

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

FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

On October 25, 2022, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Mansfield ISD (“Respondent” or “the District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On October 26, 2022, TEA assigned this matter to me as the impartial Special Education Hearing Officer (“SEHO”) and sent a copy of the Complaint and Notice of Filing to Respondent. Petitioner’s pivotal issue involves Respondent’s alleged failure to comply with its affirmative Child Find duty, thereby denying Petitioner a Free Appropriate Public Education (“FAPE”).

PETITIONER’S ISSUES:

Student asserted multiple substantive and procedural issues in Student’s Complaint. Specifically, Student asserted that the District denied Student FAPE based upon the following violations of IDEA occurring during school years 2020-21, 2021-22, and 2022-23:

1. Respondent failed to conduct an appropriate and timely Full and Individual Evaluation (“FIE”) to identify Student as a child with a disability who is eligible for special education and related services and to develop and implement an appropriate Individualized Education Plan (“IEP”);
2. Respondent failed to conduct a Manifestation Determination Review (“MDR”);
3. Respondent failed to allow Student’s Parents to meaningfully participate in the decision-making process;
4. Respondent failed to provide Petitioner’s Parents with Procedural Safeguards at the time Student was ***; and

5. Respondent failed to develop and implement an appropriate support plan to maximize Student's potential and reduce the risk of regression.

B. PETITIONER'S REQUESTED RELIEF:

Petitioner seeks the following relief from the SEHO:

1. Reimbursement of expenses for out-of-school services;
2. An Independent Educational Evaluation ("IEE") at District expense to make recommendations regarding disability-specific behavioral interventions in the school environment;
3. A personal apology to Student;
4. An intra-district transfer to *** program or a private school at the District's expense;
5. Implementation of a process to ensure no child endures what Student has endured;
6. Pragmatic speech therapy; and
7. Any relief the SEHO deems appropriate.

RESPONDENT'S ISSUES:

Respondent asserts that some of Petitioner's requested relief falls outside the jurisdiction of a Special Education Hearing Officer and should be dismissed:

1. An IEE at District expense to make recommendations regarding disability-specific behavioral interventions in the school environment;
2. A personal apology to Student;
3. An intra-district transfer to *** program or a private school at the District's expense; and
4. Implementation of a process to ensure no child endures what Student has endured.

II. PROCEDURAL HISTORY

Petitioner filed Petitioner's Complaint on October 25, 2022, against Respondent. On October 26, 2022, the undersigned SEHO sent the Initial Scheduling Order to the Parties stating that the prehearing telephone conference ("PHC") would convene on November 18, 2022; the Disclosure Deadline would be December 5, 2022; the Due Process Hearing would take place on December 12, 2022; and the Decision would issue on, or before, January 9, 2023.

On October 26, 2022, Respondent filed a Notice of Appearance. On November 4, 2022, Respondent filed its Ten-Day Response to Complaint and Plea to the Jurisdiction. Respondent's Plea to the Jurisdiction addressed a portion of the relief requested by Petitioner that allegedly falls outside the jurisdiction of a SEHO.

On November 18, 2022, the Parties convened the PHC. In attendance were the following: (1) Ms. ***, Petitioner's Mother; (2) Mr. ***, Petitioner's Father; (3) Ms. ***, Petitioner's maternal Grandmother; (4) Mr. Dean Micknal, Respondent's counsel; (5) the undersigned Hearing Officer; and (6) the court reporter, who made a record of the PHC. The Parties discussed the issues and, but for the addition of an extra hearing date, December 13, 2022, jointly agreed to the current due process scheduling order set out in the SEHO's Initial Scheduling Order.

The Due Process Hearing:

The Parties made their Disclosures timely.

The SEHO convened the in-person Due Process Hearing on December 12, 2022. By the end of that date, the Parties agreed to reconvene on December 13, 2022, to complete the Hearing. The Parties' Exhibits were admitted; the Parties called a total of eleven witnesses, who presented direct testimony and who were cross-examined.

During the Hearing, Petitioner was represented by (1) Ms. ***, Petitioner's Mother and (2) Ms. ***, Petitioner's maternal Grandmother. Respondent was represented by (3) Mr. Dean Micknal, Respondent's counsel; (4) Ms. Taylor Gardner, Respondent's counsel; and (5) Dr. ***, Respondent's Executive Director of Special Populations. Also in attendance throughout the Hearing were (6) Mr. ***, Petitioner's Father; (7) the undersigned Hearing Officer; and (6) the court reporter, who made a record of the Hearing. At the conclusion of the Hearing, the Parties requested a continuance of the Decision Deadline to allow them to file Closing Arguments. This request was granted and the Parties agreed to file and serve their Closing Arguments on, or before, January 5, 2023, and the Decision Deadline was extended to January 12, 2023.

Both Parties filed their Closing Arguments timely. The Decision in this case is rendered timely on January 12, 2023.

**III.
RESOLUTION SESSION**

The Parties convened the Resolution Session on November 9, 2022, but were unable to settle their issues.

**IV.
FINDINGS OF FACT ¹**

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 has attended *** since ***, school year 2020-21. Student has passed all grades and currently is in the *** grade.
3. Student's Parents ***. Student lives with Student's ***. Student likewise spends a great deal of time with Student's ***. *** reside within the District's boundaries. Student's ***.

School Year 2020-21: ***

4. Student's *** and Father did not suspect that Student was in need of special education services during Student's *** year [T.1.46.16-20; 48.2-14]. Student was having some behavioral issues that worried Student's Mother but Student's Father and *** did not see such behaviors as indicative of the need for special education testing [T.1.48.2-49.13; 93.5-17].
5. Although Student's *** teachers discussed Student's behaviors, such as fidgeting and *** [T.1.37.14-25], they did not see a need for referral to special education [T.1.48-49; 177-178; 188.3-15; 199.13-22]. Some supports were put in place to aid Student in controlling Student's behavior. When these supports were no longer successful, the District and the Parents agreed to move Student into another *** classroom for the spring 2021 with a teacher was more tenured and structured [T.1.96-97; R.21.106].
6. Student's *** was unaware of anyone seeking evaluations for special education eligibility during Student's *** year [T.1.48.5-49.13].
7. The District provides three reporting periods over the course of one school year. In school year 2020-21, these reporting periods consisted of the following: Reporting Period No. 1: August 12 - October 30, 2020; Reporting Period No. 2: November 4, 2020 – February 19, 2021; and Reporting Period No. 3: February 22 – May 26, 2021 [J.1.002]

¹ References to the Due Process Hearing Record are identified as follows: "T#.#.#" refers to the two-volume Court Reporter's Transcription of testimony made on December 12-13, 2022, and the specific volume, page, and line numbers contained therein; "Jt#.#" refers to the Joint Exhibits by Exhibit number and page; "P#.#" refers to Petitioner's Exhibits by number and page; and "R#.#" refers to Respondent's Exhibits by number and page.

8. Student performed academically very well in ***. The lion's share of Student's reports noted Student had achieved level "****"). The lowest level achieved by Student was "****) and this level "****" occurred only a few times [J.1.002].
9. In the area of ***, Student received an "****) each grading period under "****," one "****" under "****"; one "****" under "****"; one "****" under "****"; and one "****" under "****" [J.1001.
10. The evidence failed to establish that anyone saw a need for, or requested, Student's referral for special education evaluations during Student's *** year. Student achieved academic success with limited behavioral challenges [J.1.].

School Year 2021-22: * grade**

11. On August ***, 2021, Student's Mother sent an email to Student's teacher informing her of some possible *** that Student was expressing. She also informed the District that Student, ***, could begin counseling immediately [P.7.020].
12. Student started the *** grade with some behavioral issues but Student's teacher could correct such behaviors with redirection. Student's *** grade teacher described Student's behavior as "a typical *** grader" at the beginning of the fall semester 2021. Many *** graders require redirection many times; some have difficulty following directions. During fall 2021, Student liked helping Student's teacher Student's teacher noted that during the fall 2021 semester, Student was able to be redirected to follow directions [T1.240.19-25].
13. During the spring semester, Student's behaviors got out of control. Student's behaviors escalated to ***; Student ***; Student *** [T.1.236.1-5]. Student's teacher referred Student to the Multi-Tiered System of Support Committee ('MTSSC") [T1.248.7-24; J.14; R.26.112].²

MTSS Committee: * grade**

14. Student's MTSS Committee first convened on February ***, 2022. The reason for this first meeting was Student's behavioral decline since returning to school following the Christmas break. Student's teacher noted that she had to redirect Student several times a day and that Student's behaviors were disrupting the class. Her main concern involved Student's struggling with following directions with her student teacher [J.20.121]. The MTSS Committee assigned Student to Tier I and Student's teacher proposed the following goal for Student: Student will need less redirecting and Student will follow directions when given to the class [J.20.121]. This goal was later modified by the MTSS Committee because it was not clearly measurable. The new goals required Student (1) to make

² The MTSS is a framework that helps educators provide academic and behavioral strategies for students with various needs. MTSS consists of three tiers of intervention that can be amplified in response to levels of need.

appropriate choices 60% of the time, and (2) to follow directions 50% of the first time they are given [J.20.123].

15. On March ***, 2022, Student's MTSS Committee reviewed Student's goal of making appropriate choices 60% of the time and determined that Student had reached this goal "satisfactorily" [J.20.134].
16. Student's MTSS Committee met again on April ***, 2022. At this point Student was placed on the MTSS Tier #2. Having reached Student's goal of making appropriate choices 60% of the time, the Committee proposed a new goal that required Student to follow directions the first time or lowering the number of times a day Student needs to be redirected. Student had not achieved Student's goal of following directions 50% of the time when they are given initially.
17. Student's teacher noted that Student's behavior continued to decline rapidly. Student's teacher had to redirect Student multiple times per day, which was disrupting the class. Student was also demonstrating extreme frustration at times, even during math, Student's favorite subject. Student was refusing to do assignments and would not listen when the teacher tried to re-teach Student. She noted that Student eventually would do Student's work correctly without help [J.20.122].
18. On April ***, 2022, and April ***, 2022, the MTSS Committee reviewed the status of Student's goal of following directions the first time 50% of the time. Student had not mastered this goal [J.20.133].

Section 504 Evaluation and Plan: * grade**

19. On March ***, 2022, the District recommended that Student have a Section 504 evaluation. Student's Parent signed consent for this evaluation [J.6.014].
20. Student's Section 504 evaluation was completed on April ***, 2022. The evaluation found that Student qualified for Section 504 services [J.6.016]. The Committee noted that Student's impairment was *** [J.7.017]. The Committee adopted accommodations: preferential seating near the teacher and implementation of a behavior tracker, which included daily communication to Student's Parents and use of *** [J.7.017]. The Committee noted that Student needed a behavior plan; Student did not require modifications of the District policies; and Student would not receive health plan services [J.7.018]. The Committee recommended implementation of the Section 504 Plan to occur on April ***, 2022 [J.7.18]. The Committee found no problems with Student's academic performance and determined that Student's services could be delivered in Student's general education classroom [J.7.018].
21. The Committee developed a Behavior Intervention Plan ("BIP") to address Student's declining behaviors. The BIP targeted such behaviors as non-compliance, and physical aggression, such as *** [J.8]. Both Parents signed consent for Section 504 services [J.10.023-24].
22. Student's MTSS Committee met again on May ***, 2022. Student's teacher reported there were no academic concerns; however, Student's teacher reported that Student's behaviors continued to

escalate. Since April ***, 2022, Student received *** office referrals for ***; Student missed *** days of school; and Student spent *** days in In School Suspension (“ISS”). The MTSS Committee determined that Student should continue Student’s BIP through Section 504 [J.0.130].

23. In April 2022, Student was ***. Student ***. Student was diagnosed with ***, Attention Deficit Hyperactivity Disorder (“ADHD”), and *** [P.18.001]. Student began ***.
24. On April ***, 2022, the District issued a Notice of Evaluation pursuant to a Parent’s request for an FIE [J.11.025]. Student’s Parents signed the consent for the FIE on April ***, 2022 [J.12.027-28]. On April ***, 2022, Student was ***.
25. Between May ***, 2022, Student was assessed by ***. The evaluator added a new diagnosis: Autism Spectrum Disorder, Level I (high functioning) [P.18.013]. The examiner recommended that the District conduct an AU evaluation to determine whether Student needs special education accommodations in that area [P.18-011].

Student’s FIE: Summer to Fall * grade**

26. Student’s FIE was completed by Student’s Multidisciplinary Team on September ***, 2022 [J.17.028]. The Multidisciplinary Team Members consisted of the following: a Speech Language Pathologist, Educational Diagnostician, Licensed Specialist in School Psychology (“LSSP”), two of Student’s *** grade teachers, and Student’s Parents [J.17.038]. The resulting FIE consisted of 9 sections: (1) Speech and Language; (2) Physical; (3) Sociological; (4) Emotional/Behavioral; (5) Cognitive/Intellectual; (6) Adaptive Behavior; (7) Educational/Developmental Performance; (8) Assistive Technology; and (9) Present Levels of Academic Achievement and Functional Performance (“PLAAFP”). Notwithstanding the use of standard measurement procedures, the evaluators’ assessment tools and strategies were used to gather functional, developmental, and academic information, including information provided by Student’s Parents and teachers, observations of Student several times, and interviews with Student.
27. This comprehensive assessment found the following:
 - Student **does not** demonstrate significant educational/developmental deficits;
 - Student **does** struggle with aggression, impulsivity, and self-control while in the school setting;
 - Student **does not** present with any cognitive deficits;
 - Student **does not** present with deficits in any academic areas;
 - Student does not appear to meet federal or state criteria for Autism;
 - Student **does** demonstrate an inability to build or maintain satisfactory interpersonal relationships;
 - Student **does** demonstrate inappropriate types of behavior or feelings under normal circumstances [J.17.063].

28. The FIE determined that Student met the criteria for the following disabilities: Emotional Disturbance (“ED”) and Other Health Impairment (“OHI”) for ADD/ADHD [J.17.063]. The FIE likewise determined that Student did not qualify as having Autism or any other pervasive developmental disorders [J.17.067].
29. 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.
30. 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.
31. The District assessed Student in all areas of suspected disabilities. 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.

School Year 2022-23: * grade**

32. Prior to the completion of Student’s FIE, Student’s Section 504 Committee met on September ***, 2022. At that time Student’s eligibilities, determined in late spring 2022 by outside evaluators, were noted to be ***, ADHD, ***, and AU.
33. On October ***, 2022, Student’s Admission, Review, and Dismissal Committee (“ARDC”) met to review Student’s FIE [J.18.072]. The Committee reviewed the FIE and based upon that review, determined that Student met the criteria as a student with an ED and OHI and that Student demonstrated a need for specially designed instruction. The Committee proposed three new goals in the area of behavior; developed accommodations in the classroom; placed Student in the *** minutes per week; and developed a new BIP based upon Student’s Functional Behavioral Assessment (“FBA”), which showed Student needed more behavior intervention [J.18.072].
34. Student’s Parents disagreed with ED eligibility and declined to sign consent for the implementation of the IEP [J.18.072]. The Parents requested, and were granted, an Independent Educational Evaluation (“IEE”), which at the time of the Hearing was pending.
35. Student’s ARDC reconvened on November ***, 2022 [J.19.097]. This time the Parents agreed to implement the IEP temporarily until the IEE is completed and the ARDC meets to review it [J.19.097]. November ***, 2022, was the start date for the implementation of Student’s IEP [J.19.101].

36. The evidence failed to prove that prior to April ***, 2022, the District had a reason to believe that Student had an IDEA disability and that Student needed special education services to address the disability.
37. The evidence failed to prove that anyone requested an FIE prior to April ***, 2022. The Parent's April ***, 2022, request for an FIE triggered the District's Child Find obligation to evaluate Student.
38. The District complied with its Child Find obligations when it completed Petitioner's FIE on September ***, 2022 [R.10 & 14].
39. The evidence failed to prove that Student's Mother was denied meaningful participation in the decision-making process.
40. The evidence failed to prove that the District was required to provide Student's Parents with another copy of the District's Procedural Safeguards at Student's April ***, 2022, ***. The evidence proves that the Parents received Procedural Safeguards on April ***, 2022 [J.12.027-28].
41. Student's request for an IEE is moot. The District granted this request during the October 2022 ARDC meeting.
42. The SEHO has no jurisdiction to order the District to apologize to Student.
43. The SEHO has no jurisdiction to order the District to ensure globally that no child endures what Student endured.
44. The evidence failed to prove that Student was entitled to a Manifestation Determination Review.
45. The evidence failed to prove that the District denied Student FAPE.

V. DISCUSSION

A. BURDEN OF PROOF

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir.2009). 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).

B. CHILD FIND

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.)

1. Respondent’s “Child Find” Obligation Was Not Triggered Until April *, 2022:**

***** 2020-21:**

Throughout *** and *** grade, Student performed well academically. While Student seemed to require attention, Student’s *** teacher used various methods to distract and redirect Student when Student was not following directions or was behaving negatively. Student’s first semester *** teacher was relatively new and inexperienced in dealing with the nuances of Student’s acting out. Student’s Parents requested that Student be transferred into another *** class whose teacher was tenured and much more organized. The Parents requested this teacher because one of Student’s ***.

Student ended Student’s *** year with high achievement in Student’s academics and only a few “needs improvement” on Student’s citizenship report. Student consistently achieved level “***). The lowest

level Student achieved, and only in a few instances, was ****). In the area of ***, Student received an ****) each grading period under ****, one **** under ****, one **** under ****, one **** under ****; and one **** under ****.

*** grade 2021-22:

Student started *** grade with some of the same negative behaviors but excelled in Student's academics. Student's *** grade teacher described Student as "a typical *** grader" at the beginning of the fall semester 2021. Many *** graders require redirection many times; some have difficulty following directions. During fall 2021, Student liked to help the teacher. Student's teacher noted that during the fall 2021 semester, Student was able to be redirected to follow directions. Student's teacher had to be creative in attempting to redirect Student when Student was not paying attention or was bothering ***. By the end of the fall semester, Student's teacher reported that she was constantly redirecting Student and this redirecting, plus Student's growing aggression ***, was affecting the other students.

When Student returned from the Christmas break, Student's negative behaviors escalated. During the spring semester, Student's behaviors got out of control. Student's behaviors escalated to ***; Student ***; Student ***. Student's teacher referred Student MTSSC. The MTSS is a framework that helps educators provide academic and behavioral strategies for students with various needs. MTSS consists of three tiers of intervention that can be amplified in response to levels of need. **MTSS Committee Spring 2022:**

Student's first MTSS Committee convened on February ***, 2022. Student's negative behavior was escalating rapidly. The MTSS Committee assigned Student to Tier I and Student's teacher proposed the following goal for Student: Student will need less redirecting and Student will follow directions when given to the class. This goal was later modified by the Committee because it was not clearly measurable. The new goals required Student (1) to make appropriate choices 60% of the time, and (2) to follow directions 50% of the first time they are given.

On March ***, 2022, Student's MTSS Committee reviewed Student's goal of making appropriate choices 60% of the time and determined that Student had reached this goal "satisfactorily."

Student's MTSS Committee met again on April ***, 2022. Having reached Student's goal of making appropriate choices 60% of the time, the Committee proposed a new goal that required Student to follow directions the first time or required Student to lower the number of times a day Student needs to be redirected. Student had not achieved Student's goal of following directions 50% of the first time they are given.

On April ***, 2022, and April ***, 2022, the MTSS Committee reviewed the status of Student's goal of following directions the first time 50% of the time. Student did not master this goal.

Section 504 Evaluation and Plan *** grade:

When the interventions proposed by Student's MTSS failed to work, on March ***, 2022, the District recommended that Student have a Section 504 evaluation. Student's Parent signed consent for this evaluation. Student's Section 504 evaluation was completed on April ***, 2022. The evaluation found that Student qualified for Section 504 services. The Committee adopted accommodations and developed a BIP

to address Student's declining behaviors. The BIP targeted such behaviors as non-compliance and ***. Both Parents signed consent for Section 504 services.

The Committee recommended implementation of the Section 504 Plan to occur on April ***, 2022. The Committee found no problems with Student's academic performance and determined that Student's services could be delivered in Student's general education classroom.

Student's MTSS Committee met again on May ***, 2022. Student's teacher reported there were no academic concerns; however, Student's teacher reported that Student's behaviors continued to escalate. Since April ***, 2022, Student received *** office referrals for ***; Student missed *** days of school; and Student spent *** days in ISS. The MTSS Committee determined that Student should continue Student's BIP through Section 504.

The FIE Spring 2022:

On April ***, 2022, the District issued a Notice of Evaluation pursuant to a Parent's request for an FIE. Student's Parents signed the consent for the FIE on April ***, 2022.

Each public agency must conduct an FIE, in accordance with 34 C.F.R. 300.304-306, before the agency may provide special education and related services to a child with a disability. In conducting its evaluation, the District should use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The District should use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student and not use any single measure as the sole criterion for determining an eligibility and developing an educational program.

The District's assessments and other evaluation materials used to assess a student must be selected and administered so as not to be discriminatory on a racial or cultural basis; the assessment must be provided and administered in the student's language; the assessment must be used for the purposes for which the assessments or measures are valid and reliable; the assessments must be administered by trained and knowledgeable personnel; and the assessments must be administered in accordance with instructions provided by the producer of the assessments.

In this case, the District assessed Student in all areas of suspected disabilities. 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.

The IEP Fall 2022:

On October ***, 2022, Student's ARDC met to review Student's FIE. The Committee reviewed the FIE and based upon that review, determined that Student met the criteria as a student with an ED and OHI and that Student demonstrated a need for specially designed instruction. The Committee proposed three new goals in the area of behavior; developed accommodations in the classroom; placed Student in *** minutes per week; and developed a new BIP based upon Student's FBA, which showed Student needed more behavior intervention.

Student's Parents disagreed with ED eligibility and declined to sign consent for the implementation of the IEP. The Parents requested, and were granted, an IEE, which was pending at the time of the Hearing.

Student's ARDC reconvened on November ***, 2022. This time the Parents agreed to implementing the IEP temporarily until the IEE is completed and the ARDC meets to review it. November ***, 2022, was the start date for the implementation of Student's IEP.

The evidence shows that as of spring 2022, the District was providing a plethora of supports to aid Student in controlling Student's negative behaviors. Nothing worked – even after convening the MTSSC, referring Student for an evaluation under Section 504, and developing and implementing a Section 504 Plan. The Child Find trigger was when Student's Parents requested an FIE on April ***, 2022.

The evidence failed to show that anyone requested an FIE prior to April ***, 2022. The evidence failed to show that prior to this request, the District suspected that Student had a disability that required special education placement.

C. FAPE

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.

A. Procedural Requirements

Under IDEA, a denial of FAPE can result from a procedural violation if the violation impeded the child's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or caused a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2)(i-iii).

Student asserts that the District denied Student FAPE when the District deprived Student's Mother of the right to be an equal, collaborative participant in the decision-making process; when the District failed

to provide Student with a copy of the Procedural Safeguards when Student was ***, 2022; and when the District failed to convene a Manifestation Determination Committee in spring 2022.

1. The District Did Not Deprive Petitioner's Parents of the Right to be Collaborative Participants.

The evidence actually proved that Student's Parents were not deprived of their right to be equal, collaborative participants in the decision-making process. From requesting an FIE to participating in the evaluations to participating in two ARDC meetings, Student's Parents were extremely involved.

These Parents have been involved in Student's educational "up" and "downs" since Student entered *** in school year 2020-21. There were some conflicts between the Parents at times but this was not the fault of the District; the obstacles were the result of the Parents' ***. Under ***, both Parents had to agree 100% to any educational decisions. If one disagreed, then the requested educational change could not be implemented. This created angst when one Parent wanted an educational evaluation or services and the other rejected it. This was a family matter and not the District's.

2. The District Fulfilled its Obligation to Provide Procedural Safeguards.

The evidence likewise failed to prove that the District committed a procedural violation when it did not provide the Parents with a copy of their Procedural Safeguards upon Student's ***, 2022.

IDEA requires districts to provide parents of a child with a disability with notice of procedural safeguards. This notice must be provided once every year, except that a copy must also be provided as follows: upon the initial referral or parental request for the evaluation; upon receipt of the first state complaint in the school year; upon receipt of the first due process complaint in the school year; in accordance with disciplinary procedures; and upon parental request. 34 C.F.R. §300.504(a).

The evidence established that the District provided the Parents with Procedural Safeguards when they requested the FIE on April ***, 2022. ***. There was no need to provide another copy of the Procedural Safeguards.

3. The District Had No Duty to Conduct a Manifestation Determination Review in Spring 2022.

Student asserts that the District violated IDEA in failing to conduct a Manifestation Determination Review ("MDR"). Student claims that Student's multiple removals from Student's class constituted a denial of FAPE

IDEA provides that when a district decides to change a disabled student's placement because of a violation of a code of student conduct, the student's ARDC must determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or was the direct result of the district's failure to implement the student's IEP. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e). If the behavior is determined not to be a manifestation of the student's disability, then the student may be disciplined in the same manner and for the same duration as would apply to children without disabilities. 20 U.S.C. §1415(k)(1)(C); 34 C.F.R. §300.530(c). If the behavior is determined to be a manifestation of the student's disability then, with limited exceptions, the ARDC must either modify any existing BIP or conduct

an FBA and develop a BIP. 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f). A child with a disability who is assigned to a DAEP must continue to receive education services to enable the child to continue to participate in the general education curriculum and to make progress on Student's goals. 34 C.F.R. §300.530(d). The student must receive, where appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

The MDR is an important discipline procedure under the IDEA. It is an evaluation of a student's misconduct to determine whether that conduct is a manifestation of the student's disabilities. It must be performed within ten (10) school days of the change in placement that stemmed from an IDEA-eligible student's violation of a code of conduct. 34 C.F.R. §300.530(e).³

Generally a district is not required to conduct an MDR where the student is not eligible for special education and related services. A student that is not eligible for special education is only entitled to an MDR if the district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. See 34 C.F.R. §300.534.

While the evidence established that the District had knowledge of Student's negative behaviors, this did not equate to knowledge of an IDEA eligibility and an understanding that Student was in need of special education services. The trigger to perform an FIE occurred when Student's Parents requested an FIE on April ***, 2022. This is the date that the District suspected a disability requiring special education intervention.

It was incumbent on Student to prove that Student had a change in placement after April ***, 2022, and that such change in placement occurred over 10 school days. Student did not present probative evidence that the District did, in fact, change Student's placement for more than 10 school days. Accordingly, Student failed to prove entitlement to an MDR.

B. Substantive Requirements

In 1997, the Fifth Circuit established a four-factor test to determine whether a school district's IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA: (1) Is the program individualized on the basis of the student's assessment and performance?; (2) Is the program administered in the LRE?; (3) Are the services provided in a coordinated and collaborative manner by the key stakeholders?; and (4) Does the student demonstrate both positive academic and nonacademic benefits? *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997). These factors were re-affirmed by the Fifth Circuit as appropriate under, and consistent with, *Andrew F. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018). These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry.

The Michael F. analysis presupposes that an IEP has already been developed and implemented. At the time Student filed Student's Complaint, October 25, 2022, there was no IEP that had been implemented. On November ***, 2022, Student's Parents agreed to implement the October ***, 2022, IEP, with some

³ A "change of placement" occurs when the district removes the IDEA-eligible student from Student's current educational placement for more than ten (10) consecutive school days. 34 C.F.R. §300.536.

changes, on a temporary basis until the IEE is completed and reviewed by the ARDC. Three weeks later this case went to Hearing.

Conducting a Michael F. analysis is difficult under the record of this case. It has already been determined that Student's FIE assessed Student in all areas of suspected disabilities; 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. Student's IEP was individualized to Student's needs, based on assessment data, performance, and reasonably calculated to allow Student to make progress appropriate in light of Student's unique circumstances.

Likewise, the IEP appears to offer Student an education in the least restrictive environment ("LRE"). Student's education is presented in the general education class. Student is allowed *** minutes per week in a ***. There are no restrictions on Student's ***, lunch, or travel within the school. On the face of the IEP, it appears that Student's education will be conducted in the LRE.

As to the final two Michael F. factors, there is no evidence (1) to establish that Student's IEP is not being provided in a coordinated and collaborative manner by the key stakeholders or (2) to demonstrate that Student is not garnering both positive academic and nonacademic benefits. Consequently, in reliance upon IDEA's presumption favoring the education plan proposed by a school district and placing the burden of proof on the student challenging the plan, the District did not deny Student FAPE.

VI. CONCLUSIONS OF LAW

1. Petitioner bears the burden of proof on all issues 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 IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.
2. Petitioner failed to meet Petitioner's burden of proving that Respondent violated its Child Find obligations. *Schaffer*, 546 U.S. at 621; 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.111; 19 TEX. ADMIN. CODE §89.1151 (c).
3. Petitioner failed to meet Petitioner's burden of proving that the District's FIE was inappropriate, not comprehensive, and not in compliance with 34 C.F.R §300.304-306.
4. Petitioner failed to meet Petitioner's burden of proving that Student's IEP is not reasonably calculated to enable Student to make appropriate progress in light of the Student's individual circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).
5. Petitioner failed to prove that the District violated Student's procedural rights. 34 C.F.R. §300.503 and 34 C.F.R. § 300.504.

VII. ORDER

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Student is DENIED and this case is DISMISSED WITH PREJUDICE TO REFILEING.

SIGNED this the 12th day of January 2023.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the Due Process Hearing in any state court of competent jurisdiction or in a District Court of the United States. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

COPIES SENT TO:

VIA EMAIL: ***

Petitioner's Parent

VIA EMAIL: ***

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