowledge at the time of the May 29th altercation, which led to her exclusion from school, that Helena is a child with a disability entitled to the protections of the IDEA. Parent has met her burden to prove that Norwood should have conducted a MDR before excluding Helena from school for more than 10 days.[[63]](#footnote-63)

1. *Norwood Must Convene a Manifestation Determination Review within Five Business Days of Receipt of this Decision*

Parent asserts that the appropriate remedy for Norwood’s failure to convene a MDR

in connection with Helena’s exclusion from school is that the BSEA should conduct the MDR and render a determination as part of the instant decision. She argues that Norwood has already demonstrated its unwillingness to provide Helena with a fair disciplinary process, and that having Norwood conduct the MDR will cause undue delay in Helena’s return to school.

 Norwood contends that should the Hearing Officer determine that the District had knowledge that Helena is a child with a disability and thereby entitled to a MDR in connection with her exclusion from school, Norwood should be permitted to convene the MDR in the first instance at or near the beginning of the school year. Furthermore, Norwood assert that if I were to make this determination, I would be relying primarily on reports written by doctors whose credibility could not be tested, as they were not subject to cross-examination at the Hearing. The Progress Note written by Dr. Shah, a child and adolescent psychiatrist, and the letter written by Dr. Reis, Helena’s pediatrician, were not presented at the Principal’s Hearing, and there is no evidence as to whether either document was considered in connection with the Superintendent Appeal Hearing.

 I agree with Norwood on this issue. Parent, who was unrepresented at the time of the Principal’s Hearing, did not present evidence for Dr. Galligan to consider as to Helena’s ADHD diagnosis or her pediatrician’s recommendations; in fact, I have no knowledge of what was presented during that proceeding. Mr. Gonzales, the one school administrator with knowledge of Helena’s ADHD diagnosis (and presumably the administrator with whom Helena had the most interaction) was not present. Moreover, it is unclear how much of the evidence now before me was presented at the Superintendent Appeal Hearing. Norwood should be permitted to consider this information in the first instance. Furthermore, there is limited information before me concerning the events of May 29th, consisting of a short video, limited direct testimony provided by one eyewitness, and a witness statement provided by another. At a MDR, participants will be able to elicit additional information about the altercation itself, and about Helena’s diagnosis/es and their impact on her, to assist Norwood in determining whether Helena’s conduct on May 29, 2024 was a manifestation of her disability.[[64]](#footnote-64)

 I am mindful of Parent’s concern that allowing the MDR process to unfold may cause Helena to miss additional days of school. Thus, it is essential that Norwood convene the MDR as soon as practicable, and no later than five business days from the date of this decision.[[65]](#footnote-65)

1. Exceptions for Dangerous Behavior

Helena was initially excluded from school on an emergency removal on May 29, 2024. The Emergency Removal Notice dated May 29, 2024 specifies that Helena was charged with the disciplinary offense of fighting, and mentions that a staff member had been “injured while attempting to help separate” Helena and S. The Notice of Long-Term Suspension/Expulsion Hearing, issued on May 31, 2024, alleges that Helena “assaulted a student and fought, and also assaulted a staff member on school premises.” This Notice states that Helena’s two-day emergency removal was issued pursuant to M.G.L. c. 71 §37H ¾ and notes that assault of a student may result in suspension of up to 90 school days pursuant to this provision, whereas assault on school staff pursuant to M.G.L. c. 71 §37H may result in long-term suspension or expulsion from school. Following the Principal’s Hearing, Dr. Galligan concluded that Helena had committed the disciplinary offenses of assaulting a peer, fighting, and assaulting a staff member on campus and exercised his “full authority under M.G.L. c. 71, §37H [to] expel [Helena] from the Norwood Public Schools.” After the Superintendent Appeal Hearing, Helena’s expulsion was reduced to a long-term suspension through the end of Term 1 of the 2024-2025 school year.

According to Norwood, even if I were to find that Helena is a child with a disability entitled to the protections of the IDEA, including a MDR in connection with her exclusion from school beyond 10 days, the District lawfully removed her from school pursuant to the special circumstances standard, because she inflicted serious bodily injury upon a school staff member during school. Norwood bears the burden of proof as to this contention.[[66]](#footnote-66)

1. *Legal Standards*

Regardless of whether the behavior is determined to be a manifestation of the child’s disability, a student may be removed to an IAES for not more than 45 school days in limited circumstances, including the infliction of serious bodily injury upon another person on school premises.[[67]](#footnote-67) For purposes of 34 C.F.R. §530(g)(3), “serious bodily injury” as defined in Section 1365(h)(3) includes one or more of the following: substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.[[68]](#footnote-68)

1. *Application: Norwood Has Not Met its Burden to Demonstrate that Helena Inflicted Serious Bodily Injury on LT*

The evidence before me establishes that LT, a NHS staff member, was injured attempting to separate Helena from S during the May 29th altercation; that she appeared to be upset and in pain; that her leg was broken in two places; and that she was unable to return to work as a SAC in person for the remainder of the school year or for ESY, though she was cleared to return to remote work after approximately two and a half weeks. Although these factors may support a finding that a serious bodily injury occurred, they do not necessarily support a finding that such injury was inflicted on LT by Helena.

34 C.F.R. §530(g)(3) does not define “infliction,” nor does it reference any other definition of the word. Merriam-Webster’s online dictionary defines “inflict” as “to give by or as if by striking,” and “to cause (something unpleasant) to be endured.” In many school discipline cases where hearing officers or courts have found, or sustained a finding, that a student inflicted serious bodily injury on another individual, the student made intentional contact with the person injured,[[69]](#footnote-69) consistent with the first dictionary definition above.

There is no question that LT’s injury occurred because of the altercation between Helena and S on May 29, 2024, which was instigated by Helena when she pulled S’s hair. LT would not have been injured but for her attempt to break up the fight by separating the two students. Based on my review of the evidence, however, including the video of the altercation, Dr. Galligan’s testimony, and the Notices issued to Parent in connection with Helena’s exclusion from school, it appears that any contact between Helena and LT during the May 29th incident was incidental, rather than intentional.[[70]](#footnote-70) Comparing these circumstances with those in cases where students were found to have inflicted serious bodily injury on other students or staff members by punching them repeatedly;[[71]](#footnote-71) pulling their hair, squeezing their throat, and hitting the back of their head;[[72]](#footnote-72) standing on a chair and hitting their head with a closed fist, then repeatedly slapping them on the head;[[73]](#footnote-73) or attempting to punch them, tripping into them, causing them both to fall, then kicking them,[[74]](#footnote-74) I find that Norwood has not met its burden to show that Helena may be removed from school for inflicting serious bodily injury upon another person on school premises.[[75]](#footnote-75)

1. *Additional Considerations: Massachusetts Law May Not Permit a Long-Term Suspension to Continue Beyond One School Year*

In Massachusetts, a student charged with a disciplinary offense set forth in M.G.L. c. 71, §37H(b), which includes assaulting educational staff on school premises, may be subject to expulsion from the school or school district by the principal.[[76]](#footnote-76) Helena was initially expelled by the principal on or about June 4, 2024. On or about July 22, 2024, however, her expulsion was modified to a long-term suspension. Under 603 CMR §53.02, “[n]o long-term suspension shall extend beyond the end of the school year in which such suspension is imposed.” This provision contains no carve-out for discipline imposed under M.G.L. c. 71, §37H or §37H ½, which otherwise permit expulsion. As the long-term suspension Helena received was for her conduct on May 29, 2024, the school year in question is 2023-2024. Arguably, 603 CMR §53.02 may prohibit the continuation of this suspension into the 2024-2025 school year.

1. Services Must Be Provided for Helena in Connection with her Improper Exclusion from School

Helena is currently out of school and without services, except those that may be offered to any general education student through Norwood’s School-Wide Education Service Plan.[[77]](#footnote-77) Parent has since requested that Helena be evaluated for special education, and this evaluation is scheduled to begin shortly after the issuance of this decision. Helena will have already missed 16 school days, during the 2023-2024 school year, when the 2024-2025 school year begins on September 4, 2024.

As I explained above, the District violated child find in or about April or May 2024, potentially depriving Helena of any special education and related services she may have been found to require had she been evaluated. Furthermore, Norwood is deemed to have had knowledge that Helena is a child with a disability at the time of the May 29th altercation that precipitated her exclusion from school beyond 10 days, thus triggering her right to a MDR. In the circumstances of this case, the District was not permitted to exclude Helena under 34 C.F.R. §530(g)(3).

In light of these findings and conclusions, I note that Helena has missed six days of school beyond the 10 consecutive school days Norwood was permitted to exclude her before conducting a MDR. Because the District is deemed to have known of Helena’s status as a child with a disability at the time of the May 29th, 2024 behavior that precipitated her exclusion from school, Norwood cannot change her placement unilaterally and should, instead, return her to school immediately. A plan should be developed to provide compensatory services for any school days missed. Helena’s evaluation must be expedited, as it was requested during the time period when she was subjected to disciplinary measures.[[78]](#footnote-78) In the event that Parent disallows the evaluation or refuses services, or Helena is found ineligible for special education and related services under the IDEA and Section 504 as a result of this evaluation, Norwood shall no longer be required to provide her with the attendant protections outlined in this decision.[[79]](#footnote-79)

1. **CONCLUSION**

After reviewing the record in its entirely in the context of relevant case law, I conclude that Parent has met her burden to prove that Norwood violated its child find obligations. She has also proven that Norwood unlawfully excluded Helena from school beyond 10 consecutive days because the District had knowledge (under the deemed to have knowledge standard), at the time of the behavior precipitating the disciplinary action, that Helena is a child with a disability and was therefore entitled to a Manifestation Determination Review. I find, however, that the District should have the opportunity to conduct the MDR in the first instance, and I decline Parent’s request to make a manifestation determination on the evidence before me at this time. I further conclude that Norwood has not met its burden to prove that its exclusion of Helena was lawful, under the special circumstances exception for dangerous behavior, notwithstanding her eligibility for special education.

**ORDER**

1. Norwood is hereby ordered to conduct an expedited evaluation of Helena to determine her eligibility under the IDEA and Section 504.
2. Norwood is hereby ordered to convene a MDR no later than September 6, 2024, five business days from the issuance of this Decision.
3. Norwood is hereby ordered to develop a plan to provide Helena with compensatory services for any school days missed beyond June 11, 2024 (her tenth consecutive day of exclusion from school).

 *So ordered.*

By the Hearing Officer:

 /s/ Amy M. Reichbach

Dated: August 29, 2024

1. “Helena” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. Norwood Public Schools (Norwood or the District) objected to Parent’s Exhibit 22, the progress report written by Dr. Suhal Shah dated July 22, 2024 on two grounds: (1) that to the extent the Hearing Officer is asked to make a manifestation determination, Dr. Shah is not available for cross-examination and the information contained in the report is based on information provided primarily by Helena and her mother; and (2) that it is hearsay. The District’s objection was overruled. [↑](#footnote-ref-2)
3. Exhibit J-1 is identical to Exhibit P-24. [↑](#footnote-ref-3)
4. Although the Superintendent Appeal decision references only a suspension, I refer to it as a long-term suspension given its duration. See 603 CMR §53.02 (defining long-term suspension as “removal of a student from the school premises and regular classroom activities for more than ten consecutive school days . . .”). [↑](#footnote-ref-4)
5. The Superintendent Appeal Decision outlines several additional conditions Helena must meet in order to return to school. [↑](#footnote-ref-5)
6. I have carefully considered all evidence presented in this matter. I make findings of fact with respect to the documents and witnesses’ testimony, however, only as necessary to resolve the issues presented. [↑](#footnote-ref-6)
7. WIN, or “What I Need,” block is like a study hall. It occurs twice a week, during a block when all teachers are available to meet with students to provide extra help. (Gonzales) [↑](#footnote-ref-7)
8. Mr. Gonzales testified credibly that he did not recall being asked this question, and that generally, he would probably request documentation in connection with a student’s diagnosis when a parent shared it with him. He also testified that he does not recall whether he did that here. Mr. Gonzales’ testimony on these points does not conflict directly with Parent’s testimony, which I also credit. (Mother; Gonzales) [↑](#footnote-ref-8)
9. Mr. Gonzales testified that when parents request special education evaluations orally, his general practice is to ask them to put it in writing so he can forward it to the Team Chair to start the process. None of this occurred here. (Gonzales) [↑](#footnote-ref-9)
10. Parent testified that she did not recall speaking with Ms. Cartland about the Math Strategies class. (Mother) Ms. Cartland did not mention whether Parent consented to this change, or whether she attempted to obtain Parent’s consent before making it. (Cartland) [↑](#footnote-ref-10)
11. There is no audio on the videos submitted into evidence as exhibits J-1 and S-24. [↑](#footnote-ref-11)
12. This staff member appears from the video submitted as J-1 to be NHS Principal Hugh Galligan, but as the video was not shown or discussed during the Hearing, I was unable to confirm this during testimony and as such, do not make such a finding. [↑](#footnote-ref-12)
13. Mr. Gonzales testified that after the altercation, he heard multiple calls over the staff radio system stating that Helena had run out of the building but was knocking on the door trying to re-enter. (Gonzales) Exhibit S-20 is a video entitled “Surveillance Video NHS Hallway,” which appears to show someone who is dressed as Helena was in Exhibit J-1 open and enter the outer doors to the building and knock on the door to the inside of the building from the vestibule. Someone who appears to be an adult male follows her from outside into the vestibule. Because there is no audio and it is difficult to ascertain without doubt that the person knocking on the door was Helena, I make no factual findings on this point. [↑](#footnote-ref-13)
14. I recognize that this testimony conflicts with Mr. Gonzales regarding their discussions of Helena prior to the Principal’s Hearing. I credit Mr. Gonzales’ testimony on this point. [↑](#footnote-ref-14)
15. Norwood imposed an emergency removal on May 29, 2024, and Helena remained out of school through the Principal’s Hearing on June 3, 2024; although the Notice of Emergency Removal stated that such removal shall not exceed two school days, Parent believed Helena could not return to school unless given explicit permission, and Norwood did not provide such permission. On June 4, 2024, Helena was expelled and missed the remaining 11 school days of the 2023-2024 school year. (P-12; S-2, S-12; Mother) [↑](#footnote-ref-15)
16. There is no evidence in the record as to when these assessments may have been given to Helena’s teachers. [↑](#footnote-ref-16)
17. Although this date seems to be beyond the legal timeframe to pursue a Superintendent appeal of a discipline decision, the record does not contain any information with respect to how this date was chosen by the parties, nor does it indicate that there were any concerns with the process followed with regard to the appeal. See M.G.L. c. 71, §37H(e); 603 CMR 53.08 and 53.09. [↑](#footnote-ref-17)
18. See note 4, *supra*. [↑](#footnote-ref-18)
19. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008). [↑](#footnote-ref-19)
20. 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-20)
21. *Doe v. Cape Elizabeth Sch. Dep’t*, 382 F. Supp. 3d 83, 87 (D. Me. 2019) (internal quotation marks and citation omitted). [↑](#footnote-ref-21)
22. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009). [↑](#footnote-ref-22)
23. 20 U.S.C. §1412(a)(3). [↑](#footnote-ref-23)
24. See 34 C.F.R. §300.111(a)(1)(i) (“The State must have in effect policies and procedures to ensure that . . . all children with disabilities residing in the State, . . . regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated”). [↑](#footnote-ref-24)
25. 34 C.F.R. §300.111(c). [↑](#footnote-ref-25)
26. MGL c. 71B, §3. [↑](#footnote-ref-26)
27. See *Robertson Cnty. Sch. Sys. v. King*, 99 F.3d 1139, 1996 WL 593605, at \*4 (6th Cir. 1996) (quoting, with approval, the administrative law judge’s explanation that “a parent who is a neophyte to special education and is unacquainted with IDEA cannot be expected to appear and say ‘My child is eligible for special education services under IDEA, and I am here to refer my child for an individual assessment,’” and continuing, “A request for assessment is implied when a parent informs a school that a child may have special needs”). [↑](#footnote-ref-27)
28. *In Re: CBDE Public Schools*, BSEA #106854 (Crane, 2011); see *Bd. of Educ. v. L.M.,* 478 F.3d 307, 313 (6th Cir. 2007) (“Even children who are only suspected of having a disability, although they are progressing from grade to grade, are protected by [child find] requirement”); *W.B. v. Matula,* 67 F.3d 484, 501 (3d Cir. 1995) (*abrogated on other grounds* by *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791 (3rd Cir. 2007)) (child find requires school district to identify and evaluate children “who are suspected of having a qualifying disability” within a reasonable time after the district is “on notice of behavior that is likely to indicate a disability”); *Dep’t of Educ. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001) (child find duty is triggered when school district “has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability”). [↑](#footnote-ref-28)
29. *J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F.Supp. 2d 635, 660 (S.D.N.Y. 2011) (internal citations omitted); see *CBDE Public Schools*;see also *Cape Elizabeth Sch. Dep’t*, 382 Fed. Supp. 3d at 98 (child find generally requires a school district “to identify and refer a child when the school [district] has reason to suspect a student has a disability that will impact educational performance coupled with reason to suspect that special education services may be needed to address that disability” (internal quotations and citations omitted)). [↑](#footnote-ref-29)
30. *J.M. v. Summit City Bd. of Educ.*, 39 F.4th 126, 137 (3rd Cir. 2022) (quoting *P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009)). [↑](#footnote-ref-30)
31. See *Cape Elizabeth Sch. Dep’t*, 382 F. Supp. 3d at 99; *Mr. I. ex rel. L.I. v. Me. Sch. Admin. Dist. No. 55*, 480 F.3d 1, 13 (1st Cir. 2007); *cf. Mr. F. v. MSAD #13*, 2021 WL 2188678, at \*18 (D. Me. 2021) (“a school district’s child find obligation is triggered when the district has reason to suspect three things: (1) that a child has a qualifying disability, (2) that the child needs special education and related services, and (3) that the need for special education is due to the disability”). [↑](#footnote-ref-31)
32. 34 C.F.R. §104.36. [↑](#footnote-ref-32)
33. *Michael P.*, 585 F.3d at 738. [↑](#footnote-ref-33)
34. See *Reid v. District of Columbia*, 310 F. Supp. 2d 137, 147 (D.D.C. 2004) (*rev’d* *on other grounds*, *Reid ex rel Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)) (parent’s request for help from school officials for student’s behavioral and academic problems did not, by itself, trigger school district’s child find obligations); *Alex K. v. Wissahickon Sch. Dist.*, 2004 WL 286871, at \*3, \*9 (E.D. Pa. 2004) (discussion between parents and principal regarding child’s educational performance not sufficient, by itself, to trigger child find duty). [↑](#footnote-ref-34)
35. See *Summit City Bd. of Educ.*, 39 F.4th at 137; *Michael P.*, 585 F.3d at 738. [↑](#footnote-ref-35)
36. See *Summit City Bd. of Educ.*, 39 F.4th at 137; see also *Matula,* 67 F.3d at 488, 501 (where parent met with principal, child’s teacher, and other school officials to discuss child’s behavior and academic problems; teacher reported disruptive classroom behaviors; parent informed school that child might have ADHD; and parent specifically asked school to refer child for an evaluation for special education services, school district had an ongoing obligation to discharge its child find duty). [↑](#footnote-ref-36)
37. See 20 U.S.C. §1415(k)(1)(E(i); 34 C.F.R. §300.530(e). Although the term “manifestation determination” does not appear in the regulatory language of Section 504, its language does require an evaluation prior to a significant change in placement. See 34 C.F.R. §104.35(a). This evaluation may be referred to as a manifestation determination, as it has the same purpose as a manifestation determination under the IDEA, though different regulatory requirements apply. See *Fact Sheet: Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973*, United States Department of EducationOffice for Civil Rights for the United States Department of Education (July 19, 2022); see also *A.V. ex rel. Concepcion Varela v. Panama-Buena Vista Union Sch. Dist.*, 2016 WL 3255076, at \*6 (E.D. Cal 2016) (denying dismissal of claim alleging failure to conduct a legally complaint Manifestation Determination Review (MDR) under Section 504). [↑](#footnote-ref-37)
38. See 20 USC §1415(k)(1)(E(i); 34 C.F.R. §300.530(e); *In Re: Adam*, BSEA #1708888 (Reichbach, 2017). [↑](#footnote-ref-38)
39. See 34 C.F.R. §300.536(a). A change of placement also occurs when the child has been subjected to a series of removals that constitutes a pattern. See *id*. [↑](#footnote-ref-39)
40. 20 U.S.C. §1415(k)(1)(E)(i); 34 C.F.R. §300.530(e)(2). [↑](#footnote-ref-40)
41. 20 U.S.C. §1415(k)(1)(E)(i); 34 C.F.R. §300.530(e)(2). [↑](#footnote-ref-41)
42. See 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f). [↑](#footnote-ref-42)
43. 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f). [↑](#footnote-ref-43)
44. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. §300.530(c). [↑](#footnote-ref-44)
45. 20 U.S.C. §§ 1412 (a)(1)(A); 1415(k)(1)(C), 34 C.F.R. §300.530(c). [↑](#footnote-ref-45)
46. 20 U.S.C. §1415(k)(5)(A). [↑](#footnote-ref-46)
47. See *Schaffer*, 546 U.S. at 62. [↑](#footnote-ref-47)
48. 20 U.S.C. §1415(k)(5)(A); 34 C.F.R. §300.534(a). [↑](#footnote-ref-48)
49. 20 U.S.C. §1415(k)(5)(B). 34 C.F.R. §300.534(b) tracks this language, though the regulation provides that “a public agency must be deemed to have knowledge” in these circumstances (emphasis added). [↑](#footnote-ref-49)
50. See 20 U.S.C. §1415(k)(5)(A); 34 C.F.R. §300.534(a); see also *In Re: Boston Collegiate Charter School*, BSEA #1610551 (Berman, 2016) (“To be covered by the IDEA’s procedural protections in disciplinary matters, a student must either have been determined eligible for special education at the time the misconduct at issue occurs or, if the child has a disability but has not yet been found eligible, if the school district ‘knew or should have known if the child had a disability’ before the behavior that triggered the disciplinary action occurred”). [↑](#footnote-ref-50)
51. See 20 U.S.C. §1415(k)(5)(D)(i). [↑](#footnote-ref-51)
52. 20 U.S.C. §1415(k)(5)(D)(ii). Neither the IDEA nor its implementing regulations set a specific timeline for an expedited evaluation or eligibility determination. See 71 Fed. Reg. 46540, at 46728. [↑](#footnote-ref-52)
53. 20 U.S.C. §1415(k)(5)(D)(ii). [↑](#footnote-ref-53)
54. See 34 C.F.R. §300.534(b)(i). [↑](#footnote-ref-54)
55. See 34 C.F.R. §300.534(b)(ii). [↑](#footnote-ref-55)
56. See 34 C.F.R. §300.534(b)(iii). [↑](#footnote-ref-56)
57. See BSEA #062895 (Crane, 2006) (where Parent had shared orally with guidance counselor that she was consulting with someone outside of school regarding student possibly having ADHD and sent the guidance counselor Vanderbilt forms to be filled out by student’s teachers (at the recommendation of student’s pediatrician), but did not refer to student having a disability or having academic or behavior difficulty at school in the accompanying note and did not express any concerns in writing before the incident that precipitated the school discipline, and there was no evidence that the second or third conditions of §300.534(b) had been met, the school district was not deemed to have knowledge of student being a student with a disability for purposes of protection under the IDEA). Hearing Officer Crane explained that “the IDEA is explicit regarding what may (and therefore what may not) be considered to be deemed knowledge for purposes of Student’s obtaining protections under the IDEA,” and parents had failed to satisfy the statutory standard. *Id* [↑](#footnote-ref-57)
58. See *S.W. v. Holbrook Pub. Sch.*, 221 F. Supp. 2d 222, 226-27 (2002). [↑](#footnote-ref-58)
59. See *id*. (finding that the allegations were “barely” sufficient to state a claim that the school district had knowledge that the student had a disability at the time of the disciplinary action under either one of two then-existent prongs of the framework: (ii) (which has since been eliminated) providing that “the behavior or performance of the child demonstrates the need for such services”; or (iv) (which has since been modified), providing that “the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to the personnel of the agency”). [↑](#footnote-ref-59)
60. See S. REP. No. 108-185, at 46-47 (2023) (noting that the committee had heard concerns regarding abuses resulting from the provision in the 1997 law, which permitted, for example, a teacher’s “stray, isolated comment” to another teacher to be used as a “shield against the ability of a school district to be able to appropriately discipline a student”); *cf.* Department of Education, Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children with Disabilities, Protections of Children Not Determined Eligible for Special Education and Related Services (§300.534), 71 Fed. Reg. 46540, 46726-27 (Aug. 14, 2006) (declining to revise regulation to include language requested by commenters that would have permitted parent to express concerns about a child orally to supervisory or administrative personnel, rather than requiring written notification). [↑](#footnote-ref-60)
61. See S. REP. No. 108-185, at 46-47; 71 Fed. Reg. at 46726-27. [↑](#footnote-ref-61)
62. Hearing Officers in other jurisdictions have applied a totality of the circumstances approach in determining whether a school district had knowledge that a child was a child with a disability at the time the child engaged in the conduct precipitating disciplinary action. See, e.g., *In Re: Student With a Disability*, 110 LRP 34268 (SEA NM 07/07/09) (reviewing the three conditions outlined in 34 C.F.R. §300.534(b), and concluding that “after analysis of the evidence presented within the statutory and regulatory framework . . . in this case, the school should have suspected that the student was a child with a disability based on the totality of factors including the number and nature of disciplinary referrals, the student’s history of special education since the 1st grade and the parent’s report that the student was diagnosed with ADHD”); *Howard Cnty. Pub. Sch.*, 102 LRP 3920 (SEA MD 04/11/00) (concluding that school district had knowledge that student had a disability before the misconduct on November 29, 1999 for which he was expelled, based on the student’s deteriorating behavior in the spring and fall semesters of 1999; statements made in early November 1999 on a computer in class and printed out to the effect that he was gay and did not wish to live; and his November 12, 1999 report card where he failed six of seven classes in the first quarter of the school year. The Hearing Officer concluded that the district’s knowledge of student’s disability dated to the date of his report card, “because on that date there was no doubt that the Student’s behavior was interfering with his academic performance”); *Bd. of Educ. of the Hartford Consol. Sch.*, 34 LRP 165 (SEA MI 03/17/00) (“In considering the knowledge aspect, no one particular situation is sufficient to impart knowledge on the part of []. When, however, all of the factors are considered along with the series of problems [] had in approximately the year and one half before he was expelled are combined [they] paint a very clear picture . . . that the Respondent did have knowledge”).

In addition, courts regularly apply a totality of the circumstances approach in special education contexts, including eligibility, child find, and unilateral placement. See, e.g., *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 836 (2d. Cir 2014) (noting that in the context of unilateral placement, a student’s “[p]rogress may be demonstrated by grades, test scores, regular advancement, or other objective evidence, but no single factor is dispositive as ‘courts assessing the propriety of a unilateral placement [must] consider the totality of the circumstances in determining whether that placement reasonably serves a child’s individual needs’” (internal citation omitted)); *O.P. ex rel. Perez v. Weslaco Indep. Sch. Dist.*, 2022 WL 3651967, at \*7 (S.D. Tex. 2022) (applying totality of the circumstances test to conclude school district had violated child find); *Hood v. Encinitas Union Sch. Dist.*, 2004 WL 5562034, at \*6 (S.D. Cal. 2004) (affirming hearing officer’s conclusion that the school district “correctly found [Student] to be ineligible for special education services in view of the totality of the circumstances existing during” the school year). [↑](#footnote-ref-62)
63. See *Shaffer*, 546 U.S. at 62. [↑](#footnote-ref-63)
64. See 20 USC §1415(k)(1)(E(i); 34 C.F.R. §300.530(e). [↑](#footnote-ref-64)
65. Given the upcoming Labor Day holiday, the close of five business days is Friday, September 6, 2024. The parties may agree in writing to a brief extension of the deadline beyond September 6, 2024, for the purposes of gathering additional relevant information. [↑](#footnote-ref-65)
66. See *Shaffer*, 546 U.S. at 62. [↑](#footnote-ref-66)
67. See 20 U.S.C. §1415(k)(1)(G); 34 C.F.R. §300.530(g). [↑](#footnote-ref-67)
68. See 34 C.F.R. §300.530(i)(3). [↑](#footnote-ref-68)
69. See, e.g., *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 292 F.Supp.3d 413, 416-17, 421 (D.C.C. 2018) (*rev’d and remanded on other grounds*, *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519 (D.C. Cir. 2019)) (concluding that repeated punching of another student in the head, resulting in the other student being transported to the hospital in an ambulance and suffering a concussion, seizure, significant bruising, and memory loss, constituted infliction of serious bodily injury); *In Re: Student with a Disability*, 122 LRP 21820 (SEA WI 06/29/22) (sustaining removal to an Interim Alternative Educational Setting (IAES) for infliction of serious bodily injury where student pulled teacher’s hair, tightly squeezed the front of her throat, and hit her on the back of the head, and noting that whether the serious bodily injury exception applies depends on both the part of the body attacked and the impairment stemming from the attack (emphasis added)); *Bensalem Twp. Sch. Dist.*, 122 LRP 25399 (SEA PA 05/26/22) (allowing placement of student in an IAES on the basis of inflicting serious bodily injury where student stood on a chair, hit staff member’s head with a closed fist, then continued to slap staff member’s head); *Southfield Pub. Sch.*, 118 LRP 11554 (SEA MI 02/07/18) (sustaining removal of student to IAES for infliction of serious bodily injury where student attempted to punch staff member twice but was blocked, tripped into her causing both to fall, then kicked her in the stomach and knee). [↑](#footnote-ref-69)
70. Helena’s physical contact with S on this date, in contrast, was clearly intentional. [↑](#footnote-ref-70)
71. See *Olu-Cole*, 292 F.Supp.3d at 416-17, 421. [↑](#footnote-ref-71)
72. See *In Re: Student with a Disability*. [↑](#footnote-ref-72)
73. See *Bensalem Twp. Sch. Dist.* [↑](#footnote-ref-73)
74. See *Southfield Pub. Sch*. [↑](#footnote-ref-74)
75. *Cf*. 20 U.S.C. §1415(k)(1)(G); 34 C.F.R. §300.530(g); *Schaffer*, 546 U.S. at 62. [↑](#footnote-ref-75)
76. See 603 CMR §53.02. [↑](#footnote-ref-76)
77. Parent encountered difficulty accessing these services for Helena, even when following the instructions she was given. [↑](#footnote-ref-77)
78. *Cf.* 20 U.S.C. §1415(k)(5)(D)(ii) (even when school district does not have knowledge (and has not been deemed to have had knowledge) that child was a child with a disability at the time of the behavior precipitating the disciplinary action, an evaluation requested during the time the child is subjected to disciplinary measures must be expedited). [↑](#footnote-ref-78)
79. *Cf.* 20 U.S.C. §1415(k)(5)(C). [↑](#footnote-ref-79)