

STUDENT, <i>B/N/F</i> PARENT & PARENT,	§	BEFORE A SPECIAL EDUCATION
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
CYPRESS-FAIRBANKS INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

On September 19, 2019, Student, *b/n/f* Parent & Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Cypress-Fairbanks Independent School District (“Respondent” or “District”), requesting an impartial Due Process Hearing before a Special Education Hearing Officer (“SEHO”), pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). 20 U.S.C. §1400 *et. seq.* On that same day, TEA assigned this matter to the undersigned SEHO and sent a copy of the Complaint and Notice of Filing to Respondent.

Student asserted multiple issues in Student’s Complaint. Specifically, Student asserted that the District denied Student a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”) based upon the following violations of IDEA, as well as numerous non-IDEA statutes, occurring from 2008 to the present:

1. whether the District failed to propose and fully implement, in a timely manner, an Individualized Education Program (“IEP”) for the Student;
2. whether the District failed to evaluate Student in a timely, appropriate, and/or comprehensive manner;
3. whether the District failed to comply with the Student’s and Parents’ procedural rights; and
4. whether the District violated the Student’s and Parents’ rights under other causes of action (for purposes of exhaustion). This includes legal issues pursuant to Section 504 and the

Americans with Disabilities Act consistent with *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017).¹

Petitioner requests that the Hearing Officer determine that the Student has been denied the right to FAPE, occurring between 2008 and the present, and award the following relief:

1. the District will provide Student eligibility and an appropriate IEP in the LRE that complies with all the procedural and substantive requirements of IDEA and Texas special education laws;²
2. if the District cannot provide appropriate services to the Student, then the District will reimburse the Parents for the placement they assembled for the Student, including past reimbursement for private services, evaluations, mileage, future private placement, evaluations, and/or related services going forward for the time period determined by the SEHO to be appropriate; and
3. the District will provide the relief that the SEHO deems appropriate, or which is recommended by the Student's experts and evaluators, including compensatory educational services and/or staff training on the violations of law found by the SEHO.

Respondent pled the affirmative defenses of the one-year Statute of Limitations and laches.

II. PROCEDURAL HISTORY

Student filed Student's Complaint with TEA on September 19, 2019. Also on that date the undersigned sent the Parties Order No. 1: Initial Scheduling Order of the Special Education Hearing Officer, which set out the following deadlines pursuant to the mandatory deadlines contained in IDEA: (1) October 28, 2019: prehearing telephone conference ("PHC"); (2) November 5, 2019: Disclosure Deadline; (3) November 13, 2019: Due Process Hearing; and (4) December 3, 2019: Decision Deadline.

On October 28, 2019, the Parties convened the PHC. In attendance were the following: (1) Ms. Dorene Philpot, Petitioner's counsel; (2) Mr. *** and Ms. ***, Petitioner's Parents; (3) Ms. Merri Schneider-Vogel and Ms. Brianna Zook, Respondent's counsel; (4) Ms. Marney Collins Sims, Respondent's General Counsel; (5) Ms. ***, Respondent's Director of Special Education; (6) the undersigned Hearing Officer; and (7) the court reporter, who made a record of the telephone conference. The Parties discussed the issues and jointly requested a continuance of the Disclosure, Due Process Hearing, and Decision Deadlines. Finding good cause for the requested continuances, the undersigned granted the requests and the Parties mutually agreed upon

¹ Section 504 of the Rehabilitation Act of 1973 ("Section 504") as amended, 29 U.S.C. §794; Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12131 *et seq.*, as amended by the ADA Amendments Act of 2008 ("ADAAA"), Public Law 110-325, 122 Stat. 3553 (2008); the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. 1232g; the No Child Left Behind Act of 2001 ("NCLBA"), 20 U.S.C. 6319 (2002); Section 1983 of the Civil Rights Act of 1964, 42 U.S.C. §1983; Title VI and VII of the Civil Rights Act of 1964; the Technology Related Assistance for Individuals with Disabilities Act of 1988, 29 U.S.C. §2109; the Improving Access to Assistive Technology for Individuals with Disabilities Act of 2004, Public Law 108-364; the Civil Rights Attorney's Fee Award Act of 1976, 42 U.S.C. §1988, 28 U.S.C. 211927, 29 U.S.C. §794a(b).

² Included in this general request are the following: changes or additions of eligibility areas, placement, services, accommodations, modifications, goals/objectives, and/or evaluations in all areas of suspected disability or need, potentially including one, or more, Independent Educational Evaluations ("IEEs").

the following hearing deadlines, which were set out in the SEHO's Order No. 2: (1) February 3, 2020: Disclosure Deadline; (2) February 11-14, 2020: Due Process Hearing; and (3) March 5, 2020: Decision Deadline. Likewise, the undersigned dismissed all of Petitioner's claims over which Texas SEHOs have no jurisdiction: claims lodged under non-IDEA statutes and claims for attorneys' fees.

On February 3, 2020, the Parties filed a second Joint Motion to Continue Hearing, Disclosure Deadline, and Hearing Decision Deadline, alleging that, under the current setting, there was insufficient time for the Parties to collect and review records from third-party providers and to work out agreements related thereto. Finding good cause for the jointly requested continuance, the undersigned granted the continuance and set out the rescheduled hearing and attendant deadlines in the SEHO's Order No. 4: (1) April 2, 2020: Disclosure Deadline; (2) April 13-16, 2020: Due Process Hearing; and (3) May 21, 2020: Decision Deadline.

On March 27, 2020, the Parties filed their third Joint Motion to Continue Hearing, Disclosure, and Decision Deadlines. The Parties noted the current Covid-19 pandemic, as well as the Parties' problems with document production, as grounds for the continuance. The Parties likewise provided dates for the continued deadlines. Finding good cause for the third Joint Motion for Continuance, the undersigned granted the continuance and rescheduled the hearing deadlines in the SEHO's Order No. 7: (1) April 27, 2020: Disclosure Deadline; (2) May 5-8, 2020: Due Process Hearing; and (3) June 8, 2020: Decision Deadline.

On April 23, 2020, the Parties filed a fourth continuance motion, specifically requesting that the Due Process Hearing be rescheduled for a time when the Parties could have an in-person hearing. Because of the Covid-19 pandemic and continuing discovery issues, the Parties presented joint dates for the rescheduled hearing and attendant deadlines. Finding good cause for the fourth Joint Motion for Continuance, the undersigned granted the continuance and rescheduled the hearing deadlines in the SEHO's Order No. 10: (1) September 28, 2020: Disclosure Deadline; (2) October 6-9, 2020: Due Process Hearing; and (3) November 13, 2020: Decision Deadline.

The Parties made their Disclosures timely and the SEHO convened a hybrid Due Process Hearing on October 6-9, 2020: the majority of the testimony was presented in person with some being heard via ZOOM. Both Parties introduced documentary evidence; Petitioner called several witnesses, who were cross-examined by Respondent; Respondent called several witnesses, who were cross-examined by Petitioner.

During the Hearing, Petitioner was represented by Petitioner's counsel (1) Ms. Dorene Philpot and Ms. Jennifer Lynn Swanson; and (2) Student's Parents.

Respondent was represented by its counsel (1) Ms. Merri Schneider-Vogel and Ms. Ashley K. Addo; and (2) Ms. Marney Collins Sims, Respondent's General Counsel.

At the conclusion of the Hearing, the Parties requested additional time for filing their written Closing Arguments and for the SEHO's delivery of the Final Decision, which was granted. Accordingly, the Closing Arguments would be due on, or before, November 19, 2020, and the Decision would issue on, or before, November 30, 2020.

On November 16, 2020, the Parties requested additional time for filing their written Closing Arguments and for the SEHO's delivery of the Final Decision due to counsel's illness. This request was granted and the

SEHO set the Parties' Closing Arguments for November 26, 2020, and the Decision Deadline for December 7, 2020.

Both Parties filed and served their Closing Arguments on the agreed briefing deadline, November 26, 2020. This Decision of the Special Education Hearing Officer is being delivered to the Parties on the agreed Decision Deadline of December 7, 2020.

III RESOLUTION SESSION

On October 3, 2019, the Parties convened the Resolution Session but did not reach an agreement.

IV. FINDINGS OF FACT ³

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is a ***-year-old *** who is currently ***. Student and Student's family have lived within the District's boundaries since *** [T1.276].
3. Student has superior intellectual skills with a full-scale Intelligence Quotient ("IQ") of between *** [P.2.6 & 26; T3.983]. At the time of the hearing, Student had a Grade Point Average ("GPA") of *** , which is *** percent over the six point base; Student was in the *** percent of Student's class [T3.1167].
4. Notwithstanding Student's superior intellectual skills and performance, Student has multiple health issues, including *** [P.2.6]. The level of symptoms for these health problems may vary in severity and include ***. Student's physicians have warned that Student requires close supervision because with any potential trauma Student is at risk for *** [P.11; P.35.101]. Student should avoid ***; Student should not ***; Student should avoid ***; Student should not *** [P.9.1].
5. On January ***, which was during Student's *** grade, the District convened a Section 504 Committee to create Student's Section 504 Plan [P.5]. Student has maintained a 504 Plan every school year since *** grade.
6. Student's health issues prevent Student from attending school on a daily basis. Because of doctors' visits and episodes of symptoms Student is unable to attend school regularly. As such, Student is constantly in a state of making up work and tests in school and at home. Between final grading periods Student struggles with failing grades due to Student's excessive absences and multiple missed assignments and tests. These failing grades are high stressors for Student [T3.736]

³ References to the Due Process Hearing Record are identified as follows: "T#.#.#" refers to the four-volume Court Reporter's Transcription of testimony made on October 6-9, 2020, and the specific volume, page, and line numbers contained therein; "P#.#" refers to Petitioner's Exhibits by number and page; and "R#.#" refers to Respondent's Exhibits by number and page.

& 833].

7. When Student was in the *** grade, Student's Parents informed the District that Student was having anxiety over a *** class project that had to be completed in class. Student could not complete Student's work in class so Student had to work on the project at home. This became an enormous stressor causing Student to have panic attacks and the inability to start Student's project or envision how the project would look. The Parents decided to remove Student from this *** class and put Student in an *** class [T3.723-24]. This episode was the first time that the Parents discussed Student's anxiety with school personnel [T3.723]. It was at this time that Student's Parents started taking Student to outside counseling [T3.756].
8. Student's anxiety has escalated since Student ***. Because of Student's numerous absences, coupled with the increase in work in Student's *** classes, Student manifests *** [P.2.5].
9. Student has not been identified as a student qualifying for special education and related services.

School Year 2017-2018: * Grade**

10. Student started at *** as a *** grader in the 2017-18 school year. Upon Student's enrollment, the District provided Student's Section 504 accommodations to all of Student's teachers [R.231].
11. On October ***, 2017, Student's Section 504 Committee convened and conducted an annual evaluation to review and update Student's plan [R.20]. The Parents brought a Special Education Advocate to this meeting. Student's Parents provided the District with information about all of Student's diagnoses; the Committee considered evaluation data from a variety of sources, including Parents, teacher, and administrator input; grade reports; school health information; and medical evaluations, diagnoses, and physical condition. The plan included seven (7) accommodations for Student:
 - a. ***;
 - b. Frequent breaks as needed;
 - c. Extra time to make up assignments; for long periods of absences, the Section 504 Coordinator and counselor would create a schedule for making up missed grades/tests;
 - e. Student would notify teachers when Student's *** or if additional time was needed on original or make-up work, as long as it did not affect the pace or rigor of the course;
 - f. The nurse and Parents will collaborate on training teachers on Student's disorders;
 - g. Student would be allowed to type notes or homework instead of handwriting them; and
 - h. Student would be allowed to ***.

[R.20.5-6].

12. In addition to the Section 504 Plan, Student also had an Individualized Health Plan (“IHP”) that was created by Student’s Parents and the *** school nurse. The IHP provided detailed information about Student’s various medical conditions, including the symptoms of those conditions [R.20.7-10]. The IHP noted five (5) accommodations:
- a. Student would ***; Student would ***;
 - b. Student would ***;
 - c. Student would ***;
 - d. Student would ***; and
 - e. Student would be allowed to ***.

[P.33.10-13; R.20.7-10].

The IHP also contained an Emergency Plan [R.20.7].

13. The Student’s teachers received a copy of Student’s IHP on November ***, 2017. On November ***, 2017, the school nurse discussed and reviewed the IHP with Student’s teachers and Student’s Parents [R.2].
14. On October ***, 2017, Student’s Parent requested that the District perform a Full and Individual Evaluation (“FIE”) to identify whether Student qualified for special education and related services [P.33.6; R.1.1]. Ms. ***, the campus Academic Achievement Specialist and Section 504 Coordinator, along with the campus assistant principal and counselor, reviewed Student’s educational data: grades, attendance, teacher observation and data, STAAR results, bench markings, health reports and Health Plan. Based upon this review, the District denied the request for an FIE because of Student’s “academic progress in all classes” at the time [R.1.2; T2.423-24]. On October ***, 2017, the District informed the Parents that the requested evaluation was denied [P.33.9].⁴
15. On November ***, 2017, Student’s Parent again requested that the District perform an FIE [P.33.14; R.2.1-4]. The Parents included a summary of the areas of need that the Parent’s viewed as very concerning and warranting a special education evaluation. The Parents fully acknowledged that Student’s academic progress was impressive despite Student’s multiple health issues; Student had high grades in *** classes. The Parents proffered their belief that Student qualified for special education and related services as a student with an Emotional Disturbance (ED) and Other Health Impairment (OHI) [R.2.2]. The Parents further believed that Student was***. At home, Student was manifesting profound issues with *** and anxiety. Student *** and said Student did not want to go to school. Student x***. The Parents believed that Student required a special education plan for

⁴ There was much debate over this denial and whether the District sent the Parents a copy of the refusal and Procedural Safeguards. The District asserts that its representative did include a copy of the Procedural Safeguards in the packet that Student took home. The Parents assert that they never received a copy of the Procedural Safeguards at that time. Both parties were under oath when presenting this testimony.

- developing social skills for self-advocacy, coping skills to address Student's anxiety and the effect that Student's medical conditions had on Student's performance at school, and counseling services through special education [R.2.2-4].
16. Ms. ***, the District's Special Education Director, informed the Parents that when a Parent requests an FIE, the District can either agree to, or deny, the FIE. If denied, then Prior Written Notice and Notice of Procedural Safeguards are required to be given to the Parents [T1.146]. In this case, the District neither agreed to provide nor denied the FIE request of November ***, 2017. Rather, the Special Education Director offered a psychological consult [T1.146].
 17. A psychological consultation in school is a process in which psychological services professionals use their expertise to provide advice or guidance to school staff in order to improve a child's emotional, behavioral, social, or academic functioning [R.2.6].
 18. The Parents signed the consent for the psychological consultation on November ***, 2017 [R.4.2]. The psychological consult was logged into the District's system on December ***, 2017 [R.4.3]. Although the Parents revoked consent on December ***, 2017, they executed another consent on January ***, 2018 [R.4.7].
 19. Dr. *****, a Licensed Specialist in School Psychology ("LSSP") employed by the District, conducted the psychological evaluation [R.5]. Dr. ***** met with Student twice, observed Student twice, and met with the Parents twice [R.7; T3.916].
 20. At these meetings, the Parents reported concerns about Student's***. Student's biggest *** at the time was ***. However, the largest impact on Student's school day was***. The Parents wanted Student to have alternative options in Student's class assignments, allowing Student to have exposure to the same curriculum as other students, but with consideration for Student's***. They noted that Student does not want to draw attention to ***self and does not ask for ***[R.7.1-2].
 21. Dr. ***** had a telephone conference with Student's therapist, Dr. ***, and reviewed written information from her [R.6.46-47]. Dr. *** noted Student's problems with self-advocacy and coping. Dr. *** recommended that Student receive (a) extended time on assignments and tests; (b) no penalty for late work; (c) shortened assignments; (d) help from teachers without having to ask for help; and (e) hard copies of notes and assignments when absent or present [R.6.46-8].
 22. Dr. ***** reviewed written information from Student's doctor, Dr. ***, who recommended that Student (1) receive additional time for homework, studying for tests, assessments and quizzes when Student***; (2) reduced homework with fewer or abbreviated assignments; and (3) additional time to travel between classes as well as water and restroom breaks [R.6.29].
 23. Dr. ***** gathered information from Student's teachers, including Student's *** teachers. All of Student's *** grade teachers provided positive comments about how Student performed in class. Student's teachers did not report any problem with Student's ability to concentrate; they did not observe Student as being frustrated in class. Student's *** teacher noticed that in the beginning of the year, Student would disconnect by not doing Student's work. After several talks, Student gained confidence and excelled. Student's *** teacher routinely worked with Student to catch Student up

when Student was absent by giving Student time to do Student's work; this teacher also watched for Student's stress and anxiety levels. Student's *** teachers all noted that they did not have to take any steps to assist Student. Student's *** teacher noted that Student occasionally needed extended time to complete work when Student was absent [R.5]. Student ultimately ***.

24. Student met with Dr. ***** one (1) time without Student's Parents. Student informed Dr. ***** that school demands and anxiety decreased after Student ***. This allowed Student to enjoy having more time to relax and interact with friends. Student acknowledged that Student used coping methods, such as *** all of which seemed to be working. Student did not notice *** during the school day, but when Student got home, Student realized Student *** and noticed Student's anxiety [R.7.2; T3.914-15; 930-31].
25. Based on all the information, on February ***, 2018, Dr. *** drafted a Report that included educational recommendations and strategies: (1) provide Student with time estimates for assignments to let Student know how much time Student will be expected to spend on class assignments; [R.7.4-5; T3.922]; (2) offer Student breaks or assistance with organizing Student's makeup work as subtly as possible to avoid Student's feeling singled out; (3) following an extended absence, provide Student with an opportunity to develop an individualized plan to catch up on learning and any missing work [R.7.4-5; T3.924-27]; (4) provide Student the opportunity to discuss with a nonjudgmental listener, such as Student's parent, a school counselor, or other trusted adult, Student's; (5) encourage Student's development of self-advocacy; (6) allow Student additional time for make-up work or for additional time when Student does not feel well; (7) alternatively, allow Student to use an application on Student's phone or another device that would remind Student to consider taking a break; and (8) *** [R.7.4-5].
26. On March ***, 2018, the District sent Dr. ***'s recommendations to all of Student's *** grade teachers [R.24].

School Year 2018-19: * Grade**

27. On September ***, 2018, Student's Section 504 Committee convened to evaluate Student and update Student's plan based on the psychological recommendations provided by Dr. *** as well as new information from the Parents related to Student's new diagnoses of ***, and ADHD-Inattentive. The 504 Committee clarified Student's accommodations for school year 2018-19:
 - a. Organizational Strategies: When absent for three (3) or more consecutive days provide assistance with organizing tutorial/reteach opportunities, make-up assignments and tests;
 - b. Student will notify teacher if *** necessitates a break or if additional time is needed (original or make up work) when it does not affect the pace or rigor of the course;
 - c. Technology: Allow Student the option to***;
 - d. ***;
 - e. Student will be allowed breaks as needed***. Teacher may offer a break. Student may***;

- f. Student may ***;
- g. The 504 Coordinator will review accommodations with teachers;
- h. Staff will use positive reinforcement when Student self-advocates;
- i. Student may choose to use a***. Student also may need to***;
- j. Implement psychological recommendations and health plan. (Updated February ***, 2019; Notes continued on the next page). ⁵

[R.21.8-9].

- 28. On September ***, 2018, Ms. *****, who became the campus Academic Achievement Specialist in March 2018, sent Student's *** grade teachers a copy of Student's Section 504 Plan with notes attached, Student's Health Plan, and Dr. ***'s recommendations. Within her email, she also mentioned conducting a training with the teachers about Student's plan.
- 29. On September ***, 2018, Ms. *** and the School Nurse conducted a training for Student's *** grade teachers. The trainers reviewed Student's accommodations, and the intention behind each, reviewed Student's Health Plan, and provided the teachers the opportunity to ask questions [T3.807, 822, 1134, 1136; R.27].
- 30. In early February 2019 Ms. *** sent a copy of Student's 504 Plan and Health Plan to Student's new teachers in spring 2019. This was a delay in distributing Student's plans because Ms. *** was unaware that Student had new teachers in the spring. After these teachers received Student's 504 and Health Plans, Ms. *** met with the new teachers to review and ensure they understood Student's accommodations and medical conditions [T3.844].
- 31. On February ***, 2019, Ms. *** sent Student's teachers an update of the September 2018 Section 540 Plan, which clarified Student's accommodations [R.21.9]. Teachers were instructed to provide Student with***. These *** during an exam. If Student did***. Teachers were also informed that because Student has trouble sometimes focusing on exams, teachers should have alternative testing environments for Student; they should offer breaks to allow Student to complete the test in smaller sections; and they should postpone a test if Student was not ready to take it [T3.811-14; R.21.9].
- 32. On April ***, 2019, Student's Parents again requested an FIE. The District agreed to do the FIE and the Parents provided informed consent for the FIE [R.9.4-5]. The suspected areas of disability were OHI, for medical diagnoses, and ED [R.9.3]. ⁶
- 33. In May 2019, Student's Parents sent an email to the District accusing the school of failing to

⁵ Accommodation "j" was not included in Student's Plan at the time of the September ***, 2018, meeting. This accommodation and continued notes were included at the February ***, 2019, Section 504 meeting [T3.806].

⁶ The District completed Student's FIE in August 2019.

implement Student's 2018-19 Section 504 Plan

PSYCHOLOGICAL EVALUATION BY DR. ***, PH.D., LSSP [P.2]:**

34. Dr. *** conducted a private psychological evaluation of Student on March ***, April ***, and ***, 2019 and issued his Report on June ***, 2019 [P.2.1]. In addition to reviewing numerous educational records and reports from treating physicians and therapists, Dr. *** administered the following:
- a. Wechsler Intelligence Scale for Children-V (“WISC-V”): This is a cognitive ability measure, which comprises a set of individually administered subtests. The scores are used to calculate four (4) index scores: (1) Verbal Comprehension, (2) Perceptual Reasoning, (3) Working Memory, and (4) Processing Speed. The result of the scores on these indexes generates a Full-Scale IQ. Student's overall intellectual ability, as assessed by the Full-Scale IQ index, was between ***, which is in the very high range [P.2.11-12, 26].
 - b. Wechsler Intelligence Scale for Children-V Integrated (“WISC-V Integrated”): This is an individually administered clinical instrument for assessing the cognitive processes of children. It provides additional information about a child's cognitive processes; it is organized by five (5) cognitive domains defined in the WISC-V: (1) Verbal Comprehension, (2) Visual Spatial, (3) Fluid Reasoning, (4) Working Memory, and (6) Processing Speed. Student was tested on the Block Design Multiple Choice subtest to evaluate the influence of motor planning and execution demands on performance. This subtest requires visual-spatial perception and discrimination but reduces the motor demand by having the child select the correct response instead of constructing a pictured design. Student scored in the average range. Student's score on the Block Design subtest indicated that Student had no problems with working memory limitations [P.2.12-13].
 - c. NEPSY-II: This is a normed comprehensive instrument designed to assess neuropsychological development across six (6) functional domains: (1) Attention and Executive Functioning, (2) Language, (3) Memory and Learning, (4) Sensorimotor, (5) Social Perception, and (6) Visuospatial Processing. The Inhibition subtest of the Attention and Executive Functioning domain assesses the ability of a child to inhibit automatic responses in favor of novel responses and the ability to switch between response types. Student scored in the superior range for inhibition completion and inhibition conditions; Student scored in the average range for switching completion time and naming completion time conditions; and Student scored in the average range for switching combined condition [P.2.13].
 - d. Delis-Kaplan Executive Function System (“D-KEFS”): This is a set of tests used to evaluate higher level cognitive functions in both children and adults [P.2.13].
 - e. WIAT-III: This is an individually administered measure of oral language, reading, written language, and mathematics. This test is used to identify academic strengths and weaknesses; inform decisions regarding eligibility for educational services, educational placement, or diagnosis of a specific learning disability; and is used in the design of instructional objectives and planning of interventions. Student's scores on the subtests

ranged from average to superior [P.2.15-16].

- f. Behavior Assessment System for Children 3rd Edition (“BASC-3”): The BASC-3 rating scales assess behavioral problems as well as strengths and weaknesses of adaptive behavior (skills for everyday functioning). The clinical scales measure maladaptive behavior while the adaptive scales measure pro-social skills [R.10.19]. Clinical scales include measures of externalizing and internalizing behavior problems; high scores on the clinical scales are in the “clinically significant range” and suggest a high level of maladjustment; lower scores on the clinical scales are in the “at-risk range” and suggest either a significant problem that may not be severe enough to require formal treatment or a potential of developing a problem that needs careful monitoring [R.10.19]; very low scores on the adaptive scales represent clinical significance [R.10.].

These rating scales include (1) the Teacher Rating Scales, (2) Parent Rating Scales, and (3) a Self-Report of Personality.

Student rated ***self; all validity index scores were in the acceptable range. For clinical problems items, Student scored in the “clinically significant range” on the***. Student also scored in the “at-risk range” for anxiety, attention problems, and internalizing problems. All adaptive scores were in the “average range,” with relative strengths in Student’s relationship with others and a relative weakness in self-esteem.

Student’s Parent completed a rating scale. There were no elevations indicating problems for the validity indexes. On the clinical problems the Parents scored in the “clinically significant range” for anxiety, internalizing problems; all other clinical problem scales were in the “average range”; the adaptive behavior scales scores were in the “average range”; and there were no elevated scores for the executive functioning index.

Ms. ***, the Director of Instruction at ***, completed a rating scale. Ms. *** rated Student in the “acceptable range” on the validity index summary; “clinically significant” on the***; all other problem scores were in the “average range”; all adaptive scores were in the “average to above-average range”; all executive functioning summary scores were rated as “not elevated”; all content scales were in the “average range,” except for resiliency, which was in the “above-average range”; ratings for ADHD probability and executive functioning indicated fewer problems than those of an average person.

Ms. ***, Student’s *** teacher, completed a rating scale. Validity scores were in the “acceptable range”; all clinical problems and adaptive skills scales were in the “average range”; all content scales were in the “average range”; all executive functioning index summary scores were “not elevated.”

Mr. *** completed a rating scale. The validity index summary was in the “acceptable range”; the *** was rated “clinically significant”; all problem scores were rated in the “average range”; all adaptive scores were in the “average to above-average range”; all executive functioning summary scores were rated as not elevated; all content scales were in the “average range” [P.2.18].

- g. School Questionnaire: Three (3) teachers also completed a questionnaire on Student's academic, social, behavioral, emotional, and organizational performance, as well as potential obstacles, strengths, and ability to receive instruction. While the teachers were concerned about Student's multiple health issues and excessive absences, they described Student as getting along well with adults and peers; Student seemed happy with Student's friends; Student is incredibly intelligent and independent and is able to process problems and new learning. Student is responsible, very motivated, very teachable, and receives feedback and correction well. Teachers had no concerns regarding self-care, hygiene, sleep, communication, sensory issues, motor issues, ability to pay attention, ability to recall formation, learning from mistakes, or being organized [P.2.19-20].
35. Dr. *** noted that based upon information from Student's Parents, Student has been forced to take *** classes [P.2.20]. This is an incorrect statement.
36. Dr. *** reported that Student was unable to participate in *** due to a lack of accommodations. This is an incorrect statement [P.2.21].
37. Dr. *** reported that Student had to *** in fall 2019 due to an inadequate Section 504 Plan and the District's unwillingness to provide additional support. This is an incorrect statement [P.2.21].
38. Dr. *** found that Student qualified for special education and related service as ED based upon Student's ***. Specifically, Student qualified due to Student's *** [P.1.21]. Dr. *** found that Student's school performance was negatively impacted: (1) Student's history of significant absences over a period of years making Student unavailable for instruction; (2) withdrawal from***; (3) having to *** classes due to challenges with Student's work load but not Student's ability; (4) limited participation in extracurricular activities; (5) lowered grades; (6) receiving incompletes and working 2-3 weeks past a grading period to make up work; (7) inability to receive instruction due to having to make up work; and (8) fewer social opportunities as well as heightened stress and anxiety [P.2.21].
39. Dr. *** also found that Student qualified for special education and related services under OHI [P.2.21].
40. Dr. ***'s findings that Student qualified for special education and related services as ED and OHI were based upon his determination that Student's disabilities affect, to a marked degree, Student's educational performance [P.2.21].

THE DISTRICT'S FIE [R.10]:

41. Student's FIE was completed on August ***, 2019. Dr. ***, a Ph.D. in psychology and an LSSP, completed the emotional/behavioral portions of the FIE.⁷ Ms. ***, a District Diagnostician, conducted the psychoeducational portion of the evaluation.⁸

⁷ Dr. *** has twenty-four (24) years of experience as a psychologist and LSSP; she supervises individuals working on their doctoral degrees and those who have completed their doctoral degrees [R.51; T3.1035].

⁸ Ms. *** has fifteen (15) years of experience as a Diagnostician and twenty-two (22) years of experience in education [T3.972].

42. Dr. *** collected extensive information when completing the FIE. This included interviews with Student, Student's Parents, Student's then current and former teachers, as well as a review of Student's education records and information submitted by Student's doctors and therapists [R.10].
43. All of Student's teachers completed the Teacher Concern Reports and Teacher Concern Checklists. Three (3) of Student's teachers completed open-ended questions on the BASC-3 and the Conners 3 ratings scales. All of Student's teachers reported that Student is an excellent, hard-working student [R.10.11-12].
- a. Four (4) of Student's *** grade teachers reported that they have no concerns about Student's emotional, behavioral, or social functioning [R.10.11-13].
 - b. Some of Student's teachers reported that they had concerns about ***'s attendance and how long it took Student to complete work [R.10.12].
 - c. Student's *** teacher reported no concerns; she described Student as intelligent, well-adjusted, sociable, and usually in a good mood [R.10.12].
 - d. Student's *** teacher described Student as having an awesome attitude; she had no concerns about Student's academic, social, or behavior functioning. Student's concern about emotional functioning was that Student is prone to anxiety attacks, especially during ***; and Student is anxious when Student has to make up missed work, which is frequent due to excessive absences [R.10.12].
 - e. Ms. *** described Student as outgoing, usually upbeat, and positive. She recognized that Student missed a lot of school for various reasons, including a ***, ***. As a result, Student had a good deal of work to make up. Ms. *** noted that Student appears to get stressed when Student gets behind in school work, but that Student's anxiety was similar to other high achieving students when they are absent and miss *** for a few days; Student exhibits some anxiety when Student has a teacher change or with new teachers because Student is concerned that teachers will not know about Student's medical conditions. Student struggled with perfectionism during *** grade (School year 2017-18), spending a lot of time on some assignments. Ms. *** shared that she knows when Student is overwhelmed because Student is less ***; Student does share with Ms. *** when Student is overwhelmed, but it takes follow-up by Ms. *** [R.10.13].
44. Dr. *** included information from Student's *** teachers, which was available as part of Dr. ***'s psychological consultation. Those teachers reported that they watched closely for signs of frustration or anxiety during class but did not observe Student to have any concerning symptoms; they noted positive comments about Student's work ethic and interpersonal interactions with adults and peers [R.10.33].
45. Dr. *** and Ms. *** administered the following assessments:
- a. Multidimensional Anxiety Scale for Children 2nd Edition ("MASC-2"). This is a

comprehensive assessment of anxiety dimensions in children and adolescents. It indexes the range and severity of anxiety symptoms. Student completed the MASC-SELF. Student's total score was elevated and suggested that Student experiences anxiety. Student's ratings were in the "very elevated range" for Generalized Anxiety Disorder, which includes general worry and physical symptoms such as worrying about what others think or that Student'll do something stupid, being indecisive, and feeling restless or on edge. Student's ratings were "very elevated" for the Humility/Rejection scale, suggesting that Student worries about others' perception of Student. Student also had an elevated rating for *** [R.10.29-30].

Student's Parents completed the MASC-PARENT. The Parents' scores were "very elevated," indicating that Student experiences anxiety. They rated Student in the "very elevated range" on the Separation Anxiety/Phobia scale, the Generalized Anxiety Disorder scale, and the physical symptoms scale, including both the panic and tense/restless subscales. Dr. *** noted that on the***, Student's score was elevated largely due to the response that Student ***. Most other items were scored as "never" or "rarely a problem" [R.10.30-31].

- b. Comprehensive Executive Function Inventory ("CEFI"): This test assessed Student's executive functioning in several areas. Student's full-scale score was in the "average range." Student rated ***self "high" in the area of inhibitory control scale, which suggested that Student views ***self as being able to demonstrate self-control, thinks before acting, and keeps commitments. Student also rated ***self "high" in the area of working memory, reflecting a well-developed ability to retain information. Student rated ***self in the "low average range" for organization and for self-monitoring [R.10.44].
- c. BASC-3: The Parents' rating scales showed that they had significant concerns in the areas of anxiety and***. The elevated scores on *** were likely due to Student's medical conditions.

Two (2) of Student's teachers completed a rating scale They rated Student in the "clinically significant range" for***, reporting that Student has many health-related concerns. No other scales were in the "clinically significant range" [R.10.44].

Student's self-report showed an elevated range for***, with Student struggling with***. Student's score on the anxiety scale was in the upper end of the "average range" [R.10.34].

- d. Woodcock-Johnson Tests of Cognitive Abilities 4th Edition ("WJ-IV COG"): This is a wide age-range comprehensive system for measuring cognitive functioning. This assessment measures seven (7) areas of cognitive processing: (1) Comprehension-Knowledge, (2) Long-Term Retrieval, (3) Visual Processing, (4) Auditory Processing, (5) Fluid Reasoning, (6) Cognitive Processing Speed, and (7) Short-Term Working Memory. Student's scores on these measures demonstrated a normal ability profile with cognitive strengths in all areas scored, and Student does not demonstrate any cognitive weaknesses. Student's score of *** on the General Intellectual Ability ("GIA") indicates that Student's cognitive functioning is

within normal limits and is in the superior range of abilities [R.10.36].

- e. Adaptive Behavior Assessment System Third Edition ("ABAS-3"): This is a norm-referenced assessment that provides a complete picture of daily living skills for individuals ages birth to eighty-nine (89) years. It identifies strengths and weaknesses in adaptive function and aids in the ability to diagnose and classify disabilities. This assessment focuses on independent behaviors and measures what an individual does and what an individual is able to do. This assessment focuses on behaviors an individual displays on his or her own without the assistance of others. Adaptive scales are defined as those practical, every day skills required to function and meet environmental demands, including effectively and independently taking care of ones' self and interacting with others. The set of skills are grouped into three (3) broad categories of related skills: (1) Conceptual (communication, academic and self-direction skills), (2) Social (interpersonal and social competence skills), and (3) Practical (community, school/home living, safety, independent living, and self-care skills).

Student's score on the Conceptual Skills was the "average range." The Parents' indicated that Student's self-direction skill was within the "low average range."

Student's score on the Social Skills placed Student in the "high average range," which included analyses of interpersonal relationships, responsibility, self-esteem, gullibility, naivete, following rules, obeying laws, and victimization.

Student's score on the Practical Skills placed Student in the "average range."

Based on this data, Student demonstrated relative weaknesses with self-direction skills when compared to Student's adaptive behavior skills. Student demonstrated significant strengths in communication, academic, interpersonal, social competence, and independent and daily living skills [R.10.38-39].

- f. Kaufman Test of Educational Achievement Third Edition ("KTEA-3"): This assessment is an individual measure of academic achievement, which assesses the achievement domains of reading, math, and writing. Student's composite scores were within the "superior range." Student did not demonstrate any academic weaknesses [R.10.41].
- g. Conners-3: This assessment is a focused assessment tool for ADHD, disruptive behavior disorders, and associated issues. Student, Student's Parents, and Student's teachers completed the Conners 3 rating scales. Student's and Student's Parent's scores were neither elevated nor very elevated on any of the content scores; the ADHD Index score was borderline. Scores related to emotional ability were elevated, indicating more concerns than are usually reported. Student's teachers did not rate Student in the elevated or very elevated range on any of the Conners-3 scales or indexes [R.10.26-29].

46. Dr. *** noted that the rating scales of Student, Parents, and teachers did not reflect significant concerns with focusing or paying attention. Any potential issues with attention or distractibility had not

historically impacted Student's ability to achieve well at school and had not impacted Student's interpersonal relationships [R.10.33].

47. Dr. *** found that based on the data she collected, Student was not experiencing manifestations or impairment related to symptoms associated with ADHD [R.10.47; T3.1069].
48. Dr. *** determined that Student experiences some level of anxiety on a regular basis. Student's anxiety related to school becomes more challenging for Student to manage when Student misses school and is struggling with illness. Significant academic, behavioral, social, or organizational concerns were not reported, although some teachers expressed concerns about Student's absences, which are usually related to Student's health [R.10.45].
49. Dr. *** considered whether Student qualified for special education and related services as a student with ED. To be eligible, a student must exhibit at least one (1) of six (6) characteristics:
 - a. an inability to learn, which cannot be explained by intellectual, sensory, or health factors;
 - b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c. inappropriate types of behavior or feelings under normal circumstances;
 - d. a general pervasive mood of unhappiness or depression;
 - e. a tendency to develop physical symptoms or fears associated with personal or school problems; and
 - g. signs of schizophrenia.
50. Analyzing these six (6) ED characteristics is subject to the following: the characteristic must be (1) exhibited over a long period of time; (2) exhibited to a marked degree, (3) adversely affecting the student's educational performance; (4) because of the characteristic, the student must need special education and related services, and (5) the characteristic must not be solely accounted for by social maladjustment.
51. Dr. *** determined that Student did not qualify for special education and related services under ED characteristics a, b, c, d, and f above [R.10.46]. Evaluation data indicated that characteristic "e" could apply due to Student's tendency to develop symptoms, including physical symptoms, related to anxiety about***. In analyzing characteristic "e," Dr. *** determined that while Student had demonstrated characteristic "e" for a long time, Student did not demonstrate this characteristic to a marked degree, *i.e.*, the emotional concerns should be intense and produce significant distress; ⁹ Student's demonstrating characteristic "e" did not adversely affect Student's educational performance

⁹ When Student attended class regularly, Student experienced less anxiety and enjoyed school activities and learning. Student's anxiety levels rose when, following missing school due to illness or doctor's visits, Student felt overwhelmed with the demands of making up work, failure, not meeting Student's own needs or those of others, and being unable to participate in social or extracurricular activities [R.10.46; T3.1072-73].

- ¹⁰ or qualify Student's special education and related services; and Student's evaluations did not demonstrate any social maladjustment [R.10.46].
52. The FIE revealed that Student has made all A's through *** except for one B in *** grade. Student entered ***. Student has taken all Student's ***; Student has qualified for the gifted and talented program since ***. Student's conduct grades were satisfactory or excellent and Student has no discipline referrals [R.10.5 & 31].
 53. The FIE indicated that Student passed all STAAR tests***. Student was ***Student's *** test due to Student's *** [R.10.5].
 54. Both assessors had significant information about Student's health conditions and considered and relied on the information contained in the OHI form [T3.996]. Ms. *** referenced the OHI form for Student's various medical diagnoses, and concluded that although Student had received multiple medical diagnoses from Student's private physicians, these conditions are not adversely affecting Student's educational performance to the level that required specially designed instruction [R.10.42].
 55. The Referral Committee Report did not provide for a *** because of Student's *** and Student's ability to express ***self about***. Nevertheless, Ms. *** administered an informal assessment and received input from Student, Student's Parents, and Student's teachers [T3.992-993; R.9.3].
 56. Although the assessors conducted an assistive technology ("AT") assessment, neither Student's teachers nor Parents reported any AT concerns [R.10.41-24; T3.966].
 57. The District's FIE did not include separate testing for occupational therapy ("OT") or physical therapy ("PT") because those were not areas listed by the Referral Committee. The Parents were members of the Referral Committee [T3.987; R.9].
 58. The results of the District's FIE revealed that Student did not need psychological services as a related service to benefit from instruction. Student's Section 504 Plan allowed Student to see a nurse, counselor, or the Director of Instruction, who worked closely with Student [R.10.47]. There was no need to complete a counseling assessment as Student did not need psychological services; Student had access to multiple individuals to assist Student and provide Student support [R.10.47, 49]; Student's Parents have sought outside counseling services and medication for Student, which have helped [R.10.34-35].
 59. Upon completion of the FIE, the District convened three (3) meetings in which Student's FIE was discussed: (1) a staffing that occurred with District staff; (2) a meeting with District staff and Student's Parents at which time the complete FIE was reviewed and assessment personnel provided an explanation about the testing and the complete FIE; and (3) a brief Admission, Review, and Dismissal Committee ("ARDC") meeting convened on September ***, 2019. At the second meeting District

¹⁰ Student's evaluations did not reflect any adverse education performance in behavior, social or academic functioning. Dr. *** indicated that Student experienced such an effect from March 2019 – May 2019. At that time, Student had missed several days of school from being sick and from a ***. When Student returned from Student's absences, Student took longer to complete Student's assignments and Student's grades were temporarily lower in some of Student's classes [R.10.46; T3.1073].

evaluators discussed the FIE in detail, and the Parents were given the opportunity to ask questions about the assessment [T3.1081-82]. At the ARDC meeting, the Committee discussed Dr. ***'s June ***, 2019, evaluation, the District's FIE, and the reason why Student was ineligible for special education [T3.945-46; R.11]. The ARDC meeting at which the District's FIE was considered lasted approximately 30 minutes. Because the school-based members of the ARDC meeting found that Student did not qualify as a student with disabilities under the IDEA, there was no reason to consider any other issues, including an IEP for Student [P.23; R.11].

PSYCHOLOGICAL EVALUATION BY DR. *, PH.D. AND LSSP [P.61]:**

60. Following the September 2019, ARDC meeting, Student obtained an IEE from Dr. ***, Ph.D., a Licensed Psychologist and Licensed Specialist in School Psychology [p.61]. Dr. *** administer multiple evaluations:
- a. Conners Comprehensive Behavior Rating Scales ("Conners CBRS"): This assessment was used to obtain an understanding of Student's emotional and behavioral strengths and weaknesses. Student's Parents rated Student's behavior at a very elevated range on the subtests for emotional distress, worrying, social problems, perfectionistic and compulsive behaviors, and physical symptoms. The Parent's rating scales also suggested difficulty interacting with other adolescents Student's age as well as frequent, interfering physical complaints [P.61.5-6].
 - b. Autism Spectrum Rating Scale ("ASRS"): This assessment was administered because the Parents believed that Student might be on the Autism Spectrum. The Parents' rating scale showed elevated concerns on the following scales: unusual behaviors, DSM-5 scale, stereotypy, behavioral rigidity, and sensory sensitivity. As such, Student may meet the criteria for Autism Spectrum Disorder ("ASD") [P.61.6].
 - c. Social Skills Improvement System, Social- Emotional Learning Edition ("SSIS SEL"): Student and Student's Parent completed this assessment. Student's responses indicated no significant deficits; the Parent's responses indicated "below average" self-awareness self-management skills. As such, at home, Student may have difficulty recognizing Student's own emotions and acknowledging how Student's emotions influence Student's behavior [P.61.6].
 - d. Test of Problem Solving – 2nd Edition, Adolescent ("TOPS-2"): This test assessed Student's pragmatic language skills. Student demonstrated average skills on all subscales, such as making inferences, determining solutions to social problems problem-solving social situations, interpreting other's perspectives and transferring personal insights to social difficulties [P.61.6].
 - e. NEPSY-II: Student was administered the Social Perception subscale of this test. Student demonstrated adequate ability reading facial expressions in pictures as well as understanding other's thoughts and feelings [P.61.6].
 - f. Behavior Rating Inventory of Executive Function – 2nd Edition ("BRIEF-2"): This assessment provides an understanding of a student's executive functioning strengths and weaknesses.

Based upon the Parent's responses, Student's behavior fell in the "mildly atypical range" on the Emotional Control subscale, suggesting some difficulty appropriately modulating Student's emotional behavior in the home and "significantly atypical range on the Shift subscale, suggesting that Student may struggle to transition between tasks without becoming upset [P.61.6].

- g. BRIEF-Adult ("BRIEF-A"): Student's responses indicated possible deficits on the following subscales: Emotional Control, Plan Organize and Task Monitor. This indicates that Student may have difficulty managing Student's emotions under stress and Student may find it difficult to plan sort and long-term goals. However, these results can only be considered qualitatively as Student's age fell outside the normative age range of eighteen (18) years or older [P.61.6]
61. Based upon these assessments, Dr. *** determined that Student qualified for special education and related services under OHI. Dr. *** noted that the combination of Student's multiple health concerns and Student's absenteeism created stress and anxiety [P.61.7].
62. Dr. *** also determined that Student qualified for special education and related services as a student with ED. This determination was based upon Student's "clinically significant" symptoms of anxiety and, which impact Student's home and school performance [P.61.7; T2.484, 494].
63. Dr. *** said the predominant adverse impact was Student's missing a significant amount of school, and that when this happens, Student misses the original instruction; Student's work builds up; and when you add Student's medical diagnoses and anxiety, it creates problems for Student [T2.488].
64. Dr. *** recommended that Student receive direct instruction by a qualified teacher, one-on-one, for all missed academic classes; it is not appropriate for Student to do *** via self-study [T2.490]. Dr. *** explained that lack of instruction has required Student to attempt to understand advanced concepts independently; Student was overwhelmed by teaching ***self and completing assignments.
65. Dr. *** noted that Student misses out on social interactions due to absences or spending time making up work [T2.490-91].
66. Dr. *** recommended that to help Student learn effective coping strategies, as well as problem-solving strategies for work completion, that Student receive counseling as a related service in school. She recommended thirty (30) minutes of counseling weekly to address self-management skills as well as planning/organization and task monitoring skills [P.61.8]. She also recommended that Student's Parents continue with community-based counseling with a qualified professional with experience in high-functioning anxiety disorders.
67. Dr. *** did not agree with the results of Dr. ***'s evaluation for the following reasons:
- a. Dr. *** used an outdated anxiety measure that had norms from 1988-89 [T3.1090].

- b. Dr. *** failed to obtain any information related to the *** grade. Dr. *** could have gathered qualitative data about Student's school functioning, which was available at the time of Student's evaluation [T2.1091 & 1097].
 - c. Dr. *** did not include adequate information about how Student was functioning in school. She provided no information about Student's *** exams, teacher input, grades, discipline referral information, or anything about Student's social skills. Dr. *** merely noted that Student had acceptable grades.
 - d. Dr. *** did not obtain any information from Dr. *** or Dr. ***, therapists who have worked, or are currently working, with Student as part of Student's psychological evaluation [T2.527 & 529].
 - e. Dr. *** reported that Student *** when Student met with Dr. *** [P.61.5]. Dr. *** never observed Student *** during Student's observation or their meeting [T3.937 & 942].
68. The evidence established that the District's FIE was a more appropriate evaluation than those done by Dr. *** or Dr. ***. In conducting its evaluations of Student, the District used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student and did not use any single measure as the sole criterion for determining the Student's eligibility and developing Student's educational program.
- The District's assessments and other evaluation materials used to assess Student were selected and administered so as not to be discriminatory on a racial or cultural basis; were provided and administered in the Student's language (English); were used for the purposes for which the assessments or measures are valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with instructions provided by the producer of the assessments.
- The District assessed Student in all areas of suspected disabilities: ED and OHI. The District's evaluations were sufficiently comprehensive to identify all of Student's needs. The District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs.
69. The evidence established that Student's Section 504 and Health Plans provided Student the support Student needed to be successful in Student's classes, including all of Student's *** classes. Student's 504 Plan was effective; the services were appropriate; it addressed Student's needs; and Student was excelling above most of Student's peers in advanced classes [T2.859; T3.1128 & 1143; T4.1259-1361 & 1490; R.13; R.14].
70. As part of Student's 504 plan accommodations, Student had access to school counselors, including licensed professional counselors ("LPC") who Student could see whenever Student needed. *** employs *** school counselors, and *** of them are LPCs. The counselors can advise Student on a broad range of issues beyond ***[T3.886-87 & 1148-49; T.4.473-74].

71. Student rarely reported Student's concerns of distress and anxiety directly to District staff; staff rarely noticed Student in distress. Ms. *** encouraged teachers to ask Student if Student needed a break instead of always waiting for Student to initiate this request [T2.823-25]. Dr. *** recommended the same within Student's psychological consultation.
72. The organizational strategy accommodation was written in a way that Student could also initiate and seek the help Student needed. Providing Student some responsibility with Student's make up work would in turn, help improve Student's self-advocacy skills. Though Ms. *** routinely helped Student organize Student's makeup work, she did not believe Student needed her and believes that Student did a great job creating a plan on Student's own. Mr. *** stated that Student created makeup plans on Student's own and had the skills to do so when given the opportunity [T3.1131; 1170-71; T4.1501-02 & 1474-76; R.21].
73. Mr. ***, Student's *** grade *** teacher, recalled one (1) time when he had to help Student organize Student's make-up work with a third party because Student independently and successfully created Student's make-up schedule for his course [T4.1239]. Mr. ***, ***, *** grade *** teacher and Ms. ***, Student's *** grade *** teacher, met with Student after Student missed consecutive days to help Student prioritize work. They both stated that Student assisted with creating Student's make-up plan [T4.1299 & 1353].
74. Ms. *** sent emails to teachers when Student was absent for more than three (3) consecutive days and discussed with them organizational priority. [T3.1137-39; R.36.1 & 4-5; R.38.9-12 & 17]. Ms. *** believed that the District's collaborative efforts to help Student with Student's makeup work alleviated some of Student's stress [T3.1150].
75. Mr. *** helped implement the accommodation of organizing Student's make-up work. During Student's *** grade year when Student missed a lot of classes before***, he personally looked at Student's outstanding assignments, emailed teachers, and created a make-up plan for Student [T4.1468 & 1474-79; R.44.6-17; R.32.4-6]. He did the same for Student in April 2020 when the District transitioned to remote learning due to the COVID-19 pandemic [T4.1484]. ***, current Academic Achievement Specialist and Section 504 Coordinator, ***, also provides this organizational support [T4.1481-82].
76. Ms. *** and Mr. *** allowed Student to postpone exams when Student needed and never compelled Student to take an exam that Student was not ready to take [T4.1258-59 & 1307-08]. Mr. ***, Student's *** grade *** teacher, did not recall a time where he compelled Student to take an exam that Student was not prepared to take [T4.1381-82].
77. District staff rarely noticed Student to be distressed or anxious at school; they did not report these concerns to Ms. ***, Ms. ***, or Principal ***. The reports about Student's being distressed and anxious primarily came from Student's Parents but not through observations reported by District staff [T3.823-25 & 869-70 & 1140-43; T4.1260 & 1297-98 & 1333 & 1363 & 1379 & 1383 & 1470 & 1504].
78. District witnesses reported that Student was social and engaging with Student's peers at school [T4.1142-43 & 1260-61 & 1298 & 1333 & 1401 & 1470].

79. Ms. *** was a ***. She did not observe Student to be in distress before or during***. Ms. *** checked with Student before *** to ensure that Student was fine and ready***. During the***, Student and Ms. *** walked to the restroom; Ms. *** did not have any indication that Student was distressed [T3.1160-61].
80. Student performed extremely well on the ***, ***. Student successfully completed the exam without extended time [T3.1164 & 1166].
81. Student took the *** ***. Ms. ***. Ms. *** noticed no signs of distress while Student *** [T3.1165]. Student's ***[T3.1180-82].
82. Notwithstanding Student's anxiety levels, Student has***. Student has been in *** since the *** grade and has taken many ***. Despite Student's***, Student made all A's except for one high B in *** during the ***. At the time of the hearing, Student's *** .
83. Mr. *** testified that Student's achievements were incredible, especially considering that Student's *** [T4.1488]. Student's *** were "exceptional [T4.1489; R.16].
84. Student completed Student's exams in the allotted time during Mr. ***'s course. Student never used the *** accommodation in his class.
85. Student never used the extended time accommodation that was allotted to Student in Student's *** class, which was an accommodation Student received from ***.
86. Student's *** grade teachers reported that Student finished Student's exams without extra time, except for Student's ***. The teacher reported that Student used the extended-time accommodation provided to by *** [T3.1197-98; R.43.1-6].
87. Student has never been disciplined at *** and no District staff reported any behavioral concerns for Student [T4.1497].
88. Student has continuously missed a lot of school, generally related to doctor appointments, *** attendance, or an extracurricular activity [T1.391]. As part of the Parent's input collected as part of the District's 2019 FIE, Student's Parent reported that only two (2) of Student's absences in spring 2019 were because of Student's anxiety; the rest were related to illness, appointments, or field trips [R.10.43 & 46].
89. Although Student has accumulated multiple absences, Student has been successful in Student's classes. Teachers did not have to modify Student's work as Student completed the same assignments as Student's peers in Student's class, with the support of Student's 504 Plan accommodations. Where teachers exempted Student from material, it was generally because Student had already mastered the material on the exam [T4.1255-57 & 1353-54 & 1367].
90. Notwithstanding the Parents' beliefs, Student was not allowed to take half of an exam that would be counted as a whole test [P.28.9; T4.1306 & 1313].

91. Throughout Student's education, District staff and administrators have been responsive to Student and Student's Parents' concerns.
92. The evidence failed to prove that the District predetermined Student's eligibility for special education and related services without input from the Parents. The appropriate staff was present for the Staffing conducted for the District and Parents to specifically review the recent assessments. At the second meeting District evaluators discussed the FIE in detail, and the Parents were given the opportunity to ask questions about the assessment [T3.1081-82]. At the ARDC meeting, the Committee discussed Dr. ***'s June ***, 2019, evaluation, the District's FIE, and the reason why Student was ineligible for special education [T3.945-46; R.11].
93. The evidence failed to establish that the District failed to make Student's records available to the Parents in a timely manner. Ms. *** attended the Resolution Session on October 2, 2019, and Student's Parents participated by telephone. Ms. *** offered them records that day before the session started. The records were stored in a Dropbox link and included extensive documents, such as Student's referral papers, attendance, emails, and Section 504 information [T1.236-37]. The Parents declined the link and instructed Ms. *** to send the records to their attorney. Ms. *** contacted Ms. Collins Sims and informed her that the records needed to be sent to Student's attorney.
94. The evidence failed to establish that the District violated Student's confidentiality rights. In one instance, one of Student's teachers inadvertently***. While this is not an appropriate way of maintaining Student's confidentiality, the effect was *de minimis*. The ***[T.2.734].
95. On another occasion, Ms. *** sent an email to a *** ISD staff member regarding Student's 504 Plan. At the time, Student had *** teacher named ***, and the *** ISD employee's last name was also ***. *** ISD *** could not access the document referenced in the email because it was a secure link that only Student's assigned teachers could open. Also, the email included default language instructing any recipient who received the email in error to delete the email. While this is not an appropriate way of maintaining Student's confidentiality, the effect was *de minimis* [T3.846 & 848; P.34.50].
96. The evidence failed to establish Petitioners' right to reimbursement of the two (2) IEEs. Dr. ***'s evaluation was conducted before the District completed its FIE. Dr. ***'s evaluation is dated June ***, 2019; the District conducted its evaluation months later on August ***, 2019. Parents may request an IEE at public expense if they disagree with the District's evaluation. However, there was no FIE to disagree with at the time Petitioners obtained a report from Dr. ***. Further, the evidence established that the District's FIE was appropriate.
97. On September ***, 2020, Petitioners requested that the District reimburse them for Dr. ***'s psychological evaluation. The District denied Petitioners' reimbursement request, because the request was made more than one (1) year after the District completed its FIE [R.56.2-3]. The Texas one-year statute of limitations is applicable to the Parents' request for IEE reimbursement. Petitioners failed to establish that either of the tolling exceptions to the statute of limitations apply here. Further, the evidence established that the District's FIE was appropriate.
98. The evidence failed to establish that any exceptions to the one-year Statute of Limitations.

V. DISCUSSION

IDEA defines FAPE as special education and related services that (1) are provided at public expense, (2) meet the standards of the state education agency, (3) include an appropriate preschool, elementary school, or secondary school education in the state involved, and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§300.320-324.

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. The Court defined “educational benefit” as one that is meaningful and that provides a “basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.” *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). In a more recent opinion, the Court affirmed that IDEA cannot, and does not, promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). The correct standard for providing FAPE is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress in light of the student’s individual circumstances. *Id.* at 999.

The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. It is well-settled that a party challenging the district’s eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d at 754, 762-63 (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010)).

A. Statute of Limitations Issue:

Under the IDEA a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a free, appropriate public education (FAPE) to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2). The two-year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. In that case the state timelines apply. 20 U.S.C. §1415 (f) (3) (C); 34 C.F.R. § 300.507 (a) (2). Texas has an explicit statute of limitations rule. In Texas a parent must file a request for a due process hearing within one year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request. 19 Tex. Admin. Code § 89.1151 (c). Petitioners filed the request for a due process hearing on September 19, 2019. Petitioners alleged claims arising in 2008.

The IDEA only allows two limited exceptions to the statute of limitations, which are not supported by the evidence here. It is only where a parent was prevented from filing a due process complaint due to (1) specific misrepresentations by the District that it had resolved the problem forming the basis of the due process complaint or (2) the District’s withholding of information from the parent that it was required under the IDEA to provide to the parent. 20 U.S.C. § 1415 (f) (3) (D); 34 C.F.R. § 300.511 (f) (1) (2).

Petitioners' cause of action under the IDEA accrued when Student's Parents knew, or had reason to know, of the injury that forms the basis of the complaint. *Doe v. Westerville City Sch. Dist.*, 50 IDELR 132, pp 5-6 (D.C. Ohio 2008). In making the determination as to whether the exceptions should apply in this case, I must calculate the limitations period from the date Student's Parents knew, or should have known, of the complained of actions of the school district.

The United States Department of Education left it to hearing officers to decide on a case by case basis the factors that establish whether a parent knew or should have known about the action that is the basis of the hearing request. 71 Fed. Reg. 46540, 46706 (Aug. 14, 2006). Case law provides some guidance in making that determination.

The alleged misrepresentation must be intentional or flagrant. Petitioner must establish not that the school district's educational program was objectively inappropriate but instead that the school district subjectively determined Student was not receiving a FAPE and intentionally and knowingly misrepresented that fact to Student's Parents. *D.K. v. Abington Sch. Dist.*, 2012 U.S. App. LEXIS 21060 (3d Cir. 2012). Furthermore not any misrepresentation triggers the exception. Instead the misrepresentation must be such that it prevents the parent from requesting a due process hearing regarding claims that would otherwise be time-barred. *C.H. v. Northwest Ind. Sch. Dist.*, 815 F. Supp. 2d 977, 984 (E.D. Tex. 2011); *G.I. v. Lewisville Ind. Sch. Dist.*, 2013 U.S. Dist. LEXIS 120156 (E.D. Tex. 2013).

Petitioners did not introduce evidence that the District made any misrepresentations that it had resolved the problem forming the basis for the complaint.

The District presented evidence to show that Petitioners cannot meet their burden to prove facts to support the second exception, that the District withheld information from the parent that was required under the IDEA. This exception applies when a school district withholds information "[r]equired [under IDEA] to be provided to the parent, §1415(f)(3)(D)(ii), addresses the IDEA requirement that school districts provide parents with 'a copy of procedural safeguards.'" *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp.2d 918, 943 (W.D. Tex. 2008). See *C.H. ex rel. C.H. v. Northwest. Indep. Sch. Dist.*, 815 F. Supp. 2d 977, 986 (E.D. Tex. 2011) "The rationale for the exception is that a local education agency's withholding of procedural safeguards would act to prevent parents from requesting a due process hearing ... until such a time as an intervening source apprised them of their rights. *T.C. v. Lewisville Indep. Sch. Dist.*, 4:13CV186, 2016 WL 705930 (E.D. Tex. Feb. 23, 2016).

In the instant case, the Parties vehemently disputed whether the District provided the Parents with a copy of the Procedural Safeguards when the District denied the Parent's request for an FIE. The District presented evidence that Ms. *** placed both the notice of decision and procedural safeguards in the envelope provided to Student to take to Student's Parents following the denial of the first request for an FIE in September 2017. Student's Parents testified that they did not receive the procedural safeguards in 2017; that the only document contained in the packet was a notice of decision. Given this conflicting evidence, I do not find that the Parents received a copy of the procedural safeguards in 2017.

However, the evidence did establish that the Parents were aware of their rights in the procedural safeguards when they referenced the procedural safeguards in a September ***, 2017, letter to the District's General Counsel, Ms. Collins Sims [P.33.3-4]. A logical conclusion from this letter is that on September ***,

2017, the Parents knew, or should have known, that they had the right to file a due process hearing related to their concerns about Student's educational program.

B. Child Find Issue:

A "child with a disability" is a defined term under the IDEA. The student must meet the criteria under one or more of the enumerated disability classifications. 34 C.F.R. § 300.8 (a). A child with a disability may qualify for special education services under more than one classification. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 758 F. 3d 1162(9th Cir. 2014), cert. denied, 2015 U.S. Lexis 204 (2015). Even if a student can meet the criteria of one or more of the disability classifications, a student must also demonstrate a need for special education and related services for eligibility purposes. 34 C.F.R. § 300.8 (a)(1). The determination of whether a student is "in need of special education" must be determined on an individual basis. *Bd. of Hendrick Hudson Int. Sch. Dist.*, v. *Rowley*, 458 U.S. 176, 207 (1982).

The "child find" obligation is triggered when the school district has reason to suspect the student (i) has a disability; and (ii) the student is in need of special education services. 34 C.F.R. §§ 300.8 (a) (1); 300.111 (a) (c) (1); *Goliad Ind. Sch. Dist.*, 32 IDELR 134 (SEA Tex. 2000). Not every student who struggles in school requires an evaluation for special education. *Alvin Ind. Sch. Dist. v. A.D.*, 503 F. 3d 378, 384 (5th Cir. 2007); 34 C.F.R. §300.111 (a)(1); *Carrollton-Farmers Branch Ind. Sch. Dist.*, 113 LRP 14998 (SEA Tex. 2013)(school district had no reason to suspect student who performed well academically, behaviorally and socially had a disability or was in need of special education).

Educational need is not strictly limited to academics but also includes behavioral progress and the acquisition of appropriate social skills as well as academic achievement. *Venus Ind. Sch. Dist. v. Daniel S.*, 2002 U.S. Dist. LEXIS 6247 (N. D. Tex. 2002). While the achievement of passing marks and the advancement from grade to grade is important in determining educational need, it is but one factor in the analysis. *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176, 207, n. 28 (1982).

First, a student with a disability must be evaluated in accordance with the IDEA's implementing regulations and must be found to have one of the specified disabilities. Once a disability condition is identified, the second step mandates that as a result of the identified disability, the student must demonstrate a need for special education services; consequently, a student meeting IDEA-eligibility criteria but who does not show a need for special education services, is not a student with a disability under the IDEA. *Student v. Corpus Christi ISD*, Dkt. No. 298-SE-0496 (Tex. Hrg Off. Lockwood 1996). See also *D. L. by & through J.L. v. Clear Creek Indep. Sch. Dist.*, 695 Fed. Appx. 733 (5th Cir. 2017), as revised (July 31, 2017) (affirming the district court decision upholding the decision of the hearing officer who found that the student was not a student with a disability because the student did not need special education services.).

In the instant case, the evidence shows that the District did not violate its child find obligations with respect to Student.

a. The District Evaluated Student in a Timely, Appropriate and/or Comprehensive Manner:

At the time of Petitioners' first FIE request, Student had been in *** for approximately ***. Student entered *** with *** because Student took ***. Throughout ***, Student had exceptional academic and

behavioral performance. Upon Student's ***, Student had made all A's in Student's***; Student was social with Student's peers; Student was an excellent, engaged student according to Student's teachers.

Student's Parents provided the District with medical reports related to Student's anxiety; however, the District did not see manifestations of Student's anxiety at school. Although the District did not suspect that Student needed special education, it agreed to do a psychological consultation for Student in the 2017-2018 school year, which was conducted by the District's LSSP, Dr. ***. Dr. *** collected information from Student's teachers and outside providers. From there, she created a comprehensive report with many recommendations to address the anxiety that Student's Parents were reporting. The District determined that Student's Section 504 Plan, with the detailed psychological consultation recommendations, and the Individualized Health Plan appropriately addressed Student's needs.

b. The 2019 FIE Was Comprehensive and Met All the Regulatory Requirements:

The District agreed to conduct an FIE in August 2019 after Petitioners requested and provided informed consent for the assessment. The Referral Committee, which included the Parents, noted that the suspected disabilities were OHI and ED. The District evaluated Student based on these suspected disabilities.

Petitioners have challenged that the FIE lacked assessments in PT, OT, ***, and behavior. The evidence demonstrates that the District did not have a suspected need to assess Student in these areas. Although the Referral Committee did not include a need for a ***, Ms. *** did conduct an informal *** to address Student's ***. Dr. *** had no need to complete a functional behavioral assessment (FBA) as part of Student's FIE because no individual providing her information, including Student, Petitioners, ***, or Student's teachers, identified any behavior that required additional analysis through an FBA.

The evidence presented indicates that all aspects of the District's FIE were appropriate. The evidence shows that the 2019 FIE met all the regulatory requirements for an appropriate evaluation. Further, the evaluators who conducted the assessment were appropriately credentialed and have significant years of combined experience. The assessment used a variety of tools and strategies to gather relevant functional, developmental, academic, and parent information. No single measure or assessment tool was used as the sole criterion for determining Student's educational needs. The FIE included technically sound instruments to assess cognitive, academic achievement, behavioral, physical and developmental factors. The FIE included assurances that the assessment and evaluation materials were selected and administered so as not to be discriminatory on a racial or cultural basis and were provided and administered in the Student's native language. The FIE assured that the assessments and evaluation materials were used for the purposes for which they were valid and reliable. They were administered in accordance with the instructions by trained and knowledgeable educational personnel.

c. Student Does Not Qualify Under the OHI Eligibility Category:

The District's FIE appropriately determined that Student did not have a qualifying disability for special education as a result of Student's ADHD diagnosis. The evaluation results did not suggest any concerns of inattention, hyperactivity, or impulsivity significantly impacting Student's ability to progress in Student's advanced-level courses.

The District's FIE appropriately determined that Student did not have a qualifying disability for special education as a result of Student's medical conditions. Ms. *** found that although Student has received multiple medical diagnoses from Student's private physicians, these conditions were not adversely affecting Student's educational performance to a level that required specially designed instruction.

At the time of the evaluation, Student had received all A's and one high B in all of Student's***, including Student's *** courses. Student excelled on all of Student's STAAR exams***; the District had no disciplinary concerns. Student's teachers consistently reported that Student was an exceptional student who appropriately engaged, maintained focus, and participated in their classes.

As numerous courts and hearing officers have held, special education is only meant for a child who, after having been evaluated using specific procedures, is found to have an impairment and who also needs special education and related services. In other words, the presence of a disability alone is not enough to qualify a child to receive special education services; the law also requires that the child be in need of those services to progress and obtain the requisite educational benefit. *Alvin Indep. Sch. Dist. v. AD*, 503 F.3d 378 (5th Cir. 2007); *Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Aug. 10, 2007); *Corpus Christi Indep. Sch. Dist.*, Dkt. No. 233-SE-0508 (Tex. Hrg. Off. Carmichael 2008); *Student v. Leander ISD*, Dkt. No. 223-SE-0416 (SEA Tx. 2017), affirmed at *T.W. by K.J. v. Leander Indep. Sch. Dist.*, No. AU-17-CA-00627-SS, 2018 WL 1041167 (W.D. Tex. Feb. 22, 2018). In the *Leander ISD* case, a request by a parent for an FIE was denied by the district because there was no evidence of a need for special education. The student had been diagnosed with dyslexia, ADHD and other medical conditions. The student was receiving accommodations through a Section 504 plan. The hearing officer held that the student was provided with what he needed to succeed, and he did not require the specially designed instruction of the IDEA. The opinion stated: "[t]he District is not tasked with assuring that Student reaches Student's full potential or that Student makes the best grades possible given Student's intelligence." The same conclusion - that the student is not eligible for services under the IDEA - should be reached based on the evidence before the Hearing Officer in this case.

d. Student Does Not Qualify under the Emotional Disturbance Eligibility Category:

The District's FIE determined that Student did not meet the eligibility criteria for ED. Dr. *** reviewed all of the requisite considerations for determining IDEA eligibility based on ED. She considered whether Student exhibited any of the six (6) characteristics over a long period of time, to a marked degree, and whether these characteristics adversely impacted Student's education, thereby requiring specially designed instruction. No one disputes that Student suffers from anxiety, such anxiety did not require specially designed instruction, especially in light of Student's exceptional academic performance, behavioral performance, and interpersonal skills. Dr. *** concluded that the accommodations within Student's Section 504 Plan, Student's Health Plan, Student's own coping skills, Student's counseling services from an outside provider, and Student's *** together, addressed Student's anxiety.

Student's Parents argue that Student is eligible for special education as a result of ED as manifested by Student's absences based upon Student's anxiety. While the evidence shows that although Student's absences might have caused, or increased, Student's anxiety, anxiety did not cause the absences.

e. Student Does Not Need Specially Designed Instruction:

The evidence does not support the idea that Student needs specially designed instruction to access the general education curriculum. Specially designed instruction is “[a]dapt[ing], as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction 34 C.F.R. §300.39(b)(3).

The specially designed instruction that Petitioners seek is one-on-one tutoring to replicate the missed instruction from Student’s absences. Student does not require one-on-one tutoring for the instruction that Student missed because Student excels without any special education supports, and Student easily understands *** that Student is learning. Student’s teachers testified that during the occasions where they excused Student from work or modified it in any way, it was because Student had already mastered the material, not because Student needed modifications to succeed. Despite Student’s many absences, Student’s teachers reported that Student grasps the material beyond the understanding of Student’s non-disabled peers. When Student returns from absences, Student consults Student’s teachers with clarifying questions about the missed material. Student excels academically with minimal support from teachers. Student does not need hour-for-hour tutoring by a special education teacher. Student does not need specially designed instruction.

Petitioners submitted evidence from medical doctors and other outside providers regarding Student’s educational needs, such as extra time for assignments and tests and one-on-one instruction. This evidence conflicted with the testimony of the school personnel, including Student’s teachers who work with Student daily and who testified that Student is doing incredibly well *** and that Student does not need additional accommodations or services. The testimony of District personnel must be given deference. *Marshall Joint Sch. Dist. No. 2 v. C.D. ex rel. Brian D.*, 616 F.3d 632, 640-41 (7th Cir. 2010) (explaining that a physician’s diagnosis bears on the decision, but the “physician cannot simply prescribe special education” because that decision belongs to the team of parents, teachers, and school administrators. *D. L. by & through J.L. v. Clear Creek Indep. Sch. Dist.*, 695 Fed. Appx. 733, 737 (5th Cir. 2017), as revised (July 31, 2017) (finding that the observations of teachers who spend time daily with the student in the educational setting are more reliable regarding educational need than those outside providers who base their opinions on isolated in-school observations and parent-provided information and documentation.”). *See also Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 384 (5th Cir. 2007) (finding that the testimony of teachers who observed the child’s educational progress first-hand was more reliable than physician testimony); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253-54 (5th Cir. 1997) (crediting the opinions of “those individuals who had the most immediate knowledge of [the student’s educational] performance” including “the teachers who worked with [the student] on a daily basis”).

C. PROCEDURAL ISSUES:

Petitioners allege that they were deprived of the right to be equal, collaborative participants because: (1) they did not receive their required Prior Written Notice (“PWN”); (2) they did not receive access to education records; and (3) the District made predeterminations about Student’s special education eligibility.

PWN must be given when the District proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. 34 C.F.R. §300.503. The evidence shows that Petitioners received PWN at all required times.

Petitioners received PWN in September 2017 when the District first denied their FIE request; in September 2019 when the District denied Student's eligibility for special education; when the District denied their reimbursement request for Dr. ***'s evaluation; and when the District denied their reimbursement request for Dr. ***'s evaluation.

Petitioners failed to prove that they were prevented from accessing Student's education records. 34 C.F.R. § 300.613 states in part that parents are entitled to "[i]nspect and review any education records related to their children that are collected, maintained, or used by the agency under this part." Before the Resolution Session started, ***, the District's Director of Special Education, offered Parents access to the records through the DropBox link. The Parents declined and instructed the District to send the records to Petitioners' legal counsel. Ms. *** communicated this request to Ms. Collins Sims. Petitioners requested Student's education records, including the SuccessEd record, during discovery in this case. The issue of Petitioners' access to SuccessEd records was briefed by both Parties prior to the due process hearing. After reviewing the motions, I issued Order No. 6, stating in part, "[t]hat Respondent has, in fact, produced all reports from this software as of March 4, 2020. Accordingly, it appears that Petitioner's Motion to Compel is moot, in part."

Petitioners failed to establish that the District predetermined Student's ineligibility for special education and related services. There were three separate meetings held to discuss Student's 2019 FIE. The Parents were provided the opportunity to review and question the assessors who conducted Student's FIE. This occurred at the staffing prior to the ARDC meeting. This meeting lasted over two (2) hours and it provided all the time to discuss the FIE and all attendant information. *Student b/n/f Parent v. Conroe ISD*, Docket No. 027-SE-1017 (2017) (Petitioner failed to prove that the district's staffing prior to the MDR made a predetermination as to the ultimate issue and failed to prove that the parent was not permitted to participate in the decision-making process).

VI. CONCLUSIONS OF LAW

1. CFISD is a local education agency responsible for complying with IDEA. 20 USC § 1400 *et. seq.*
2. Petitioners bear the burden of proof on all issues they raised under IDEA at the due process level. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005). IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.
3. CFISD proved that the one-year statute of limitations should apply to this proceeding, and Petitioners failed to prove either exception to the one-year statute of limitations. 19 Tex. Admin. Code § 89.1151(c).
4. Petitioners failed to prove that the District failed to meet its Child Find duty in a timely manner under the IDEA 34 C.F.R. § 300.111; 19 TEX. ADMIN. CODE § 89.1151 (c).

5. Petitioners' claims prior to September 19, 2018 are time-barred, and any relief requested prior to September 18, 2018 is barred by the one-year statute of limitations. 19 Tex. Admin. Code § 89.1151(c).
6. Petitioners' request for the District to provide an IEE is time-barred. 19 Tex. Admin. Code § 89.1151(c).
7. Petitioners failed to prove that the District's FIE was inappropriate, untimely, and not comprehensive.
8. Petitioners did not prove that Student experienced an educational impact that warranted special education and related services under IDEA. The District did not deprive Student of FAPE.
9. Petitioners failed to prove that the District violated their procedural rights. 34 C.F.R. §300.503 and 34 C.F.R. § 300.504.
10. Petitioners failed to prove that the District violated their procedural rights, as the District ensured that Petitioners were meaningful, active participants of the ARDC meeting.
11. Petitioners failed to prove that the District violated Student's confidentiality rights, and to the extent that any confidential information was inadvertently disclosed, the disclosures resulted in harmless error. The effect of such disclosure was *de minimis*.
12. Petitioners failed to prove that they are entitled to reimbursement of Dr. ***'s evaluation, as their evaluation predated the District's FIE and the District's FIE was appropriate and was conducted in accordance with federal regulations.
13. Petitioners failed to prove that they are entitled to their request for reimbursement of Dr. ***'s evaluation that was made more than a year after the District's FIE and the District's FIE was appropriate in accordance with federal regulations.

