

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
NORTHWEST INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

**DECISION OF HEARING OFFICER**

Petitioner, Student (“the Student”), by next friend,\*\*\*, (“the Parent”) filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) on August 26, 2011. The Respondent in the complaint is Northwest Independent School District, (“the District,” “NISD,” or “Northwest ISD”). Following continuances, the hearing convened on February 2, 2012. At the Parent’s request and approval, the Student was present at the hearing.

At all times during the proceedings, Petitioner was represented by Chris Schulz, attorney at law. Respondent was represented by Cynthia Buechler, attorney at law.

**Petitioner’s Issues**

Petitioner alleged that, during petitioner’s enrollment in the District, petitioner was a person with a disability and the District should have determined petitioner to be eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), thus, a failure in its “Child Find” obligations. Petitioner further alleged that, because the District led Petitioner to believe that the problem forming the basis of the complaint was solved and it was not, the Petitioner is entitled to an exception to the Texas one-year statute of limitations.

Petitioner alleged that the District failed to provide petitioner a free, appropriate public education (“FAPE”) and in addition, pled the following failures by Respondent:

1. Failure to devise an appropriate Individualized Education Program (“IEP”) that provided both academic and non-academic benefits;
2. Failure to develop educational services in a collaborative manner with key stakeholders, particularly Petitioner’s Parent;
3. Failure to educate petitioner in the least-restrictive environment (“LRE”);
4. Failure to educate Petitioner in a non-hostile educational environment;
5. Failure to hire, train or supervise staff that were capable of recognizing and serving the Student’s unique and individualized needs as required under Child Find;
6. Failure to provide adequate notice to Petitioner regarding filing complaints against the District;

7. Failure to provide Petitioner with information about the Section 504 representative for the District regarding making complaints of bullying and harassment of the Student; and
8. Failure to provide Petitioner with information regarding rights and procedures related to allegations of bullying and harassment investigations under Section 504.

### **Petitioner's Requested Relief**

Petitioner requested the following relief:

1. A judgment in favor of Petitioner as supported by a finding that the District failed to provide academic services to the Student under the IDEA;
2. A judgment in favor of Petitioner as supported by a finding that the District failed to correctly provide non-academic and supplementary service to the Student as required by the IDEA;
3. A judgment in favor of Petitioner that the District failed to keep the Student safe from harm during the periods claimed;
4. A judgment in favor of Petitioner that the District failed to provide educational services in a non-hostile educational environment;
5. A judgment in favor of Petitioner that the District failed to comply with the requirements of Child Find;
6. An order directing the District to train and supervise school district staff regarding bullying prevention of a student with a disability and regarding disability accommodations and discrimination;
7. An order directing the District to pay or reimburse the Parent for all costs of her child's care, including but not limited to other out of pocket medical and transportation costs for treatment and therapeutic costs;
8. An order directing the District to reimburse the Parent for costs of moving from the District to \*\*\*;
9. An order declaring Petitioner as prevailing party in this due process matter;
10. An order directing the District to take any and all other specific actions required by the IDEA; and
11. Such other and further relief as the hearing officer may deem just and proper in law or in equity.

### **Respondent's Issue and Requested Relief**

On December 27, 2011, Respondent filed a counterclaim in support of its full and individual evaluation ("FIE"). Respondent requested a finding that its October, 2011 FIE was appropriate under the requirements of the IDEA.

### **Jurisdiction of Hearing Officer**

The authority of a hearing officer under the IDEA is limited to determinations relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child. Petitioner brought forth allegations of violations of the 14<sup>th</sup> Amendment to the United States Constitution, Section 504 of the Rehabilitation Act of 1973 (see issues number 7 and 8 above), the Americans with Disabilities Act, and Title IX of the Education Amendments of 1972, all of which are outside the jurisdiction of this hearing officer and are dismissed. In addition, Petitioner alleged that the District failed to

provide adequate notice to petitioner regarding filing complaints against the District (see issue number 6 above).

This issue is also outside the jurisdiction of this hearing officer and is dismissed.

### **Stipulations of Fact**

The parties stipulated the following facts:

1. Student enrolled at Northwest ISD at the beginning of the 2010-2011 school year.
2. On December 17, 2010, the school district received a letter dated December 16, 2010 that stated that the Student had been diagnosed with Major Depressive Disorder, Single Episode, by a doctor at \*\*\*.
3. The District sent the Parent a Notice of Proposal to Evaluate on January 4, 2011.
4. The Parent did not sign consent for assessment in the 2010-2011 school year after the District agreed to evaluate the Student.
5. The Student was withdrawn from Northwest ISD by the Parent on \*\*\*, 2011, and moved to \*\*\*.
6. The Student has attended school in \*\*\* since \*\*\*, 2011.
7. The Student has not been referred, nor has student received, special education services in \*\*\*.

### **Findings of Fact**

1. Petitioner, Student, is a \*\*\*-year-old child who resided within the geographical boundaries of the District during the fall semester of the 2010-2011 school year.
2. The Parent and the Student currently reside in \*\*\* where the Student is a \*\*\* grader. Transcript Pages 72-73 (hereinafter "Tr. Pg.")
3. Prior to enrollment in NISD, the Student attended \*\*\* Independent School District (\*\*\*). Student transferred into \*\*\* from \*\*\* and was behind academically. The Parent indicated to \*\*\* that the other children picked on Student. She declined to allow the Student to see the school counselor. Respondent's Exhibit 1 (hereinafter referred to as "Resp. Ex.")
4. The Student had problems with other students, complained of being bullied and teased, and student was transferred to \*\*\*, another school in the \*\*\* district. Student had behavior difficulties at \*\*\*, and would not accept responsibility for student's actions. The Parent accused the teachers of lying. Resp. Ex. 14; Tr. Pg. 30; Tr. Pg. 81-83
5. In the spring of student's \*\*\* grade year, the Student met the standard in reading, mathematics and science on the Texas Assessment of Knowledge and Skills. Resp. Ex. 3
6. In \*\*\* grade, the Student made passing grades. Student's final averages were \*\*\* in language arts, \*\*\* in reading, \*\*\* in math, \*\*\* in social studies, \*\*\* in science, with a core subject average of \*\*\*. Resp. Ex. 4
7. The Student enrolled in NISD at the beginning of student's \*\*\* grade year. Resp. Ex. 2; Tr. Pg. 25
8. The Student is bright, social, and has a good sense of humor. Student is \*\*\*. Tr. Pgs. 25-28
9. The Student received private counseling from \*\*\* (\*\*\*) beginning September, 2010 and continuing through January, 2011. Student was counseled again in April, 2011. Student reported symptoms of

depression, fatigue, suicidal thoughts. Student reported teasing because of student's \*\*\*. Student attended social skills class at \*\*\* where student participated fully and was well liked by the other children. Tr. Pgs. 136-140; 159

10. In the early fall, 2010, the Parent and NISD counselor had several conferences regarding the Student's transition, stomach problems and accompanying absences. The Parent was concerned that the Student was being bullied at school. The counselor made the Parent aware that she and the Student were invited to contact her. Resp. 6
11. The District offered the Student opportunities to see the school counselor and the assistant principal whenever student felt a need to do so. Tr. Pg. 63
12. Following an October \*\*\*, 2010 discipline incident, the District learned that the Student was receiving private counseling, but was told that it was not the school's business. Tr. Pgs. 171-172, 214
13. On October 18, 2010, the family's attorney sent a letter to the District that stated that the Student had been subjected to bullying on school grounds and on the school bus. The letter stated that the treatment was consistent and severe, and had affected the Student's ability to function. Petitioner's Exhibit 8 (hereafter referred to as Pet. Ex.)
14. On October 13, 2010, the Parent gave written authorization for disclosure of the Student's health information to the principal and vice-principal (assistant principal) of the school that the Student attended. Pet. Ex. 9
15. The assistant principal attempted to speak with the Student's private counselor on three occasions. There was a series of unsuccessful telephone calls between the two of them. They did not speak with each other about the Student. Tr. Pgs. 179-181
16. On November 1, 2010, the Parent told the school counselor that she did not want the Student talked to or questioned without the presence of herself or the Student's \*\*\*. Tr. Pgs. 267-268, 280
17. While at NISD, the Student was involved in numerous disciplinary incidents. The District investigated the incidents and determined that the Student initiated the majority of them. Pet. Ex. 4, 5, 6, 10, 12, 13,15; Resp. Ex. 5; Tr. Pg. 324
18. The Student was not a victim of bullying. Pet. Ex. 4, 5, 7, 10, 12, 13, 15; Resp. Ex. 5; Tr. Pg. 324
19. Following a disciplinary referral on December \*\*\*, a Disciplinary Alternative Education Program ("DAEP") placement was recommended. On December \*\*\*, 2010, \*\*\*, at a DAEP conference, the family presented a letter from the Student's psychiatrist that gave a diagnosis of depression. The Parent requested a special education evaluation and invoked "stay put." Pet. Ex. 14; Tr. Pg. 216
20. The assistant principal learned of the Student's diagnosis of depression on December \*\*\*, 2010. Pet. Ex. 21; Tr. Pg. 198

21. The District gave notice of proposal to evaluate the Student on \*\*\* January \*\*\*, 2011, and provided a consent form for psychological services and full and individual evaluation (“FIE”) to the Parent. The Parent did not sign the consent forms. Pet. Ex. 19; Resp. Ex. 16, 19; Tr. Pgs. 75, 216
22. On January 10, 2011, the Student’s psychiatrist recommended that student \*\*\*. The psychiatrist stated that the Student was diagnosed with Major Depressive Disorder, current episode severe. She stated that the Student’s ability to recover was greatly compromised by the continued bullying student was experiencing at school. Pet. Ex. 22
23. While enrolled in NISD, the Student had friends, talked with other children in the hallways, laughed, “cut up,” actively participated in class, and was very social. Tr. Pgs. 194, 221, 230-232, 267, 295
24. While a student at NISD, the Student took \*\*\* advance placement (“AP”) classes. Student passed all classes during the fall semester, 2010-2011 school year. Pet. Ex. 18; Resp. Ex. 4; Tr. Pg. 359

<b>Course</b>	<b>1<sup>st</sup> 6 wks</b>	<b>2<sup>nd</sup> 6 wks</b>	<b>3<sup>rd</sup> 6 wks</b>	<b>Semester Exam</b>	<b>Semester Average</b>
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***

25. During the semester that the Student was enrolled at NISD, student had 14 excused and 4 unexcused absences. Student’s absences were attributable to \*\*\*. Resp. Ex. 4, 19
26. When the Student enrolled in \*\*\* School, \*\*\*, student continued to be teased by the students. Resp. Ex. 17; Tr. Pg. 65
27. After the Student moved to \*\*\*, student was admitted into \*\*\* following a suicidal incident. After \*\*\* days, student was discharged with a diagnosis of depressive disorder, recurrent, mild, among other diagnoses. Pet. Ex. 25; Tr. Pgs. 65-67
28. The District offered to conduct an FIE of the Student in October, 2011. The Parent gave consent for the evaluation on October 11, 2011. The Parent brought the Student from \*\*\* for the evaluation. Resp. Ex 22, 23
29. The District gathered formal and informal data in its November, 2011 FIE, as follows: parent information, Woodcock-Johnson III Tests of Cognitive Abilities, Home Language Survey, school health records, sociological data from Parent, and testing observations including consideration of assistive technology (“AT”) needs. Resp. Ex. 25
30. A health screening was conducted by the school nurse, assessor observations, and parent information. Hearing and vision were within normal limits. The Parent reported that the Student has asthma, \*\*\*, and depression. Student takes medication for \*\*\*, and melatonin to help with sleep. Resp. Ex. 25

31. Sociological data was obtained by reviewing information on the parent information sheet. The Parent reported that the Student gets along well with parents and other family members. Student enjoys playing baseball, playing with friends, biking and skating. AT needs were considered, and were not recommended at the time of the FIE report. Resp. Ex. 25
32. The Parent and the Student indicated problems with teasing as early as \*\*\* grade and continued through the \*\*\* grade. The Student stopped attending therapy and taking anti-depressant medication May, 2011. Resp. Ex. 25
33. The District's psychological assessment included the Behavior Assessment System for Children-Second Edition ("BASC"), teacher, parent and self report versions, \*\*\*, Revised Children's Manifest Anxiety Scale, Piers-Harris Children's Self-Concept Scale, Scale for Assessing Emotional Disturbance (Parent Report), Structured Student Interview, clinical observation, and records review. Resp. Ex. 26
34. The FIE academic evaluations reflected average to advanced performance in all areas. The Student presented with a cognitive weakness in long-term retrieval, but did not present with any academic delays. Pet. Ex. 26; Tr. Pgs. 343-344
35. Three of the Student's NISD teachers had no significant concerns with student's emotional or behavioral functioning while student was in their classrooms. Student's NISD general education teacher indicated a clinically significant report in the area of depression. The Student did not report any feelings of depression or anxiety. The Parent and the Student both reported that student currently makes \*\*\*'s and \*\*\*'s and has some friends at student's school. The Parent noted that the Student has had no discipline referrals this school year. Pet. Ex. 26; Resp. Ex. 25; Tr. Pgs. 345-346
36. The District made several unsuccessful attempts to gather information from the Student's current school in \*\*\*. Pet. Ex. 26; Resp. Ex. 25
37. The multidisciplinary team determined that the Student did not meet eligibility criteria as a student with a learning disability or emotional disturbance. Resp. Ex. 25, 26, 27
38. The District convened an ARD meeting on December 7, 2011 to review the evaluation results and determine eligibility for special education services. The Parent, Student, their attorney, the Student's grandfather, and parent advocate attended the meeting. The Parent and grandfather expressed agreement that the Student did not qualify for special education services. Pet. Ex. 26; Resp. Ex. 29; Tr. Pgs. 234, 333
39. The Student is currently in student council, has perfect attendance, is an honor student, and is involved in basketball. Resp. Ex. 29; Tr. Pgs. 73-75
40. Neither the Parent nor the \*\*\* school staff has referred the Student for special education. Student is not attending counseling. Resp. Ex. 29; Tr. Pg. 87

41. Annually, NISD teachers and students receive training about bullying. Bullying programs used by the District are Rachael's Challenge, Capturing Kids Hearts, a PowerPoint presentation. Pet. Ex. 27; Tr. Pgs. 207-210, 225, 229, 244, 273-274
42. A child qualifies under the category of an emotional disturbance if child meets one of the following five categories: 1) inability to learn that cannot be explained by other factors 2) inability to build or maintain satisfactory relationships with peers and teachers 3) unhappiness or depression 4) fears or anxiety associated with school or personal problems or 5) inappropriate feelings and behaviors under normal circumstances. The child must meet one of the categories for an extended amount of time, to a marked degree, and it must adversely affect the child's educational performance. Tr. Pg. 354
43. The Parent moved from \*\*\* to \*\*\*. Tr. Pg. 72

### Discussion

#### Exception to Texas One-Year Statute of Limitations

There are two exceptions to the Texas one-year statute of limitations. Petitioner pled one of the two exceptions: the District made specific misrepresentations that it had resolved the problem forming the basis of the complaint. Petitioner presented no evidence to support a finding in petitioner's favor. The one-year statute of limitations applies in this matter. 34 C.F.R. §300.511; 19 Tex. Admin. Code 89.1151.

### Child Find

The purpose of the IDEA is 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. 34 C.F.R. §300.1(a). To qualify for special education services a student must (1) have a qualifying disability and (2) by reason thereof, need special education and related services. 34 C.F.R. §300.8. A child with a disability is not automatically eligible for special education and related services. Both prongs of the two-prong definition must be satisfied. In making this determination, a state or local education must conduct a "full and individual evaluation" following statutorily prescribed standards. 34 C.F.R. §§300.304 and 305.

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate services as necessary to provide a FAPE. This is referred to as Child Find. 34 C.F.R. §300.111; *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997).

Child Find is an affirmative duty of a school district. It is triggered at the time a district has reason to believe that a student has a disability and suspects that special education services may be needed to address that disability. *Student v. Houston I.S.D.*, No. 327-SE-596 (Texas H.O. Dec'n, May 2, 1997); *Dep't of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001); *see C.G. v. Five Town Cmty. Sch. Dist.*,

No. 05-237-P-S, 2007 WL 494994 (D. Me. Feb. 12, 2007); *Kanongata'a v. Washington Interscholastic Activities Ass'n.*, No. CO5-1956C, 2006 WL 1727891 (W.D. Wash. Jun. 20, 2006). When these suspicions arise, the local educational agency "must evaluate the student within a reasonable time after school officials have notice of behavior likely to indicate a disability." *Strock v. Indep. Sch. Dist. No. 281*, No. 06-CV-3314, 2008 WL 782346 (D. Minn. Mar. 21, 2008) (citations omitted).

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. 19 Tex. Admin. Code §89.1011. For the reasons discussed below, Petitioner failed to carry petitioner's burden of proof.

Petitioner alleges that the District failed to timely identify the Student as a child eligible for special education services and that student is eligible for such services. As such, the Petitioner bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), aff'd, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005). Petitioner sought to prove that student is a child with a disability in need of special education and that the District failed to identify petitioner as such by bringing forth evidence of petitioner's depression diagnosis, allegations of petitioner's being bullied, dropping grades in the second 6 weeks of school, absences, and discipline incidents.

Depression Diagnosis: The Parent testified that she told the District of the Student's diagnosis of depression in September 2010. The District witnesses stated that they did not learn of the diagnosis until December \*\*\*, 2010, \*\*\*. District witnesses testified that they saw no signs of depression or anxiety in the Student. During the fall semester, student made good grades, interacted with student's classmates, appeared happy, and "cut up." Student was described as a typical \*\*\* grader. Petitioner's psychiatrist did not testify. Student's private counselor provided testimony regarding her belief that the Student was bullied.

The District became aware that the Student was receiving private counseling in October, 2010. The assistant principal and private counselor played "phone tag" several times, but never discussed the Student or the reasons for student's private counseling. The grandfather told the District that the counseling was not their business.

The IDEA requires more than a diagnosis of a disability. It requires that a child exhibit symptoms of a qualifying disability and exhibit them to such a degree that they interfere with the child's ability to benefit from the general education setting. *Student v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Filed

Aug. 10, 2007); *Alvin Indep. Sch. Dist. V. A.D.*, 46 IDELR 221 (5<sup>th</sup> Cir. 2007).

Bullying: Both the Student's private counselor and District staff described bullying as a pattern of behavior involving the same players that occurs over time. One time or one conflict is considered to be teasing or meanness, but does not qualify as bullying. The private counselor wrote a December \*\*\*, 2010 letter that reflected a belief that the Student's depressive symptoms seemed to be directly related to issues with bullying at school. Her impressions were based on information gathered from the Student and the Parent.

Prior to the Student's enrollment in NISD, the Parent complained about bullying at the Student's previous schools in the \*\*\* district. During the fall semester, 2010 at NISD, Petitioner and the Parent alleged that petitioner was a victim of bullying. The District has a zero tolerance policy for bullying, and regularly provides training on bullying to both its staff and the students. Although the Student and Parent reported bullying incidents to the District, upon investigation of each report, it was determined that the Student initiated the majority of the incidents and that student was not bullied. Each investigation included statements from the parties involved in the allegations, as well as the Student.

Absences: Petitioner argued that petitioner had excessive absences, and that, taken in conjunction with the depression diagnosis, drastic drop in some grades at the end of the second 6 weeks period, and bullying allegations, there should have been sufficient to cause the District to suspect that petitioner may have been a student with a disability in need of special education services. The evidence showed that the absences were due to \*\*\* and stomach aches.

Drop in Grades: Petitioner also argued that a severe drop in the Student's grades should have given the District reason to believe that petitioner may have needed special education services. The most severe drop in grades occurred at the end of the second 6 weeks grading period in the \*\*\* class. Admittedly, a drop of \*\*\* points is a drastic drop. However, the class is a rigorous elective for students who like \*\*\* and want to \*\*\*. It is common for students to drop the class after they've had time to realize that it is not appropriate for them. The Student did not drop the class and earned a semester grade of \*\*\*. When reviewing grades from student's other classes, \*\*\* of which were AP classes, overall, the Student did well academically. Behaviorally, student's classroom teachers indicated that student worked well in groups, that the other students liked student, that student laughed and "cut up," and gave no sign of depression or anxiety.

The Student continues to do well in student's current school, making \*\*\*'s and \*\*\*'s. Student is not receiving special education services. Student has friends and is in \*\*\*.

Discipline Incidents: The Student was in the District approximately \*\*\* during which time student received several discipline referrals. None of the referrals were the result of incidents in the classrooms. In fact, student's teachers testified that student performed satisfactorily in class, both academically and socially.

The discipline incidents occurred either on the bus, at the bus stop, in PE, in the hallways, or in the school office. During PE, the Student told a child \*\*\*. The Student admitted making the statements. Student

\*\*\*, and \*\*\* and at the\*\*\*. Student \*\*\*. Student \*\*\*. A school administrator investigated each incident. Interviews of the individuals involved in each incident were conducted. The District staff determined that the Student initiated the majority of the disciplinary incidents. While student's behaviors were inappropriate, and even mean at times, the credible evidence does not support a finding that they were sufficient to give the District reason to suspect that student had a disability and was in need of special education services. Student was not experiencing difficulties in the general education. 19 Tex. Admin. Code §89.1011.

The Parent requested an FIE on \*\*\*. On the day the District \*\*\*, the District contacted the Parent to obtain consent for the evaluation. The District made follow-up calls to the Parent who told them she would come in to sign the consent forms. She did not provide consent and withdrew the Student from the District \*\*\*; thus, no FIE was undertaken until after the instant action was filed.

Based on the credible evidence at hearing, I find that during the relevant time frame, the District did not have reason to suspect that the Student was a child with a disability in need of special education services. Further, I find that evaluation procedures were initiated within a reasonable time following the Parent's request for a FIE. The Parent's failure to provide consent was the reason that the evaluation was not completed. 34 C.F.R. §300.300. Respondent complied with its child find obligations. Petitioner did not carry petitioner's burden of proving that student is a child with a disability in need of special education services, or that the District denied petitioner a FAPE under the IDEA.

#### **The District's FIE**

The IDEA requires that a school district provide special education services to eligible children who reside within its geographical boundaries. *Daniels v. Morris*, 746 F.2d 271 (5<sup>th</sup> Cir. 1984). The Texas residency statute for its school children requires a school district to admit a child if that child and a parent reside in the school district. Or, if the child does not reside in the school district, but the parent resides there and that parent is either a joint managing conservator or the sole managing conservator or possessory conservator of the child, the school district must admit the child. T.E.C. §25.001.

Since January, 2011, the Student attended school in \*\*\*. The Parent moved to \*\*\* \*\*\* 2011, and \*\*\* continue to reside there. In the fall, 2011, as a courtesy, the District offered to evaluate the Student. The Parent brought student to \*\*\* the District conducted the evaluation. Following a question regarding the validity of the District's FIE, Respondent filed its counterclaim in support of the evaluation.

Because the Student and the Parent did not reside within the geographical boundaries of the Northwest ISD, the District had no legal responsibility to evaluate the Student when it conducted its FIE in the fall, 2011. Consequently, a question of whether the District's FIE was appropriate under the requirements of the IDEA is moot and is dismissed for lack of subject matter jurisdiction.

### **Conclusions of Law**

1. The Northwest Independent School District complied with its child find obligations under the IDEA. 34 C.F.R. §300.111.
2. The Northwest Independent School District did not deny the Student a FAPE. 34 C.F.R. §300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), aff'd, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
3. The one-year statute of limitations applies in this case. 34 C.F.R. §300.511; 19 Tex. Admin. Code 89.1151.

### **Order**

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all relief requested by Petitioner is DENIED.

SIGNED on March 1, 2012.

\_\_\_\_\_/s/\_\_\_\_\_  
Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas

### **NOTICE TO THE PARTIES**

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §1415(i)(2).