DOCKET NO. 249-SE-0821

STUDENT b/n/f PARENT & PARENT,	**§**	**BEFORE A SPECIAL EDUCATION**
Petitioners	**§**	
	§	
v.	**§**	
	§	**HEARING OFFICER FOR**
LAMAR CONSOLIDATED INDEPENDENT	**§**	
SCHOOL DISTRICT,	**§**	
Respondent	**§**	
	§	**THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

I. Statement of the Case

This matter concerns a claim brought by Petitioner pursuant to the Individual with Disabilities Education Act [hereinafter IDEA], and its implementing state and federal regulations, for violations of the Act. In particular, the issue is whether the District violated the IDEA by failing to: comply with its Child Find obligations; develop an Individual Education Plan (IEP) including the provision of related services; and comply with procedural obligations under the IDEA, and related laws.

The hearing officer finds that the Respondent District complied with all Child Find obligations, conducted an evaluation in a timely manner, and thereafter made a determination that the Student was not eligible for special education. It is also determined that that the evidence did not establish Student's eligibility for special education and related services. Further, it is found that the District did not commit a procedural violation of IDEA. Hence, the District did not deny the Student FAPE under the IDEA.

II. Procedural History

Petitioners, Student b/n/f Parent & Parent (collectively referred to as Petitioner), filed a request for an impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA). The Complaint was received by the Texas Education Agency (TEA or Agency) on the 19th day of August 2021 and Notice of Filing of Request for a Special Education Due Process Hearing was then issued by TEA on August 19, 2021. The Respondent to the Complaint is the Lamar Consolidated Independent School District (hereinafter District). The

hearing officer then issued the First Procedural Scheduling Order on August 19, 2021. On August 25, 2021, the Respondent District filed its Response to the Complaint.

The Prehearing Conference (PHC) was convened during which time Petitioner requested a brief continuance of the hearing date. Respondent did not oppose the request, and the Continuance was granted, and the Order issued on September 29, 2021. The Due Process Hearing was then set for November 10 & 11, 2021.

A. Representatives

Petitioner was represented throughout the case by non-attorney advocate Karen Mayer Cunningham, and the Respondent District was represented by attorney Amy Tucker.

B. Mediation and Resolution

The parties participated in a Resolution Session on September 2, 2021, and no agreement was reached at that time. The parties declined to participate in mediation.

C. Continuances

At the time of the initial Pre Hearing Conference, (PHC), a Request for a Continuance was made, and no objection to the request was voiced. The Continuance was granted, and the Due Process Hearing (DPH) then set for November 10 & 11, 2021.

D. Preliminary Matters

Other than the Request for Continuance as noted earlier, no other preliminary issues were presented to the hearing officer.

E. Due Process Hearing

The parties made their respective disclosures timely. The due process hearing (DPH) was then conducted on November 10, 2021 on the Zoom platform, and lasted one day. The Petitioner continued to be represented by Ms. Karen Mayer Cunningham, and in addition, the Student's parents, Ms. *** and *** attended the hearing. The Respondent continued to be represented by its legal counsel, Ms. Amy Tucker, and Ms. ***, Executive Director of Special Education for the District, attended the hearing as the District representative. Petitioner requested that the hearing be open to the public, and observers were present. The Student did not attend the hearing.

F. Post Hearing

Upon the conclusion of the presentation of evidence, but prior to closure of the hearing, the parties jointly moved for a continuance to accommodate the completion of the hearing transcript, to allow the submission of post-hearing briefs, and a time allotment for the hearing officer to complete the decision. Order No. 3, granting such joint request was then issued on November 11, 2021, and the Decision is hereby issued in compliance with the decision due date of January 10, 2022.

III. Issues

A. Petitioner's Issues

Petitioner alleges that the District has denied Student a free, appropriate public education (FAPE), and the denial of FAPE consists of both substantive violations of IDEA as well as procedural violations. More specifically, Petitioner's claim consists of the following components:

- Whether the District violated its Child Find obligations in failing to timely evaluate Student in all areas of suspected disability or need;
- Whether the District failed to develop an appropriate IEP as requested by the parents;
- Whether the District failed to provide special education services, including related and supplementary services;
- Whether the District failed to comply with certain procedural duties under IDEA, including violations of procedural matters regarding the Admission, Review and Dismissal (ARD) Committee. These claims consist of the allegation that parents were denied meaningful participation, that the District misled the ARD committee during deliberations, and predetermined decisions.

B. Petitioner's Requested Relief

Petitioner requests for relief consist of reimbursement to parents for private school placement, tutoring and therapy; and, an order for mandatory training for all District personnel on IDEA requirements.

C. Respondent's Issues and Legal Position

Respondent District generally denies all allegations and contends that all decisions and services provided were and are appropriate. More specifically, the District asserts that it timely evaluated the Student and completed a Full Individual Evaluation (FIE), and that the ARD Committee properly determined that the Student did not qualify for special education and related services. Hence, no IEP was appropriate in this instance. Respondent further

contends that the District worked collaboratively with the parents throughout the evaluation processes and meetings, as well as followed proper procedures.

IV. Findings of Fact*

1. The Student resides with Student's parents within the Lamar Consolidated Independent School District [hereinafter LCISD or District] and during the 2020-2021 school year was in the *** grade.[1]

2. During the 2020-2021 school year, the Student attended *** within the District.[2] During that time, Student's ***.[3]

3. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District. The District is responsible for providing FAPE under the IDEA and its implementing rules and regulations.

4. In the fall of 2020, Student's parents requested that Student be evaluated for special education, and the district agreed to conduct the evaluation.[4] Consent for the evaluation was provided on September ***, 2020.[5]

5. The Full Individual Evaluation (FIE) was then conducted by the District, completed on December ***, 2020, and sent to the Student's parents on December ***, 2020.[6]

6. On or about December ***, 2020, which was after the evaluation was complete, and very close to the time of the District's winter break, the Student's parent requested that the District provide her an Other Health Impairment (OHI) form.[7]

7. Evidence demonstrated that Ms. ***, a diagnostician for the District, did not realize that the request was for this Student, but rather assumed that it was for ***.[8]

*References to the Due Process Hearing Record throughout this section are as follows: Citations to Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "P" or "R" respectively, followed by the exhibit number or letter and page number. Citations to Joint Exhibits are designated with a notation of "J", and followed by the exhibit number and page number. Citations to the transcript are designated with a notation of "T" followed by the page number.

[1] R.1:1; R.5:1.
[2] R.1.
[3] T.136-138.
[4] R.7:1.
[5] R.5:1.
[6] R.5:1.
[7] T.56; P.1:35-36.
[8] T.136-138; P.1:66.

8. No evidence was submitted regarding any other communication about the OHI form until the time of the Admission, Review and Dismissal (ARD) Committee meeting that was held on January ***, 2021.

9. At the time of the meeting, the ARD committee reviewed the information and results of the FIE and concluded that the Student did not qualify for special education and related services.[9]

10. During the ARD Committee meeting, numerous aspects of the FIE were discussed, including testing results, observations and impressions by District staff and teachers, as well as feedback from the Student's parents.[10]

11. With regard to considerations of the evaluation data, the record shows Dr. ***, who at the time was a licensed specialist in school psychology (LSSP) the for the District, looked at the Student's behavior generally, as well as focusing on possible Attention Deficit Hyperactivity Disorder (ADHD). He reported that no symptoms of ADHD were observed.[11]

12. Dr. *** stated that he observed the Student exhibiting ***, and nothing else, and that it was likely that the *** was further exasperated in the home, and most likely the result of ***. He also noted that the *** was not observed in the school setting. [12]

13. Dr. *** also noted that teachers and others asserted that the Student demonstrated role model behavior.[13] The Student's parent also indicated that Student pays attention.[14]

14. A number of tests and assessments were administered as part of the FIE, including the Wechsler Intelligence for Children; the Woodcock-Johnson IV Tests of Oral Language; the Woodcock-Johnson IV Tests of Cognitive Abilities; the Comprehensive Test of Phonological Processing; and the Woodcock-Johnson IV Tests of Academic Achievements.[15]

15. Ms. ***, a diagnostician administered several tests. The cognitive and intellectual scores demonstrated that that the Student scored average to high average in comprehension, visual spatial, fluid reason and processing speed, and overall had an average intelligence quotient. [16]

16. There were however, some concerns about Student's short-term working memory, as the scores were very low. Student's parents, through their advocate, voiced concerns in

[9] T. 29; P.1:17; R.4:6.
[10] T.36-37; P.1.
[11] P.1:8.
[12] P.1:3-4,6-7.
[13] P.1:4-5; R.5:4-5, 12.
[14] P.8:11.
[15] R.5:2.
[16] T.124-128; R.5:13.

particular about this issue.[17] Ms. ***, however, explained that the Student did perform in the average range on several tests and did well academically.[18]

17. Further, when there were noises in the hallway, the Student turned during the testing. Ms. *** testified that such behavior is not a concern, and rather normal for a child of the same age.[19]

18. As noted, the scores on most of the testing were in the average to high average range and in reviewing the education and developmental scores, Ms. *** concluded that no deficit existed that would indicate a learning disability.[20]

19. Also as part of the FIE, written and spoken language comprehension was measured by Ms. ***, a District reading interventionist. She noted that there were no signs of dyslexia, and that the student was reading above grade level.[21] Further, Ms. *** explained that the Student's scores were low in punctuation, but this was due to the method of scoring, so the scores indicated more errors than were actually made.[22]

20. In general, while a few of the scores were in the low to low-average range, testimony indicated that upon subsequent testing to reassess the "outliers", the overall processing scores were in the average range.[23]

21. The committee also considered the input of the Student's general education teacher at the time of the evaluation, Ms. ***. She reported that the Student did not have difficulty in the classroom, had not demonstrated behavioral issues, and did not exhibit signs of ADHD.[24]

22. Ms. *** also testified that the Student was working above grade level, had grades above average, and had demonstrated no need for specialized instruction. She testified that she did not see any reason for special education.[25]

23. The ARD committee (except for the parents), after review and consideration of all of the information, determined that the Student did not qualify for special education.[26]

24. During the ARD Committee meeting, a request was made to consider an OHI as an eligibility for special education, and the parents requested additional time for the physician to

[17] T.223; P.1:21.
[18] T.130.
[19] T.131-132.
[20] P.1:17.
[21] T.192; P.1:13; R.5:22,27.
[22] T.177-178.
[23] T.128.
[24] T.213; P.1:26.
[25] T.210; 213-215; R.5:28.
[26] T.35-36; P.1:40; R.4:6.

complete the OHI form. The parents' advocate requested the meeting be tabled and not concluded.[27]

25. Debate and discussion occurred during the ARD about the procedures for the committee to then take with regard to the disagreement, and the ability to consider the OHI form that the parents, through their advocate, requested to have considered.[28]

26. Evidence demonstrated that it was then determined by Ms. ***, the school principal, that the ARD meeting should end in disagreement and it was concluded.[29]

27. Testimony revealed that under certain circumstances, that the ARD committee meeting will be ended as a disagree if all of the material has been reviewed, rather than table it for a later date.[30] The parents were informed at the time of the meeting that they could obtain additional information and thereafter the meeting could be reconvened for the purpose of considering the additional information, in this case the OHI form.[31]

28. During the meeting, parents were asked for their input at various points in the process and responded through their advocate.[32] The District provided the parents the opportunity to bring in additional information for consideration, as they had requested.[33] Evidence also showed that the parents had attending every meeting the District held, and that upon the parents' request, the District held an ARD Committee meeting.[34]

29. The ARD Committee met two additional times in March 2021, and considered the additional information.[35] The first reconvene was on March ***, 2021 and the second was on March ***, 2021.[36]

30. In both instances, the meetings ended in disagreement, and all of the members of the ARD committee, except the parents, agreed that the Student did not qualify for special education.[37]

31. During testimony, a number of inquiries were made as to the content of the Present Levels of Academic Achievement and Functional Performance (PLAAFP). The evidence

[27] T.101,150; P.1:49-50.
[28] T.57-58; P.1:49-52.
[29] T.71; P.1:40.
[30] T.54, 59,62.
[31] T.62; P.1:58.
[32] P.1:7-8,13-14,16-17.
[33] T.62-63,68-70.
[34] T.250,253.
[35] T.71.
[36] R.1; R.2.
[37] T. 71,155,164.

demonstrated that during the ARD Committee meeting there were no PLAAFPs written, as the ARD Committee was not looking at creating an IEP. [38]

32. It was also established that PLAAFPs are written and reviewed for students who qualify for special education, and that was not the case in this matter.[39]

33. Testimony also established that it is not uncommon that a FIE will recommend DNQ, and during the course of the ARD committee meeting the decision is changed, and the PLAAFPs and the IEP are written during the meeting.[40]

34. The evidence revealed that on February ***, 2021, a 504 meeting was held where Section 504 Plan eligibility for the Student was considered. An OHI form and other information were considered, and accommodations were put in place.[41] Student qualified for 504 services due to ***, ADHD, ***, and a ***.[42]

35. Parents requested that members of the Student's ARD Committee attend the 504 meeting so that a more complete view of the Student could be discussed.[43] They, however, did not attend as apparently ARD Committee members do not attend Section 504 meetings.[44]

36. Evidence also revealed that the 504 accommodations were implemented by the Student's teacher, although her testimony also established that Student was able to succeed without them, as well as with them. Ms. *** testified that they were ordered by the physician and were also good teaching practices. [45] These included chunking of assignments, extra time, preferential seating, hydrating reminders, and a LSSP consult.[46]

37. The evidence also demonstrated that around or during the time of the January ***, 2021 ARD Committee meeting, the student was ***.[47] Notes show that Student then ***. The student continued to ***for most of the afternoon. [48]

38. Student's parents were not notified by District personnel that Student had ***, and found out about it from the Student later that evening.[49]

[38] T.187-188;190-192;199;271-272.
[39] T.190-191; 271-272.
[40] T.119.
[41] T. 237-239; R.3.
[42] R.3:5.
[43] T.233.
[44] T.234.
[45] T.210, 216-217.
[46] T.216-217; R.3:5
[47] T.240; R.12.
[48] T.258-260.
[49] T.241.

39. Upon examination by Student's pediatrician, it was determined that the Student had *** and thereafter had the OHI eligibility of ***.[50]

40. For the next several weeks of the spring 2021 semester, the Student was given access to the nurse and the school counselor, and the evidence shows that the Student had gone to the nurse's office and to the counselor many more times during the spring semester than in the fall.[51]

41. Parents continued to take the Student to tutoring and obtain other services, such as physical therapy.[52]

42. On April ***, 2021 Student's parents informed the District that Student would no longer be attending school within the District, and Student was unenrolled on April ***, 2021.[53]

43. The Request for a Due Process Hearing was filed on August 19, 2021.

V. Discussion

The following discussion reviews the legal standards that govern the considerations and issues brought forward in this case.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. The burden of persuasion or proof falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Tood L.*, 999 F. 2d 127, 131 (5th Cir. 1993). No distinction has been established between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 224, 292 n.4 (5th Cir. 2009).

In terms of the application of the approach, the Fifth Circuit went on to establish that a presumption exists "in favor of a school system's educational plan, placing the burden of proof on the party challenging it". *White ex Rel. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 377 (5th Cir. 2003); *Teague* at 132.

B. Duty to Provide FAPE

[50] T.89.
[51] T.218,239.
[52] T.229;
[53] R.10.

A primary purpose of the IDEA is to ensure that all children with disabilities have available a free, appropriate public education (FAPE) as well as related services. Further, it is essential that the educational and related services are designed to meet the unique needs of that particular student. 34 C.F.R. § 300.39 (b)(3). Under the IDEA, school districts have a duty to provide a FAPE to all children with disabilities between the ages of three and twenty-one who reside within the jurisdictional boundaries of the district. 34 C.F.R. §300.101(a).

Additionally, the United States Supreme Court has provided guidance as to the determination of whether a school district provided FAPE to a student, with both substantive and procedural considerations. Specifically, the district must: comply with the procedural requirements of IDEA; and, design and implement a program that is reasonably calculated to enable the student to receive an educational benefit. *Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, (1982). Further, 'educational benefit' has been defined as that which is meaningful and provides a basic floor of opportunity or access to specialized instruction and related services individually designed to provide educational benefit. *Id*. More recently, the court clarified that the IDEA does not promise any specific educational outcome, but that the IEP be reasonably calculated to enable the student to make appropriate progress in light of that student's individual circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist.,* 137 S. Ct. 988 (2017).

Only certain students, however, are eligible for special education. In order to fall within the scope of the IDEA, or qualify for services, a student must have both a qualifying disability, and also by reason of that disability, be in need of special education and related services. *Alvin Indep. v. A.D. ex rel*, 503 F.3d 378, 382 (5th Cir. 2007).

1. Child Find

It is clear that school districts are required to evaluate all children where a suspected disability exists. Further, if a parent requests an evaluation, then the District is obligated to respond within fifteen school days as to their agreement to complete the evaluation or conversely a denial of the request. See 19 TEX. ADMIN. CODE §89.1011(b). Further, when conducting an evaluation, a school district must comply with the procedures set forth in 34 C.F.R. §§ 300.304-300.311. The determination of the nature and extent of special education and related services that a child needs must also be based on an evaluation conducted in accordance with the procedures mandated by IDEA. 34 C.F.R. §300.15, referencing evaluation procedures found in 34 C.F.R. §§ 300.304-300.311). The evaluation must not focus on a single measure, but rather utilize a variety of instruments, multiple data and other input, such as observations. 34 C.F.R. § 300.

Once the evaluation is complete, the ARD committee has the responsibility to make determinations of eligibility, and if found eligible, then design and implement educational as well as related services for the student. Even if a disability condition is identified, the second part of the eligibility determination requires the Petitioner to demonstrate a need for special education

services as a result of the disability. Consequently, a student who meets eligibility criteria but who does not show a need for special education services, has not met the definition of a student with a disability under the IDEA. See 34 C.F.R. §300.8. Moreover, 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).

2. The ARD Committee

The responsibilities of the ARD Committee (also referred to as the IEP team under the IDEA) is set forth in 34 C.F.R. §300.320 and 19 TEX. ADMIN. CODE § 89.1050. These include the review of evaluations, including a FIE and to make decisions about both eligibility, and if found eligible, then the educational program and related services for the student.

In the event consensus or agreement about the elements of the IEP is not reached, then a parent who disagrees must be offered an opportunity to recess and reconvene the ARD Committee meeting. 19 TEX. ADMIN. CODE § 89.1050 (g).

3. Procedural Matters

With regard to issues of the failure to provide FAPE as a result of procedural violations of the IDEA, the law holds that a hearing officer may find that a child did not receive FAPE in limited circumstances. Specifically, if the procedural violations rise to the level of impeding a child's access to FAPE, significantly denying parents the opportunity or ability to participate in the child's education, or causing a deprivation of educational benefit, then those violations could be considered a denial of FAPE. 34 C.F.R. **§**300.513(a)(2); *Rowley*.

Procedural requirements under the IDEA consist of certain timelines, such as the time from consent until FIE complete; time from completion to a meeting to review the evaluation, determine eligibility, and if appropriate, develop and craft the IEP; and time for the IEP to be in place. While the IDEA holds that a school district must complete an evaluation of a student within 60 days from the time of parental consent, 34 C.F.R. **§**300.301 (c) (1)(i), Texas law modifies that time frame to 45 school days from the time of consent. TEX. ADMIN. CODE §89.1011(c). Further, the IEP team (in Texas the ARD committee) must hold a meeting within 30 days of the evaluation's completion. 34 C.F.R. § 300.323 (c); TEX. ADMIN. CODE §89.1011(d). These timelines and deadlines are key in helping to assure that students have educational and related services available in a timely manner.

The IDEA certainly contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist*., 2017 WL 3017282, *27 (S.D. Tex. 2017), aff'd 909 F.3d 754 (5th Cir. 2018). The IDEA does not, however, require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v.*

Springfield R-XII Sch. Dist., 198 F.3d 648, 658 (8th Cir. 1999). While collaboration with key stakeholders is certainly anticipated and expected, the right to meaningful input does not mean parents have the right to dictate an outcome, as parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish* Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.* In other words, deference is given to the District, and the right for meaningful input for a student's IEP does not equate to a parent's ability to dictate its terms.

Predetermination would, of course, violate both the law and spirit of collaboration, which is so important under the IDEA. Predetermination can occur when a school district makes educational decisions so early in the planning process that it deprives the parents of a meaningful opportunity to fully participate as equal members of the ARD committee. E.R., 909 F.3d at 769.

C. Private Placement

A student is entitled to reimbursement for a unilateral private placement or to be placed in a private school only in those instances where it is demonstrated that the school district's program does not provide the student with FAPE. Where tuition reimbursement is sought after a parent's unilateral placement, case law provides that at least three factors are to be considered in what is often referred to as the three prongs of the Burlington-Carter test. See *Sch. Comm. of Burlington v. Mass. Dept*. *of Educ.,* 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). These factors are as follows: whether the district provided a student a FAPE; if the district failed to provide FAPE, then whether the private placement chosen by the parent is appropriate; and a consideration of the equities in requiring a school district to pay for a unilateral placement for the student. In those instances where no finding of a denial of FAPE is made, then there is no need to consider the other two prongs of the test.

VI. Analysis

In this case, Petitioner brings forth issues alleging both procedural and substantive violations of the IDEA. The following examines these issues and considers the exhibits in evidence and the testimony of the witnesses, the issues of the evaluation, the subsequent finding that the Student was not eligible for special education or related services, and the procedural matters in terms of the ARD process.

A. Child Find: Evaluation, Assessment, and ARD Issues

In this case, Petitioner has claimed that the District failed its Child Find duties, that the ARD committee proceedings were both procedurally and substantively flawed, and that other procedural violations under the IDEA rose to the level of a denial of FAPE.

The evidence demonstrated that in response to the request for an evaluation made by the Student's parents, the District timely completed an FIE. The evaluation was multi-faceted, and had input, data, and feedback from a variety of sources. The District met in accordance with the timelines required, considered all of the information, and made a determination that the Student did not qualify for special education. More specifically, a need for specially designed instruction was not demonstrated. Evidence showed that during the process, numerous requests for parental feedback were made. The District also reconvened the ARD Committee at least twice in order to consider the additional information and allow further discussion.

As noted, in order to prevail on the claim that Petitioner was denied FAPE, Petitioner must (1) prove Student was an eligible Petitioner under the IDEA because Student had a qualified disabling condition; and (2) required special education and related services. Assuming arguendo, that the ADHD, (that was only diagnosed by the physician, and not observed during the evaluation) could qualify for special education under the OHI category, the next question is whether it would cause a need for specially designed instruction. The evidence was clear that the Student was successful in class, even without the 504 accommodation, and courts often look to teachers observations in making decisions about wither a disability interferes with education or rises to the level of a need for special education. See D.L. ex rel P. L., 695 F. App'x. 733 (5th Cir. 2019). The record did not support that the Student required special education services to receive an educational benefit. Petitioner offered no evidence that Student required specialized instruction to make appropriate progress, particularly where Student's teacher testified that Student made progress without any accommodations. Case law has held that teachers' observations are quite informative, as the teacher observes the student on a regular basis in the educational environment, and because of that direct observation may be more reliable that physician reports. *Id.*

Specially designed instruction includes adapting, as appropriate, to the needs of the child, the content, methodology, or delivery of the instruction in order to: address the unique needs of the child that result from the child's disability; and, ensure access of the child to the general curriculum so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. 300. 39(b)(3). Only certain students demonstrate need for specialized instruction. Those students must not only have a qualifying disability, but moreover, by reason of it, be in need of special education and related services. *Alvin,* 503 F.3d 378. In this case, evidence clearly demonstrated that the student was able to do well and succeed in the classroom, and no need for specialized instruction was established.

Further, the evidence failed to establish a need for a modified curriculum or related services. Petitioner did not meet the burden of demonstrating a need for special education or related services that is the result of the Student's disabilities.

B. Procedural Considerations

An allegation of a denial of FAPE based upon procedural violations of the IDEA depends, in part, upon timelines and deadlines. In this case, an initial issue deals with the evaluation in terms of procedural require timelines, and the matter of the procedures of the ADR Committee meeting. Upon request, the District agreed to evaluate the Student and the District was in compliance with both the IDEA and the Texas statute providing that an evaluation must be completed within 45 school days from the time of consent. The ARD Committee met in a timely fashion.

Further, in order for a procedural violation to rise to the level of a denial of FAPE, such violation must impede the Student's right to FAPE; impede parental participation; or cause educational deprivation. 34 C.F.R. § 300.513 (a)(2). In this instance, evidence did not establish that the procedural violations of the IDEA resulted in any deprivation of education or impeded the student's right to FAPE or the parental participation.

Petitioner also claims that the District violated Student's procedural rights under the IDEA by generally alleging that the District impeded the parent's ability to participate in the decision-making process. The evidence, however, demonstrated that the parents attended all scheduled meetings with the District, and that when the parents requested an ARD Committee meeting, the District scheduled one. The District also considered parental input when offered, albeit most communication with the parents was through their advocate.

Petitioner also contends that the District's proposed placement was predetermined. Predetermination occurs when a school district makes educational decisions so early in the planning process that it deprives the parents of a meaningful opportunity to fully participate as equal members of the ARD Committee. *E.R.*, 909 F.3d at 769. Petitioner failed to present evidence of predetermination, as the evidence was clear that much consideration and discussion occurred prior to, and especially during, the three separate determinations of did not qualify (DNQ) for special education.

While much discussion was focused on the choice made during the initial ARD Committee meeting as to whether the meeting should be tabled, or alternatively ended and then reconvened, the significance of this issue has not been presented. Quite the contrary, since Petitioner was then given the opportunity to present the additional information and have discussions about it in at least two reconvened ARDs.

In essence, no violations of IDEA were established and no evidence of any impediment to the Student's right to FAPE was presented. The evidence showed the parents' opportunity to

participate in the decision-making process regarding the provision of FAPE, and no deprivation of educational benefit was established. 34 C.F.R. §300.513(a)(2). In summary, the Petitioner did not meet Petitioner's burden of proving the school district violated student or parental procedural rights under the IDEA.

C. Private Placement

Under the Burlington-Carter test, as set forth earlier, an examination of the appropriateness of private placement will occur only if there is first a finding that the district failed to provide FAPE to the student. In this instance, the Petitioner failed to establish that the District failed in its Child Find obligations. Further, it was demonstrated that the Student did not qualify for special education, and thus no further inquiry is required. Additionally, no evidence was presented regarding any need for, or appropriateness of, a private placement.

D. Training of District Personnel

No evidence was presented regarding the need for such training.

VII. Conclusions of Law

1. Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 C.F.R. §300.301 and 19 TEX. ADMIN. CODE §89.1011.

2. The Lamar Consolidated School District (LCISD) is responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.

3. Petitioner failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984).

4. Petitioner, as the party challenging the District's decision on special education eligibility, failed to meet the burden of proof on the claims asserted in this case, as the burden is on the party seeking relief. *Schaffer v. Weast,* 546 U.S. 49 (2005).

5. Petitioner failed to prove that the District violated its Child Find duties. 34 C.F.R. §300.111.

6. Petitioner did not prove the District failed to include Student's parents as key stakeholders or predetermined Student's program. Schaffer, 546 U.S. at 62; 34 C.F.R. §300.501(b)(c); 34 C.F.R. §300.322.

ORDERS

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

IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims of Petitioner are DISMISSED WITH PREJUDICE.

All other relief not specifically stated herein is DENIED.

Signed this 10th day of January 2022.

_____

Kimberlee Kovach
Special Education Hearing Officer for the State of Texas

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. 1415 I.2. 19 Tex. Admin. Code §89.1185(n); Tex. Gov't Code, § 2001.144(a)-(b).