

**BEFORE A SPECIAL EDUCATION
HEARING OFFICER FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

**STUDENT, b/n/f/ PARENT,
Petitioner**

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v.

DOCKET NO. 032-SE-1012

**CARROLLTON-FARMERS
BRANCH INDEPENDENT
SCHOOL DISTRICT,
Respondent**

REPRESENTING PETITIONER:

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v.	§	HEARING OFFICER
	§	
CARROLLTON-FARMERS BRANCH INDEPENDENT SCHOOL DISTRICT, Respondent	§	
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	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner *** (“the Student”), by next friend, *** (“the Parent”), requested a due process complaint pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, against Respondent Carrollton-Farmers Branch Independent School District (“the District”).¹ Matthew L. Finch, The Law Offices of Matthew L. Finch, P.C. in San Antonio, Texas, represented Petitioner with assistance from Debra L. Liva, a special education advocate in Carrollton, Texas. Attorneys Nona C. Matthews and Melissa Scherer, Walsh Anderson Gallegos Green and Treviño, P.C. in Irving, Texas, represented Respondent.

The Texas Education Agency (“TEA”) received this due process request on October 11, 2012, and issued the notice of filing on October 12, 2012. The initial procedural schedule set the hearing for November 27, 2012, and the Decision Due Date for December 26, 2012. Respondent filed its Ten-Day Response and a Partial Motion for Dismissal on October 22, 2012, seeking dismissal of matters outside the jurisdiction of the Hearing Officer.² A telephonic pre-hearing conference took place with the parties on October 29, 2012. At the end of the telephonic pre-hearing conference, Petitioner indicated intent to seek a waiver of the one-year statute of limitations in this proceeding and Respondent indicated intent to respond to the request. On November 15, 2012, Respondent filed its Supplement to Motion for Partial Summary Judgment on the Statute of Limitations (“Respondent’s Motion”), with attachments. Petitioner sought a continuance of the due process hearing because of scheduling conflicts, granted for good cause shown, and the hearing was reset to December 12, 2012, with the Revised Decision Due Date set for January 9, 2013. A schedule for Petitioner’s Response to Respondent’s Motion set a deadline of November 26, 2012, but Petitioner failed to file a response and did not seek a continuance of this deadline.

Petitioner sought, but was denied, a second continuance request. The hearing convened as scheduled on December 12, 2012, as an open hearing. Prior to the conclusion of the hearing, the parties jointly requested submission of their closing argument in writing in lieu of oral closing argument, granted for good cause shown, setting a deadline for the written closings on January 7, 2013, and the

¹ This litigation was filed by the Student’s mother but both parents testified at the due process hearing. The use of the singular “Parent” reflects the mother’s “next friend” status.

² During the subsequent telephonic pre-hearing conference on October 29, 2012, the Hearing Officer and the parties discussed that the Hearing Officer’s jurisdiction is limited to matters arising under the Individuals with Disabilities Education Act, as amended. [Pre-hearing transcript at 7-8].

Revised Decision Due Date for January 18, 2013. Due to the illness of Petitioner's counsel and by agreement of the parties, the written closing deadline was reset to January 14, 2013, and the Revised Decision Due Date to January 25, 2013. The parties timely filed their written closings and the record closed on January 14, 2013. The Decision of the Hearing Officer timely issued on January 25, 2013.

Petitioner complains of the following actions or inactions of Respondent regarding the Student:

1. Failure to comply with Child Find provisions by timely evaluating all areas of suspected disability: a) Emotional Disturbance ("ED"); b) Other Health Impairment ("OHI"), or c) Autism Spectrum Disorder ("AU");
2. Failure to develop an appropriate individualized education program ("IEP");
3. Failure to conduct a Functional Behavioral Assessment ("FBA");
4. Failure to develop and implement an appropriate Behavioral Intervention Plan ("BIP");
5. Failure to provide a Free Appropriate Public Education ("FAPE");
6. Failure to address the Student's sensory issues;
7. Significantly impeding the Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE;
8. Failure to provide appropriate supplementary aids and services, including: a) behavioral therapy; b) a mentor; c) social skills training; d) occupational therapy; e) tutoring; and, f) counseling;
9. Failure to consider areas of disability when imposing punitive consequences directly linked to those disability areas; and,
10. Failure to address the Parent's concerns regarding peer interactions and social skills.

As relief, Petitioner seeks the following for the Student:

1. Compensatory education and related services to address areas of disability, including:
 - a) continuation of private counseling; b) social skills training; c) occupational therapy; d) a mentor for at least two years and thereafter as determined by an Admission, Review, and Dismissal Committee ("ARDC"); and, e) other services that may be determined after completion of all evaluations;
2. Reimbursement to the Parent of out-of-pocket expenses for additional interventions, including a behavior specialist and private counseling, and reimbursement for mileage and per diem expenses for each private counseling session;
3. Any and all out-of-pocket expenses incurred by the Parent as a result of Respondent's failure to provide a FAPE;
4. An independent behavior analysis by a certified behavior specialist;
5. An expedited Full and Individual Evaluation ("FIE") to be completed within 30 days;
6. An Independent Educational Evaluation ("IEE") in all areas of disagreement with the FIE;
7. Convene a duly constituted ARDC meeting within 10 days after completion of the FIE;
8. At Respondent's expense, provide participation of the IEE evaluator at the ARDC meeting discussed above;
9. At Respondent's expense, provide the Parent with a conference to address social skills, including travel, lodging, meal, and mileage reimbursement;
10. Social skills training for the Student;
11. Social skills training by a certified behavior specialist for all staff working with the Student;
12. An Order that Respondent cease the imposition of punitive consequences for behaviors directly linked to the Student's area(s) of disability;
13. An Order that Respondent provide staff training regarding identification of students with disabilities and the referral process; and,

14. An Order that Respondent provide an annual staffing regarding the Student's educational plan for every member of school staff who will work directly with the Student.³

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

Background

1. The Student resides within the jurisdictional boundaries of the District with student's Parents. At the time of the hearing, the Student was *** years old in *** grade at *** School. [Pleading file; Petitioner's Exhibits ("P.Exs.") 1 and 9; Respondent's Exhibit ("R.Ex.") 9 at 1-6; Transcript ("Tr.") at 54-55, 79, 88, and 104].

2. The Student has attended the same campus since ***. Between *** and *** grades, student cumulatively earned *** A's and *** B's for final year-end grades. [R.Ex. 9 at 3-5].

3. The Student was diagnosed with Attention Deficit Disorder ("ADD")/Attention Deficit Hyperactivity Disorder ("ADHD") during student's *** grade year by student's pediatrician. The Parent filled out health forms at the beginning of the Student's *** grade year in August 2011 for the school nurse indicating that the Student took ADD/ADHD medication but did not indicate any concerns of AU or ED on the form. [P.Exs. 1 at 1 and 7 at 1; R.Ex. 10 at 4; Tr. at 92-93].

4. In August 2011, the Parent did not report stereotypical mannerisms or restricted forms of behavior to the Student's teachers and administrators. [P.Exs. 7 at 1-5 and 8 at 1-4; R.Ex. 10 at 1-5].

5. At the hearing, the Parent reported concerns about the Student's behaviors. Recently, the Student does not want to let go of old toys because of associated memories. In the past, the Student ***. The Parent reports problems with the Student *** at school and coming home with *** as a result. In the past, the Parent reports discussing *** behavior with school personnel. The Parent also reports problems during a previous school year of the Student ***. [Tr. at 179-184].

6. The Parent is concerned that the Student frequently makes noises *** at school that annoy other students rather than communicate with student's peers with words, as reported by the Student to student's Parent. According to the Parent and ***, the Student does not like loud noises and places, no longer can sit through a movie, can't stand to have student's ***, ***, and does not like things on student's legs like pants or long socks. Additionally, the Parent has concern that the Student has no real friends, has come home crying that no one would sit with student at lunch, does not have play dates outside of school that are reciprocated, and exhibits difficulty with other extracurricular activities such as scouting and sports. [Tr. at 28-30, 176-178, and 183-187].

2011-2012 – * Grade**

7. The Student made more A's than B's on student's report card during student's *** grade year. Student scored a year above expectations in reading skills as compared to typical *** grade peers, and did well in math and writing skills. During weekly team teacher meetings, all *** grade teachers

³ Petitioner additionally sought reimbursement of all costs and attorney's fees for this litigation, matters over which the undersigned Hearing Officer has no jurisdiction.

agreed that the Student made great academic strides and no teacher expressed any behavioral or social concerns about the Student. [Tr. at 252-255].

8. On the 2012 administration of the State of Texas Assessments of Academic Readiness (“STAAR”) tests, the Student scored in the *** percentile for both math and reading skills. Student exceeded all academic requirements for promotion to *** grade. [R.Exs. 2 at 1 and 9 at 5; Tr. at 87 and 268-269].

9. The Student demonstrated either successful or exceptional performance of standard conduct expectations throughout student’s *** grade year, with only rare occasions of correction for classroom behavior. The Student has not had any behavior referrals since ***. [R.Exs. 1 at 5, 8 at 2, and 9 at 5; Tr. at 80 and 255].

10. Student’s *** grade reading teacher, ***, testified at the due process hearing. According to ***, the Student is very bright and made significant progress in student’s reading, remaining an entire year ahead of expected reading levels in the *** grade year. In *** class, the Student did an excellent job of communicating with the teacher and peers and participated in class discussions. Throughout student’s *** grade year, *** observed that the Student maintained successful friendships at school. The Student interacted with peers at lunch and *** without problem. *** did not observe any unusual behaviors from the Student and described student’s behaviors as typical of an average *** grade student. [Tr. at 253-255].

11. The Student was one of *** students selected to participate on the *** during student’s *** grade year. The *** that existed in the 2011-2012 school year, selected based on student leadership qualities, interest in ***, and with demonstrated ability to complete assigned tasks without interrupting ongoing classroom instruction. ***. Only *** members who timely completed their classwork by the start of *** could participate on a given day. Once unfinished classwork had been completed, a *** member could join *** activities if they were not completed or could join other classmates at ***. [Tr. at 221-222 and 259-260].

12. The Student was upset at home when student did not get to participate on ***, and reported that student had been “kicked off” the ***. [Tr. at 31-32].

13. On occasion, the Student was not able to participate in *** activities during *** grade because of unfinished classwork, missing about the same amount of *** activities as the other *** members. The Student remained on *** throughout the entire school year. [Tr. at 261-262 and 283].

14. The Student functioned as a typical *** grade student during the 2011-2012 school year. No educator reported any concerns to the campus counselor about the Student’s behavior. Throughout *** grade, the Student appeared well-adjusted, exhibited no behavioral concerns, sat with friends at lunch, did not exhibit heightened sensitivities, and showed no odd interest in ***. [Tr. at 78, 255-257, and 288].

15. The Student at times had difficulty finishing student’s classwork in *** grade. Overall, student required an average amount of time to finish student’s work. On occasion, like other typical *** grade peers, student missed part of *** in order to finish student’s work. [Tr. at 256, 287, and 309].

16. During *** grade, the Parent asked if the Student could talk to the counselor and the Student came only one time for counseling to ***, the Student's *** campus counselor. The Student participated in the group guidance counseling lessons every two weeks given to all students in the school. [Tr. at 62 and 77-79].

2012-2013 – * Grade**

August 2012

17. The District's first day of school in the 2012-2013 school year was August 28, 2012. Prior to that date on August 20, 2012, Petitioner's advocate faxed a letter requesting mediation to the District's Executive Director of Special Education, ***. This was the first contact concerning this Student by the Parent and/or the advocate with ***. On August 21, 2012, *** replied to this request and began the parental referral process. Although the District was unaware of any dispute concerning this Student, *** agreed to mediation as requested by Petitioner. [P.Ex. 11 at 11; R.Ex. 3 at 2; Tr. at 107, 300-301, and 317-318].

18. The Student's *** grade teacher, ***, began keeping a log regarding the Student's behavior after speaking with the Parent on *** on August ***, 2012. The Parent informed *** that she was working with an advocate, discussed Section 504, and discussed the Parent's desire for more services and accommodations for the Student. After this meeting, *** discussed the Student with the campus principal. [P.Ex. 9; R.Ex. 6; Tr. at 107 and 125].

19. The District convenes a *** (***) committee meeting several times a year for teachers to discuss concerns about students with specific needs. Prior to August 2012, no *** committee meeting ever specifically discussed the Student due to student's good academic and non-academic progress. [Tr. at 65, 82-83 and 303-306].

20. On August 28, 2012, the District convened a *** committee meeting in response to the advocate's request for mediation with the Student's principal, counselor, and teachers. This *** committee reviewed the Student's grades, previous teachers' reports, and an E-mail from the Parent reporting that the Student had ADD and was currently taking medication dated August 28, 2012. After review, the *** committee determined that the Student had no academic, behavioral, or social concerns that warranted a special education evaluation or intervention. Instead, the *** committee agreed to refer the Student for a Section 504 evaluation due to the Student's diagnosis of ADD. [R.Ex. 7 at 1; Tr. at 82-83, and 305-306].

21. On August 29, 2012, the District sent the Parent a Prior Written Notice ("PWN") of the District's refusal to evaluate the Student under the IDEA for special education services and included a copy of the IDEA's procedural safeguards in the documents. On the same date, the District requested parental consent for a Section 504 evaluation of the Student and included a copy of Section 504 procedural safeguards. [R.Exs. 4 at 1-5 and 5 at 1-20; Tr. at 84-85, 306, and 324].

22. The Parent did not present any testimony or documentary evidence to show the PWN of the District's decision not to test the Student for special education eligibility was not received by the Parent.

23. On August 31, 2012, the Parent signed and returned the consent for a Section 504 evaluation of the Student. On September 4, 2012, the Parent indicated to ***, the campus counselor, that she had the Section 504 paperwork and would be providing a physician's note concerning the Student's ADD. [R.Ex. 4 at 2; Tr. at 65].

September 2012

24. In early September 2012, *** noticed the Student routinely had unfinished work. About this time, *** began using some strategies to help the Student including allowing the Student to take breaks and refocus, the opportunity to work on unfinished work, and extended time for some work. On September 11, 2012, *** talked with the Parent and suggested that the Student come in at *** a.m. in the morning to help get the Student's day organized. [P.Ex. 9 at 3; R.Ex. 6 at 3; Tr. at 109 and 137].

25. The District administers a computer-generated test taken by students across the nation, the *** test, to compare student progress.⁴ In September 11-18, 2012, the Student scored above national norms in reading, math, and science skills on the *** test. [R.Ex. 2 at 2-5; Tr. at 87 and 132-135].

October 2012

26. The District was not able to obtain any information regarding this dispute until the parties unsuccessfully attempted mediation on October 8, 2012, three days before filing this dispute. [Pleading File; Tr. at 303].

27. The District sent notice by registered mail to the Parent of a Section 504 meeting, scheduled for October 15, 2012, with a copy of Section 504 procedural safeguards. Even though the Parent received the notice, the Parent did not attend the Section 504 meeting. [Tr. at 73 and 89].

28. On October 15, 2012, the Section 504 committee met with the Student's principal, teachers, and counselor for review of the Student's ADD diagnosis and medication, previous and current grades, conduct, teacher's reports, STAAR testing results, and *** test results, discipline and attendance records, and extracurricular participation. The Section 504 committee did not suspect a disability under the IDEA that resulted in a need for specially designed instruction, including AU, OHI, or ED. As a result, the committee did not make a referral for special education but instead found the Student eligible for Section 504 services as a student with ADD. [Tr. at 307-308].

29. The Section 504 committee developed an accommodation plan for the Student on October 15, 2012. This plan continued the same general education supports successfully used with the Student in *** and *** grade as Section 504 accommodations. To address the Parent's sensory and behavioral concerns for the Student, the Section 504 committee requested an occupational therapy consultation with the Student's teacher and a consultation by the District's Behavior Resource Specialist ("BRS") with the Parent and the Student's teacher. [P.Ex. 3; R.Ex. 8; Tr. at 88, 126-128, and 312-313].

30. The District provided copies of the Section 504 committee meeting documents to the Parent by certified mail on October 19, 2012. Because the Parent did not pick up the documents at the post office, a second notice of package delivery occurred on November 15, 2012. [P.Ex. 3; R.Ex. 8; Tr. at 89-90].

31. The Parent has not consented to initial placement of the Student into Section 504 services. As a result, neither the occupational therapy nor the BRS consultations have occurred. [Tr. at 90, 225, and 313].

⁴ Scoring report sheets for this instrument show the test was developed by the ***. The abbreviation *** is not further defined in this hearing record. [R.Ex. 2 at 2-5].

Petitioner's Private Evaluation

32. The Parent sought a private psychological evaluation of the Student from Dr. ***, a pediatric neuropsychologist in private practice in ***, Texas. Dr. *** performed an abbreviated psychological evaluation between September and October 2012 limited to areas of parental concern – the Student's social and behavioral functioning – and did not address intelligence or academics. [P.Ex. 1; Tr. at 57-58].

33. Dr. *** issued his written report on November 15, 2012. Dr. *** interviewed the Parent and then interviewed the Student on three separate dates. Dr. *** gathered information by means of the Conners Comprehensive Behavior Rating Scales ("Conners CBRS"), a questionnaire designed to measure a wide range of behavioral and social-emotional characteristics of children and adolescents, and a teacher questionnaire. *** filled out the teacher questionnaire after only teaching the Student for one month. Dr. *** did not observe the Student at school, did not gather additional information from the Student's previous *** grade teachers, and did not directly interview *** by phone or in person. [P.Ex. 1; Tr. at 46, 51, 54-55, 143-144, and 251].

34. Dr. *** evaluation included the School Motivation and Learning Strategies Inventory, an instrument that yields a standardized score and reports the testing subject's self-view of school performance. Dr. *** did not report any results or scores from this instrument in the written evaluation report and there is no other information in the report concerning the Student's thoughts about student's school performance. [P.Ex. 1; Tr. at 51-53].

35. At the hearing, *** admitted that she was inexperienced in filling out such an instrument and included the Parent's input with her own in the responses when she filled out the Conners CBRS for Dr. ***. [P.Ex. 1; Tr. at 144-149, and 289-290].

36. At the hearing, Dr. *** admitted that he produced two versions of his written report. In the first version, Dr. *** did not include any reference to AU as a suspected disability for the Student, a need for an AU evaluation, or that the Student needed special education services. Instead, the first version of the written report recommended accommodations that could be obtained through the Section 504 committee. [P.Ex. 1; Tr. at 49-51].

37. Dr. *** admitted at hearing that he changed his written evaluation report at the request of the Parent to include a recommendation for an AU evaluation and to remove the statement that the Student could receive necessary accommodations through the Section 504 committee. Petitioner produced the second changed report as an exhibit. When asked at hearing about the change from the first to second versions of the written report, Dr. *** explained that it would be "helpful" to "rule in/rule out" a diagnosis of AU. [P.Ex. 1; Tr. at 47-57].

38. Dr. *** proposed a list of 13 general accommodations for the Student in his report that were not individualized but were "standard recommendations that we do for the ADHD accommodations." This generalized list includes preferential seating, maintain eye conduct, provide extended time, and provide a safe person for the Student to talk to regularly at school. [P.Ex. 1 at 6-7; Tr. at 236].

39. Dr. *** is not a Licensed Specialist in School Psychology ("LSSP"), cannot provide psychological services in the public school system, and does not have the ability to make educational planning decisions. [Tr. at 45-46 and 57].

40. The Parent reported the Student has a diagnosis of ADD and takes medication that has been monitored and adjusted. The Parent has never reported any diagnosis of the Student as AU by any medical professional. [P.Exs. 7 and 8; R.Exs. 7 and 10; Tr. at 64, 85, 91-93, 100, 214, 242, 277, 307, and 312].

41. Petitioner presented the testimony of Dr. ***, an LSSP in private practice. The Parent sought assistance from Dr. *** with the Student's behavior management at home, assistance that could possibly "lend itself to a behavior plan at school." Dr. *** met with the Parent twice and the Student once prior to the due process hearing. [Tr. at 231-232].

42. Dr. *** reviewed school documents and Dr. *** report but did not review the Student's report cards that set forth how the teachers view the Student's behavior and work/study skills. In Dr. *** opinion, the Student would benefit from a good behavior plan in place with very clear goals and some incentives. Dr. *** believes that a 24-hour plan with a focus on behavior management, socialization, skills of independence, and managing anxiety would assist the Student in establishing small goals to promote socialization. [Tr. at 232, 238-239, and 241-245].

43. Prior to her hearing testimony, Dr. *** did not talk to any school personnel about the Student's progress at school, was unaware that the Student's teachers were not concerned about the Student's school behavior, and had not reviewed the Student's proposed Section 504 accommodation plan. [Tr. at 238-239].

44. At the hearing, Dr. *** did not agree that the Student would benefit from additional special education evaluation as the Student has had "so much assessment." Dr. *** agreed that it would be appropriate to incorporate Dr. *** proposed accommodations for the Student into a Section 504 plan. Dr. *** also agreed it would be appropriate for the Student to have a consultation by a behavioral specialist at school. [Tr. at 235-236 and 240-241].

Progress in Fall 2012

45. The Student continued student's academic success in the first semester of student's *** grade year. At the time of the due process hearing, the Student received all A's except for one B in the Fall 2012 semester. [R.Ex. 9 at 6; Tr. at 128].

46. The Student's *** grade teacher, ***, noted a few occasions when the Student seemed to shut down during Fall 2012, requiring refocusing. While the Student had a bad day or a couple of bad days, these occasions were brief, inconsistent, and student had more good than bad school days. *** observed the Student perform as a "model student" on the majority of school days. [Tr. at 104-105, 129-131, and 146].

47. *** reported that the Student regularly has unfinished classwork, just like the majority of *** other *** grade students. [Tr. at 105].

48. *** entries in her Fall 2012 behavioral notes concerning the Student include two times when the Student stated no one liked student. *** did not observe any social deficits in the Student's behavior as student worked well with friends in the classroom and interacted with friends on the playground. Although the Student is very articulate, *** observed that the Student may not communicate what student is feeling when student is upset. [P.Ex. 9; R.Ex. 6; Tr. at 149-152].

49. The Student's teachers were aware that the Student had *** on the way to school in *** grade. As a result, the Student required some refocusing at school as student started student's day. The *** did not take place at school. The Parent was informed about these incidents by *** in the log that went back and forth between school and home and also during a conference in September 2012. [Tr. at 113, 117, 130, 137, and 272-273].

50. Petitioner presented no evidence that the Student needed, but did not receive, the assistance of a mentor at student's *** campus.

51. The Student was chosen to participate in the *** as an extracurricular activity in *** grade. [R.Ex. 8; Tr. at 88].

52. At the time of the due process hearing, the Student continued to perform well socially and behaviorally in *** grade. Student has no office referrals. The Student has friends in class, friends on the playground, and sits with a group of friends at lunch. [Tr. at 80, 129, and 149].

53. Over the entire time the Student has attended student's *** campus since ***, the campus counselor has intervened for the Student between five or six times. At the time of the due process hearing, the Student had not sought out or had a need to speak to the campus counselor during student's *** grade year for any issue. [Tr. at 62 and 79].

54. It is a regular education consequence at the Student's *** grade campus for all students to *** for unfinished homework. The Student may have *** on two or three occasions because of unfinished homework. [Tr. at 111 and 286-287].

55. The Parent has not previously, prior to August 20, 2012, requested a special education evaluation by the District. [Tr. at 310].

Legal Standard

Under the IDEA, the educational plan developed by a school district is presumed appropriate and the burden of proof for challenging that program is placed on the party making the challenge. *Shaeffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 536-537 (2005); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011(5th Cir. 2011). Petitioner, as the party challenging the District's program, bears the burden of proof in this dispute and must overcome the presumption in favor of the District's educational plan and establish that the District failed to provide a FAPE.

The U.S. Supreme Court developed a two-prong test for determining whether a school district's program provides a FAPE: 1) whether the school district complied with the procedural requirements of the IDEA, and, 2) whether the school district offered a program to an eligible student that was reasonably calculated to provide educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 207-208, 102 S.Ct. 3034, 3051 (1982). Procedural errors may result in a denial of a FAPE to eligible students only when the error: 1) impeded the student's right to a FAPE; 2) significantly impeded the parents' opportunity to participate in the IEP process; or, 3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); *see also Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003).

Special education under the IDEA and its implementing regulations is limited to students who meet the definition of a "child with a disability." 20 U.S.C. § 1401(3)(A); 34 C.F.R. §300.8. Only

certain students with disabilities are eligible for special education and related services under the IDEA. To qualify for special education and related services, a student must have both: 1) a qualifying disability; and, 2) by reason of the qualifying disability, must need special education and related services to address those needs. *See Alvin Ind. Sch. Dist. v. A.D.*, 503 F.3d 378, 384; 34 C.F.R. §300.111(a)(1).

Statute of Limitations

Petitioner did not properly plead any exceptions to the Texas statutory one-year limitations period and instead, brought up a waiver to the one-year limitations period during the telephonic pre-hearing conference in this dispute. 19 TEX. ADMIN. CODE §89.1151(c). Respondent timely filed its Motion regarding this issue and Petitioner did not timely file a response and did not seek leave to amend its due process complaint. 34 C.F.R. §300.508(d). The one-year statute of limitations period applies absent proof of an exception. *El Paso Indep. School Dist. v. Richard R.*, 567 F.Supp. 2d 918, 944 (W.D. Tex. 2008); *rev'd in part on other grounds, El Paso Indep. School Dist. v. Richard R.*, 591 F.3d 417 (5th Cir. 2009).

To toll the statute of limitations, the IDEA allows two narrow exceptions: 1) if a parent was prevented from requesting a due process hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; and/or, 2) the school district withheld information that it is required to provide to a parent and, as a result, a parent failed to exercise their right to a due process hearing. 34 C.F.R. §300.511(f).

Petitioner failed to plead facts to support a waiver of the applicable statutory period, the Parent's concerns fall within the one-year statutory period, and Petitioner did not respond to Respondent's Motion. I conclude that the applicable limitations period in this dispute runs from October 11, 2011, to present.

Discussion

This dispute concerns allegations that the District did not properly identify the Student as an eligible student under the IDEA, and as a result, did not provide an appropriate educational program to address the Student's needs. The parties do not dispute that the Student is making academic progress under the District's program. Instead, Petitioner's allegations concern the behavioral and social needs of the Student as a result of student's disability.

A. Failure to Timely Evaluate and Comply with Child Find Provisions

Petitioner's first issue concerns identification of the Student as an IDEA-eligible student. At the hearing, neither party disputed the Student's ADD/ADHD diagnosis, but the parties disagreed as to whether the Student is a qualified student under the IDEA who requires special education services. Respondent believes the Student made progress in all areas – academically, behaviorally, and socially – without the need for specially designed instruction.

School districts have an affirmative duty referred to under the IDEA and its implementing regulations as the "Child Find" obligation to identify, locate, and evaluate students whom they suspect may be disabled and provide them with special education services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. §300.111(a), (c)(1). While the IDEA's Child Find duty includes students who are suspected of having a disability that requires special education instruction, not every struggling student with a disability requires an evaluation. *See Alvin, supra*, at 384 (where student had appropriate academic and social performance and demonstrated no need for special education, despite alcohol abuse and

related behaviors); *see also D.K. v. Abington School Dist.*, 696 F.3d 233, 249 (3rd Cir. 2012) (grade school student not denied a FAPE, even though not designated disabled under the IDEA, where the student made good academic progress in reading and math while progressing from grade to grade and program provided individualized system with tutoring and extra time for test completion).

The record established that the District did not have reason to suspect that the Student required specially designed instruction because student performed as a typical student academically, behaviorally, and socially within the general education setting with very few accommodations.

Academically, the Student performed in the *** percentile on math and reading skills during *** grade STAAR testing and within student's Fall 2012 semester, the Student continued to score well above national grade level norms for math and reading skills, progress mirrored by far more A's than B's on student's report card grades. Behaviorally, the Student's school report cards show student's good-to-excellent behavioral progress throughout student's *** school years. Socially, the Student interacted well at school with student's peers in all settings – including lunch and ***. In the classroom, student interacted well with peers on class projects, small group work, and other partner work.

The Student behaved as other typical peers in *** and *** grades, including regularly not completing all student's classwork, occasionally having to miss *** to finish incomplete work, and having a couple of bad school days from time to time. Overall, the Student functioned as a well-adjusted student within student's general education classes. Student did not exhibit the sensitivities that the Parent reported at home – ***. No teacher or administrator voiced concern about the Student's behavior to the campus counselor. Indeed, on only one occasion, did the Student talk individually with the school counselor in *** grade after the Parent asked the counselor that student be allowed to do so. [Tr. at 62]. I found the testimony of the Student's teachers and administrators convincing that the Student's social and behavioral interactions at school were typical of student's peers in *** and *** grade.

Petitioner presented a Fall 2012 private evaluation by Dr. *** in support of Petitioner's allegations that the Student required special education evaluation for possible AU and required special education services to address student's needs. At the hearing, Dr. *** admitted that he changed his written report *at the request of the Parent* to include a suspicion of AU in a second version of his written report after concluding in his first version that there was no need for an AU evaluation or special education services. [Tr. at 49-50]. I find it troubling, at best, that Petitioner's expert made such a change. Further, the changed second version of the evaluation report as entered into evidence in this proceeding includes no results and/or scores from one of Dr. *** evaluations, the School Motivation and Learning Strategies Inventory, and there are no other reports or measures of the Student's self-view of school functioning contained in the second evaluation report. Additionally, the results reported by the *** grade teacher included, based on *** testimony, a mixture of the *** grade teacher's perceptions as well as the Parent's perceptions. *** had only taught the Student five weeks at the time of this evaluation. Dr. *** written report includes no input from the Student's ***grade teachers who had taught student an entire year, no observation of the Student within the school setting, and no thorough review of school records that would have reflected the Student's successful functioning within the general education setting on student's *** campus. Dr. *** general ADD/ADHD recommendations for the Student, by Dr. *** own admission, are general recommendations for students with ADD/ADHD and are not individualized for the Student. [Tr. at 236]. For all these reasons, I do not find this evaluation persuasive and do not accord weight to the changed written report recommendation that the Student be tested for AU.

The Parent reported an ADD diagnosis for the Student but never provided any further diagnoses from the Student's physician of AU or other disability categories. Petitioner presented testimony from Dr. ***, an LSSP in private practice who met twice with the Parent and only once with the Student prior to the due process hearing. Dr. *** did not gather additional information from the Student's teachers, did not observe the Student at school by the time of the due process hearing, did not review the Student's grades, report cards, or the Section 504 accommodation plan proposed by the District, and was unaware that the Student's teachers did not have concern about the Student's school behavior. Dr. *** agreed that it would be appropriate for the Student to have the general accommodations proposed by Dr. *** into the Student's Section 504 plan as well as a consultation with a behavioral specialist at school, but Dr. *** did not agree that the Student would benefit from additional evaluation. [Tr. at 235-236 and 240-243]. I do not find Dr. *** testimony persuasive that the Student required special education testing and identification as an IDEA-eligible student.

The record before me established that the District did not violate its Child Find duty under the IDEA by not evaluating the Student for special education eligibility. The preponderance of the record evidence shows that the Student did not exhibit a suspected disability that called for special education instruction. The District, however, did not ignore the Student's ADD/ADHD diagnosis or student's classroom needs. Instead, the District's teachers and administrators addressed student's classroom performance and student has remained successful in the general education setting at all times pertinent to this dispute. Even with this general education setting success, the District offered accommodations and consultations with a behavioral specialist regarding the Student's school behaviors. *See Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 272 (3rd Cir. 2012) (no Child Find violation took place where a school district appeared to be invested in addressing the student's needs and in providing appropriate instruction and interventions "before rushing to special education identification").

Upon receipt of Petitioner's request for evaluation on August 20, 2012, the District responded promptly on August 21, 2012 with communication from the District's Executive Director of Special Education, ***. One week later on August 28, 2012, the District's *** committee reviewed the Student's ADD/ADHD diagnosis, information on the Student's progress, and information from the Student's teachers, gathering functional, developmental, and academic data from a variety of sources. This review was sufficiently comprehensive and accurate to reflect the Student's achievement and aptitude levels as well as student's behavioral and social needs. Only after this review did the District make a determination that there were no concerns about the Student's academic, behavioral, or social behavior suggesting that the Student was a student with a suspected disability that required special education instruction in the school setting. Instead, the *** committee found that the Student's needs were being addressed through successful general education interventions and referred the Student for a Section 504 evaluation due to the Student's ADD/ADHD diagnosis. I conclude that the District was fully aware of the Student's needs, including student's ADD/ADHD diagnosis, and determined that these needs could be met in the general education setting with general education interventions.

Interestingly, even if Respondent had identified the Student as having a suspected disability under the IDEA, the record before me established that there would have been no change to the Student's interventions. The preponderance of the evidence shows that the Section 504 accommodation plan proposed by the District contained only the general education accommodations that were already in place in the general education classroom. As Petitioner did not need special education instruction in order to be successful and required no special education evaluation, I conclude that Petitioner did not sustain petitioner's burden to prove Respondent violated the Child Find provisions of the IDEA.

B. Development of the Student's IEP including an FBA and BIP

Petitioner's second, third, and fourth issues concern allegations that the District failed to design an appropriate IEP under the IDEA for the Student, including additional assessment of an FBA and the development of an appropriate BIP to address the Student's behavior. As discussed above, Petitioner did not prove a need for special education services. I turn to Petitioner's program in place during the pertinent period of this dispute.

The record before me shows that the Student made consistent progress under student's general education program provided by the District. Although the Parent to date withheld consent to the Section 504 accommodation plan proposed by the District in October 2012, the same accommodations actually remained in place in the general education classroom up to the time of the due process hearing. With these accommodations, the Student continues to be successful and Petitioner failed to meet petitioner's burden to show otherwise.

It is undisputed that the District did not provide an FBA or a BIP to the Student during the pertinent period. However, neither the IDEA nor its implementing regulations require a school district to provide an FBA or a BIP for students *prior to* or *during* initial disability evaluation. *See* 34 C.F.R. §300.304(b)(1-3). When the Section 504 committee reviewed the Parent's behavioral concerns about the Student on October 15, 2012, the Section 504 meeting participants found no behaviors by the Student that interfered with this school program, yet offered a consult by a BRS in the school setting to address the Parent's concerns. Such a consult, had the Parent given consent, would have been available for ongoing Section 504 committee review and discussion, including any subsequent Section 504 committee determination for development of an FBA or BIP through the Section 504 accommodation plan. [Tr. at 312-313]. To date, however, a BRS consult has not occurred because the Parent withholds consent. I find Petitioner did not sustain petitioner's burden on the second, third, and fourth issues in this dispute.

C. FAPE Provision

Petitioner's fifth issue alleges a failure to provide a FAPE to the Student by not responding to the Parent's attempt to get additional services for the Student. When the District refused to evaluate the Student for special education services, Petitioner argues that the Parent sought private assessment to get help.

The record established that the District provided PWN to the Parent on August 29, 2012, of its decision not to test the Student for special education services. Section 300.503(a) of the IDEA's implementing regulations requires a school district to give written notice to parents within a reasonable time when a school district refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE. 34 C.F.R. §300.503(a). The preponderance of the evidence before me shows that such notice was sent to the Parent along with a copy of the procedural safeguards under the IDEA. 34 C.F.R. §300.504(a)(1). Petitioner failed to prove otherwise.

The Student made progress under the District's general education program, shown by the Student's above average grades and mastery of the general education curriculum. This program, as previously discussed above, received review by both the District's *** and the Section 504 committees in specific response to concerns brought by the Parent, yet the Parent refused the offer of additional supports of a BRS consult or an occupational therapy consultation.

The District's general education program did not remediate the Student's disability, but instead allowed the Student to receive an overall educational benefit within mainstream classes that includes passing grades and advancement from grade to grade. *Klein Independent School Dist. v. Hovem*, 690 F.3d 390, 398 (5th Cir. 2012). Petitioner did not sustain petitioner's burden to show a denial of a FAPE to the Student.

D. Sensory Needs of the Student

Petitioner's sixth issue concerns a failure to address the Student's sensory issues. At the due process hearing, the Parent and *** detailed sensory issues of the Student at home and outside the school environment, including ***, not wanting to sit through movies, and reluctance to participate in some extracurricular activities. Yet the District did not observe the Student exhibit similar sensory issues within the school environment that rose above the level experienced by typical peers. For example, there were no reports by District staff of heightened sensitivities of the Student to noise or unusual interest in *** at school during the pertinent period. Even so, the District responded to the Parent's report of these sensory issues when the Section 504 committee proposed a consultation with the school occupational therapist. To date, because the Parent withholds consent, this consultation has not taken place. Petitioner did not meet petitioner's burden on the sixth issue.

E. Parent Participation

In Petitioner's seventh issue, Petitioner alleges that the District impeded the Parent's ability to participate in the decision-making process regarding the provision of a FAPE to the Student by denying the Parent's request for a special education evaluation and by not addressing the Parent's concerns for the Student's behavior and social issues. By contrast, Respondent presented testimony and documentary evidence to show that the District promptly addressed such concerns at all junctures of this dispute, culminating in the Section 504 accommodations that have yet to be implemented due to the Parent's lack of consent, previously discussed above. Although the Parent had prior notice of the Section 504 meeting held on October 15, 2012, neither parent of the Student chose to participate.

There was an ongoing flow of information between the District and the Parent concerning the Student's progress with frequent, and at times daily, written communication about this progress. Based on the record before me, I conclude that the Parent was included as a full participant in this process and Petitioner has not sustained petitioner's burden on this issue.

F. Supplementary Aids and Services

Petitioner's eighth issue challenges the District's services for the Student, alleging that the Student did not receive needed services because the District failed to identify student as a special education student. Instead, the evidence established that the Student behaved as an average student within student's general education program. Student received appropriate and sufficient instructional accommodations that allowed student to exhibit both academic and non-academic success – all without the addition of special education instruction.

The Student does not need additional tutoring as student makes very good grades. Likewise, the Student did not need social skills training to function socially at school. The Student has friends at school and fully participates in classes, ***, and lunch during the school day. Although the Student does not always use student's class time wisely to finish student's work, student was not atypical from

student's classmates and ultimately did not require more than the average amount of time to complete unfinished work. [Tr. at 256, 287, and 309]. The preponderance of the evidence shows that on the majority of school days in Fall 2012, the Student functioned as a model student, underscored by student's *** grade teacher's report that student had more good than bad days. [Tr. at 129-131 and 146].

There is no evidence in the record before me to support a need for occupational therapy in the school setting to address heightened sensitivity or odd behaviors. The Student did not have emotional outbursts or need to see the counselor for emotional issues, and when given the opportunity to visit with the school counselor individually, the Student did so only once in two school years. [Tr. at 62 and 79]. Petitioner did not sustain petitioner's burden on the eighth issue.

G. Disciplinary Consequences

In petitioner's ninth issue, Petitioner alleges that the Student suffered from punitive consequences for behaviors that might be linked to a suspected disability. Petitioner claims the Student should be protected as a student not yet identified.

Petitioner presented testimony from the Parent and *** regarding the Student's reaction when student's unfinished classwork prevented student from participation in *** activities – student reported that student was “kicked off” ***. The evidence showed, however, that the Student was never “kicked off” ***. In fact, the Student missed participating in *** activities in approximately the same amount as other *** members when they did not complete their classwork. [Tr. at 261-262 and 283]. Petitioner also claimed the Student had to *** more than once for incomplete classwork. Instead, the preponderance of the record evidence established that on no more than three occasions, the Student had *** for unfinished homework just like all other *** grade students on the campus who failed to complete classwork. [Tr. at 111 and 286-287].

Based on the totality of the record before me, the Student remained subject to the general education consequences and expectations on student's *** campus. The Student's teachers had high expectations of the Student and student's peers that required classwork and homework completion to achieve the goal of getting an education. These requirements are not inconsistent with the IDEA. Although the IDEA prohibits a disciplinary change of placement for eligible students, it does not prohibit consequences, designed to discipline students with disabilities, and strategies, “designed to correct behavior by imposing disciplinary consequences.” *See* Comment to 34 C.F.R. §300.530(e), 71 Fed.Reg. 46721. On the facts before me, there was no disciplinary change of placement of the Student and Petitioner did not sustain petitioner's burden on the ninth issue.

H. Peer Interaction and Social Skills

Petitioner's tenth issue concerns whether or not the District addressed the Student's peer interaction and social skills needs. Petitioner presented a variety of concerns from the Parent about social and emotional adjustment of the Student at home such as no friends outside school, ***, and unwillingness to participate in scouting. However, these concerns are not seen at school. As previously discussed, the Student interacts normally within the school environment.

The record also shows that when the Student experienced impact to student's school day over two weeks in *** grade due to *** before school, the District relayed this information to the Parent.

[Tr. at 137-138]. As the Student functioned well at school in all school social settings, I conclude Petitioner did not sustain petitioner's burden on this issue.

In conclusion and for the above-stated reasons, I find that the presumption of the appropriateness of the District's general education program for the Student withstands challenge in this dispute. Petitioner did not meet petitioner's burden to show that the District's program for the Student failed to provide a FAPE, the District violated the IDEA, or the Student needed specially designed instruction. As a result, I decline to award any relief to Petitioner.

Conclusions of Law

1. Respondent is the local educational agency responsible for determining the Student's eligibility for special education and related services under the IDEA. 20 U.S.C. §1400, *et. seq.*, and its implementing regulations.
2. The one-year statutory period applies in this dispute. Petitioner failed to plead any exceptions to the Texas one-year limitations period, did not respond to Respondent's Motion, and did not seek leave to amend petitioner's due process complaint. *El Paso Indep. School Dist. v. Richard R.*, 567 F.Supp. 2d 918, 944 (W.D. Tex. 2008); *rev'd in part on other grounds, El Paso Indep. School Dist. v. Richard R.*, 591 F.3d 417 (5th Cir. 2009); 34 C.F.R. §§300.508(d) and 300.511(f); 19 TEX. ADMIN. CODE §89.1151(c).
3. The educational plan developed by the school district is presumed appropriate and the burden of proof for challenging that program is placed on the party making the challenge. Petitioner bears the burden of proof in this dispute. *Shaeffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 536-537 (2005); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011(5th Cir. 2011).
4. Respondent did not commit procedural error and complied with all procedures under the IDEA in this dispute. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Dist.*, 328 F.3d 804 (5th Cir. 2003); 34 C.F.R. §§300.503(a) and 300.504(a)(1).
5. Petitioner did not meet petitioner's burden to show denial of a FAPE to the Student by Respondent. The Student received an overall educational benefit within mainstream classes that includes passing grades and advancement from grade to grade. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 207-208, 102 S.Ct. 3034, 3051 (1982); *Klein Independent School Dist. v. Hovem*, 690 F.3d 390, 398 (5th Cir. 2012); 34 C.F.R. §300.111(a), (c)(1).
6. Respondent, at all times pertinent to this dispute, complied with its Child Find duty regarding Petitioner. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. §300.111(a), (c)(1).
7. Respondent was not required to evaluate the Student for special education services. The Student made progress under student's general education program without the need for specially designed instruction and is not entitled to an FIE or an IEE. 34 C.F.R. §300.111(a), (c)(1).

8. The Student's diagnosis of ADD/ADHD did not require special education and related services in order for the Student to progress under the District's general education program. *Alvin Ind. Sch. Dist. v. A.D.*, 503 F.3d 378, 384; *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 272 (3rd Cir. 2012); 20 U.S.C. § 1401(3)(A); 34 C.F.R. §§300.8 and 300.111(a)(1).
9. Respondent was not required to provide an FBA or a BIP to the Student during the pertinent period as the Student is not a student with a disability under the IDEA. 34 C.F.R. §§300.8, 300.111(a), (c)(1), and 300.304(b)(1-3).
10. Petitioner did not provide consent for services under Respondent's Section 504 accommodation plan that included a behavioral consult and an occupational therapy consult for the Student. Because the Student is not a student with a disability under the IDEA, Respondent was not obligated to provide a behavioral consult or an occupational therapy consult as part of a special education program. 34 C.F.R. §§300.8 and 300.111(a), (c)(1).
11. Respondent was not required to provide supplementary aids and services to the Student under the IDEA and its implementing regulations. The Student made progress and showed academic and non-academic success under student's general education program without the need for supplementary aids and services. 34 C.F.R. §§300.8 and 300.111(a), (c)(1).
12. Respondent was not required to provide counseling to the Student or social skills training under the IDEA. The Student made progress with peer interactions in student's general education program without additional counseling services or social skills training and is not a student with a disability under the IDEA. 34 C.F.R. §§300.8 and 300.111(a), (c)(1).
13. Respondent at all times pertinent to this dispute included the Parent as a full participant in the District's decision-making process regarding the provision of a FAPE to the Student. 34 C.F.R. §§300.503(a) and §300.504(a)(1).
14. Respondent did not propose and did not make any disciplinary change of placement for the Student. The Student, as a general education student, remained subject to general disciplinary guidelines at student's elementary school campus. 34 C.F.R. §300.530(e).
15. Petitioner is not entitled to any award or reimbursement in this dispute as Petitioner did not meet petitioner's burden to prove any violation of the IDEA by Respondent.

ORDERS

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the relief requested by Petitioner is **DENIED**.

IT IS FURTHER ORDERED that any and all additional or different relief not specifically ordered herein is **DENIED**.

Signed this 25th day of January 2013.

/s/ Mary Carolyn Carmichael

Mary Carolyn Carmichael
Special Education Hearing Officer

NOTICE TO THE PARTIES

This decision is final and immediately enforceable, except that any party aggrieved by the findings and decision may bring a civil action in any state court of competent jurisdiction or in a district court of the United States as provided in 20 U.S.C. §1415(i)(2); 34 C.F.R. §300.516; and 19 TEX. ADMIN. CODE §89.1185(o).

DOCKET NO. 032-SE-1012

STUDENT, b/n/f PARENT § BEFORE A SPECIAL EDUCATION
Petitioner §
§
v. § HEARING OFFICER
§
CARROLLTON-FARMERS BRANCH §
INDEPENDENT SCHOOL DISTRICT, §
Respondent § FOR THE STATE OF TEXAS

SYNOPSIS OF DECISION

- A. **ISSUE:** *Whether the District timely complied with Child Find provisions to evaluate the Student in all areas of suspected disability?*
HELD: For the District
CITATION: 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. §300.111(a), (c)(1).
- B. **ISSUE:** *Whether the District failed to develop and implement an appropriate individualized education program for the Student, including additional assessment of a Functional Behavioral Assessment and the development of an appropriate Behavioral Intervention Plan?*
HELD: For the District
CITATION: 34 C.F.R. §§300.8, 300.111(a), (c)(1), and 300.304(b)(1-3).
- C. **ISSUE:** *Whether the District provided a Free Appropriate Public Education (“FAPE”) for the Student?*
HELD: For the District
CITATION: 34 C.F.R. §§300.111(a), (c)(1), 300.503(a), and 300.504(a)(1).
- D. **ISSUE:** *Whether the District addressed the Student’s sensory issues?*
HELD: For the District
CITATION: 34 C.F.R. §§300.8 and §300.111(a), (c)(1).
- E. **ISSUE:** *Whether the District significantly impeded the Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student?*
HELD: For the District
CITATION: 34 C.F.R. §§300.503(a) and 300.504(a)(1).
- F. **ISSUE:** *Whether the District failed to provide appropriate supplementary aids and services for the Student?*
HELD: For the District
CITATION: 34 C.F.R. §§300.8 and §300.111(a), (c)(1).

Student, b/n/f Parent v. Carrollton-Farmers Branch I.S.D.

Synopsis of Decision

G. **ISSUE:** *Whether the District failed to consider the Student's areas of disability when imposing punitive consequences directly linked to those disability areas?*

HELD: **For the District**

CITATION: 34 C.F.R. §300.530(e).

H. **ISSUE:** *Whether the District failed to address the Parent's concerns regarding the Student's peer interactions and social skills?*

HELD: **For the District**

CITATION: 34 C.F.R. §§300.8 and §300.111(a), (c)(1).