

STUDENT, <i>B/N/F</i> PARENT, Petitioner,	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER
	§	
FORT BEND ISD, Respondent.	§	FOR THE STATE OF TEXAS

FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

On April 26, 2023, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Fort Bend ISD (“Respondent,” or “District” or “FBISD”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On April 27, 2023, 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. ¹ The issues in this proceeding concern multiple allegations that Respondent deprived Petitioner of a free, appropriate public education (“FAPE”) by violating certain substantive and procedural rights.

A. PETITIONER’S ISSUES:

1. Whether Respondent failed its “child-find” obligation, owed to Petitioner, when it:
 - a. failed to evaluate Petitioner timely;
 - b. failed to convene an Admission, Review, and Dismissal Committee (“ARDC”) timely;
 - c. failed to identify Petitioner’s special education needs;
 - d. failed to develop appropriate individualized education plans (“IEPs”) containing appropriate goals and objectives and Petitioner’s Present Levels of Academic Achievement and Functional Performance statements (“PLAAFP”);
 - e. failed to provide Petitioner Extended Year Services (“EYS”); and
 - f. failed to develop and implement disability accommodations’

¹ Petitioner asserted claims related to disciplinary actions Respondent had taken against Petitioner. These claims required the implementation of the expedited due process procedures under 34 C.F.R. §§300.532(a)-(c); 19 TEX. ADMIN. CODE §89.1191. Included in Petitioner’s Complaint were multiple claims that did not fall under the expedited procedures. The Parties agreed to bifurcate the issues: *Student, b/n/f Parent, v. Fort Bend ISD*; 257-SE-0423-A became the expedited case and *Student, b/n/f Parent, v. Fort Bend ISD*; 257-SE-0423-B became the non-expedited case. Per Petitioner’s request, on May 26, 2023, the undersigned dismissed Docket No. 257-SE-0423-A without prejudice to refiling.

2. Whether Respondent violated procedural matters when it:
 - a. failed to collect Petitioner's data and maintain proper records in a timely, appropriate manner;
 - b. failed to monitor Petitioner's progress and make necessary instructional modifications;
 - c. predetermined Petitioner's placement and services;
 - d. failed to provide prior written notice; and
 - e. failed to provide progress reports.

B. PETITIONER'S REQUESTED RELIEF:

1. Payment of an Independent Educational Evaluation ("IEE") in the following areas: full psychoeducational evaluation; social skills evaluation; counseling/psychological/psychiatric evaluations; Assistive Technology ("AT") evaluation; *** evaluation; and a Functional Behavioral Assessment ("FBA");
2. Payment for private tutoring, intensive intervention services, and *** consultation service for Petitioner;
3. Payment for Petitioner's private placement; private counseling/therapy services; private behavior consultation services; private therapeutic *** services; and Attention Deficit Hyperactivity Disorder ("ADHD") coaching services by private, professionally trained ADHD coaches; and
4. Payment for an IPAD and appropriate software for Petitioner.

C. RESPONDENT'S ISSUES AND REQUESTED RELIEF:

1. The two-year Statute of Limitations governs this case and runs after April 26, 2021;
2. The claims arising under non-IDEA statutes should be dismissed for want of jurisdiction.

II.
PROCEDURAL HISTORY

A.
Docket No. 257-SE-0423 [Pre-Bifurcation]

Petitioner's original Complaint asserted mixed claims: claims that required the implementation of the expedited due process procedures under 34 C.F.R. §§300.532(a)-(c); 19 TEX. ADMIN. CODE §89.1191; and claims that did not require expedited procedures.

On April 28, 2023, Respondent filed its Notice of Counsel. On May 1, 2023, the undersigned SEHO issued the Initial Scheduling Order, which set all the Complaint issues under the expedited timelines as follows: Prehearing Conference ("PHC"): May 9, 2023; Disclosures: May 17, 2023; Due Process Hearing: May 24, 2023; and Decision Deadline: June 23, 2023.²

On May 3, 2023, Respondent filed its Plea to the Jurisdiction, Notice of Insufficiency, General Denial, and Response to Petitioner's Request for Special Education Due Process Hearing Including Prior Written Notice, and Update on Status of Resolution Session. On May 7, 2023, the undersigned issued Order No. 2: Order Denying Respondent's Notice of Insufficiency.

On May 9, 2023, the Parties convened the PHC. In attendance were the following: (1) Ms. Holly Terrell, Petitioner's counsel; (2) Ms. Paula Roalson, Respondent's counsel; (3) the undersigned SEHO; and (4) the court reporter, who made a record of the PHC. The Parties discussed the option of bifurcating the case into two cases: Docket No. 257-SE-0423-A (the expedited case); and Docket No. 257-SE-0423-B (the non-expedited case). The Parties agreed to the bifurcation. Accordingly, the Parties agreed to discuss the issues related to the expedited matter at the time of that PHC but determined to hold the remaining non-expedited issues in compliance with a new scheduling order using the non-expedited timelines. On May 9, 2023, the undersigned issued Order No. 3: Order Bifurcating Case. By that Order, the undersigned separated the expedited issues from the non-expedited issues.

B.
Docket No. 257-SE-0423-A (Expedited Case)

On May 12, 2023, the undersigned issued Order No. 4 in the expedited case. By this order the undersigned confirmed the prior expedited timeline: Disclosures: May 17, 2023; Due Process Hearing: May 24, 2023; and Decision Deadline: June 23, 2023. The Parties chose an in-person hearing. The expedited timeline applied solely to expedited Docket No. 257-SE-0423-A

On May 19, 2023, Petitioner filed an unopposed Motion for Leave Requesting Permission for Expert to Testify Virtually. On May 19, 2023, the undersigned issued Order No. 5: Granting Petitioner's Request for Permission for Expert to Testify Virtually.

The Parties provided their Disclosures timely. On May 22, 2023, the Parties filed their respective objections to the other's Disclosures. On May 23, 2023, the undersigned issued Order No. 6: Ruling on

² The undersigned informed the Parties that either or both could file a Motion to Bifurcate the claims under the expedited procedures from the non-expedited ones.

Respondent's Objections to Disclosure; also on May 23, 2023, the undersigned issued Order No. 7: Ruling on Petitioner's Objections to Disclosure.

On May 24, 2023, prior to convening the Hearing on Petitioner's expedited issues, the Parties notified the undersigned that they had settled the disciplinary issues in the expedited proceeding. Accordingly, the Hearing did not convene. On May 25, 2023, Petitioner filed Petitioner's Motion to Dismiss without Prejudice. On May 26, 2023, the undersigned issued Order No. 8 in the Expedited Matter, which dismissed Docket No. 257-SE-0423-A without prejudice to refiling.

C.

Docket No. 257-SE-0423-B (Non-Expedited Case)

Because the Parties agreed to bifurcate the case into A and B, the start date for the non-expedited timeline for 257-SE-0423-B was continued from April 26, 2023, to May 9, 2023, the date of the PHC. The Parties requested a continuance of all non-expedited deadlines starting with May 9, 2023, because the expedited case required immediate attention, the undersigned found good cause to continue the start date in the non-expedited case and granted the continuance. On May 13, 2023, the undersigned issued Order No. 1B: Initial Scheduling Order, with the following non-expedited timelines: Prehearing Conference ("PHC"): June 15, 2023; Disclosures: June 22, 2023; Due Process Hearing: June 29, 2023; and Decision Deadline: July 23, 2023.

On June 5, 2023, Petitioner filed an Unopposed Motion for Continuance. The Parties participated in settlement negotiations and they needed time to obtain a TEA mediator and convene the mediation. The Parties stated that this continuance could streamline the costs of the litigation. Finding good cause, the undersigned granted the continuance and informed the Parties that the continuance would be discussed during the June 15, 2023, PHC.

On June 15, 2023, the Parties convened the PHC. In attendance were the following: (1) Ms. Holly Terrell, Petitioner's counsel; (2) Ms. Christina Henshaw, Respondent's counsel; (3) the undersigned SEHO; and (4) the court reporter, who made a record of the PHC. The Parties discussed the issues and the requested relief; they made a joint request for the continuance of the Hearing and Decision deadlines. Finding good cause for the requested continuance, on June 26, 2023, the undersigned issued Order No. 2B, which revised the scheduled hearing: Disclosure Deadline: September 20, 2023; Due Process Hearing: September 27-29, 2023; and Decision Deadline: December 10, 2023.

On September 14, 2023, Respondent filed an Unopposed Motion for Continuance, stating that the Parties convened mediation on September 8, 2023, but did not settle all issues. The Parties requested time for the continued informal settlement talks and to prepare for the Hearing, which was scheduled for September 27-29, 2023. Finding good cause, on September 22, 2023, the undersigned issued Order No. 3B, which revised the scheduled hearing: Disclosure Deadline: December 5, 2023; Due Process Hearing: December 12-14, 2023; and Decision Deadline: January 22, 2024.³

³³ On November 17, 2023, the undersigned issued Order No. 4B, which addressed discovery issues between the Parties. It did not affect the Hearing deadlines set out in Order No. 3B.

The Due Process Hearing:

The Parties made their Disclosures timely. The SEHO convened the in-person Due Process Hearing at FBISD on December 12, 2023, and completed the Hearing on December 14, 2023. The Parties' Exhibits were admitted; the Parties called a total of fifteen witnesses, who presented direct testimony and who were cross-examined.

During the Hearing, the Parties were represented by the following: (1) Ms. Holly Terrell, Petitioner's counsel; (2) Ms. Paula Roalson and Ms. Christina Henshaw, Respondent's counsel. Also in attendance throughout the Hearing were (3) ***, Petitioner's Parent; (4) Dr. ***, Respondent's Executive Director of Student Support Services; (5) Ms. ***, Respondent's Expert; and (6) Mr. Bradley Areheart, a new SEHO fulfilling his responsibility to observe a Due Process Hearing. At the conclusion of the Hearing, the Parties requested additional time to prepare their Closing Arguments and for the undersigned to issue the Final Decision. Finding good cause for the requested continuance, on December 17, 2023, the undersigned issued Order No. 5B, which set January 19, 2024, as the due date for the Parties' Closing Argument and February 2, 2024, as the due date for the SEHO's Final Decision.

III. RESOLUTION SESSION

The Parties convened a Resolution Session on May 11, 2023, but did not settle this case: 257-SE-0423-B. The Parties later convened a Mediation on September 8, 2023, but did not settle this case.

IV. FINDINGS OF FACT ⁴

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. Petitioner is ***-year-old *** who was enrolled previously in FBISD; at the time of the Hearing Petitioner was enrolled in *** ISD.

School Year 2020-21: Petitioner's *** Grade Year

3. Petitioner attended *** ISD from *** through *** grade [R.9.3]. Petitioner transferred from *** ISD and enrolled in *** in FBISD on August ***, 2020, prior to Student's ***-grade year [R2.2]. At that time, Texas schools were closed due to the COVID-19 Pandemic. Accordingly, all FBISD students, including Petitioner, received educational services virtually starting with the first day of classes. Petitioner lived with Student's Parents and siblings within the jurisdictional boundaries of FBISD.
4. In addition to the problems attendant to the virtual learning protocol, the Pandemic created multiple

⁴ References to the Due Process Hearing Record are identified as follows: "T#.#.#" refers to the three-volume Court Reporter's Transcription of testimony made on December 12-14, 2023, and the specific volume, page, and line numbers contained therein; "J#.#" refers to the Joint Exhibits by number and page; "P#.#" refers to Petitioner's Exhibits by number and page; and "R#.#" refers to Respondent's Exhibits by number and page.

problems within other areas of the educational system. At the time of Student's enrollment, school staff was working remotely, which made exchanging Petitioner's records difficult to access and transfer. Petitioner provided only Student's ***-grade report card to Respondent but Student's complete educational record was not produced for several weeks.

5. On, or about, September ***, 2020, Petitioner's Parent reported that Petitioner had been receiving educational services in *** ISD under Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794 ("Section 504"). The District had not received any Section 504 paperwork at the time of Petitioner's enrollment. The District immediately requested all of Petitioner's records from *** ISD and on September ***, 2020, *** ISD transmitted Petitioner's September ***, 2018, Section 504 Plan. Petitioner's ***-grade counselor then distributed the Section 504 Plan to Petitioner's teachers with instructions to implement the listed accommodations until the District could prepare an updated plan [R3.4].
6. Students were allowed to return to school physically in October 2020. During the period of virtual learning, many students had trouble. Some teachers used incentives to keep students engaged, such as allowing students to listen to music on their phones. Petitioner had difficulty when asked to stop listening to music, just like many other students.
7. Notwithstanding this fact, Petitioner was successful with Section 504 accommodations; Student's teachers reported that Student was funny and acted as a mentor for some of Student's fellow *** who were in Student's classes; Student did the work; and Student was successful during the first three nine-weeks-grading periods [TIII.522-530; 544].
8. Petitioner performed more successfully when Student attended school in person. Petitioner earned passing grades during the first three grading periods of the 2020-2021 school year, finishing the first semester with ***.
9. At the beginning of the fourth-nine-weeks period, Petitioner's Parents removed Student physically from the school and moved Student back to virtual learning between April ***, 2021, and June ***, 2021 [R.9.3]. This apparently had a negative effect on Petitioner's education. Petitioner's grades dropped drastically during the online instruction: Petitioner failed *** classes, bringing down Student's overall average and resulting in a denial of *** [R40.1]. Student attended summer school to retake*** where Student received in-person instruction. Petitioner passed *** with a grade of *** and the District promoted Student to *** grade [R22.2].
10. During school year 2020-21, Petitioner had several absences in some of Student's classes, including *** [R22.1].
11. Petitioner took the State of Texas Assessment of Academic Readiness ("STAAR") administered in the spring of 2021 [P1.9-12]. The STAAR measures the extent to which students have mastered knowledge and skills set forth in the Texas Essential Knowledge and Skills ("TEKS") [TI.71; 306]. Petitioner's 2021 STAAR assessments determined that Student did not meet grade level in *** [P1.9-12].
12. The District administers the *** ("****") assessment three times a year to assess students' performances in reading and math. *** is a computer-adaptive assessment. During the 2020-21 school year, Petitioner's

reading and math scores revealed that Student performed stronger on the first assessments at the beginning of the year:

- a. August ***, 2020, ***: Petitioner obtained screening categories of “needs intervention” on the ***, and “at/above benchmark” on the *** [R5.10];
- b. January ***, 2021, and February ***, 2021, ***: Petitioner’s *** scores dropped; Petitioner obtained screening categories of “needs urgent intervention” on the ***, and “needs intervention” on the *** [R5.10]; and
- c. April ***, 2021, and April ***, 2021, ***: Petitioner obtained screening categories of “needs urgent intervention” on the ***, and “needs intervention” on the *** [R5.10].

School Year 2021-22: Petitioner’s * Grade Year**

13. Petitioner returned to *** for school year 2021-22. Student’s grades at the end of the first grading period were passing; however, Student’s grades began to drop and at the end of the second nine-weeks grading period. At the end of the fall semester, Petitioner failed *** [R22.3].
14. During the fall of 2021, Petitioner began exhibiting negative behaviors and was difficult to redirect. Petitioner ***; Student was unmotivated and would not do Student’s work. Student was chronically late for school and classes and began missing multiple days of school [P5.22]. Petitioner’s Parents believed this change in attitude and performance was attributable to Petitioner’s being *** [T.III.563 & 579]. Petitioner’s behavior would improve after Student’s Parents were notified.
15. On November ***, 2021, Petitioner’s counselor sent a copy of Petitioner’s September ***, 2018, *** ISD Section 504 Petitioner Services Plan and a fillable teacher input form to Student’s teachers to gather information regarding Student’s behaviors and academics [R.4.1]. Based upon Student’s behavior and academic changes, plus Student’s poor performance on the spring 2021 STAAR and *** scores, Petitioner’s counselor began to suspect that Petitioner may be a Petitioner with a disability in need of special education services [R.4; TII.315-320].
16. On January ***, 2022, Petitioner’s Section 504 Committee convened to conduct a re-evaluation and to consider referring Petitioner for a special education evaluation [R.5]. The Committee reviewed Petitioner’s academic and behavioral performances, updated Petitioner’s Section 504 Plan, including the addition of a specific Behavior Intervention Plan (“BIP”), and referred Petitioner for a Full Individual and Initial Evaluation (“FIIE”) [R.5; TII.319-322]. A copy of the updated Section 504 Plan, including the BIP, was distributed to Petitioner’s teachers on January ***, 2022, with instructions to print and implement the new Plan [R6]. A copy was provided to Petitioner’s Parents on January ***, 2022 [R.7].
17. On February ***, 2022, Petitioner’s Parent reviewed the referral paperwork for the FIIE; received Procedural Safeguards and Prior Written Notice of the Evaluation; and provided written consent for the initial FIIE [R.8.2-5].

Petitioner’s FIIE: Spring 2022:

18. Petitioner's Multidisciplinary Team ("MDT") consisted of an educational diagnostician and a Licensed Specialist in School Psychology ("LSSP"). The MDT reviewed Petitioner's educational records, Section 504 Plans, and the Section 504 re-evaluation [R.9.1]. The MDT garnered parental input, teacher observations and recommendations, and provided Petitioner various standard evaluations in the areas of aptitude, achievement, and behavior [R.9.1-2]. The MDT completed Petitioner's FIIE on April ***, 2022.
19. Petitioner's FIIE included assessments in the following areas: (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) PLAAFP [R.9.2].
20. Petitioner's Parents reported that Student is a respectful and caring young ***. Student is talkative, sociable, friendly, active, and confident [R.9.4]. Petitioner enjoys an excellent relationship with Student's *** [R.9.3]. Student's Parents did not have concerns regarding Student's emotional and social functioning, noting that Student is happy and likes to have fun. The Parents had no concerns as to anxious or depressive factors affecting Petitioner, stating that Petitioner has no problem making and keeping friends [R.9.5]. However, the Parents did inform the MDT that Petitioner had ***, which had a significant impact on Student [R.9.3]. Additionally, Petitioner had ***. Petitioner was upset with this action as Student had *** [R.14.14].
21. Petitioner's Parent suspected that Petitioner had a Specific Learning Disability ("SLD") as Student was not working on grade level. Student's Parent suspected that a learning disability contributed to Petitioner's loss of motivation at school. Petitioner was diagnosed in *** with ADHD, but at the time of the FIIE, Petitioner was not seeing a doctor or taking medication for ADHD [R.9.5].
22. During Student's interview, Petitioner shared that Student finds school boring; Student acknowledged that Student has a hard time paying attention, especially when multiple directions are presented at one time; Student has trouble remembering information, has poor organization, and tends to have Student's belongings scattered everywhere [R.9.7].
23. Petitioner's evaluators observed Student in ***:
 - a. ***: Petitioner was late to class; Student did not engage in the interactive lesson, choosing to play on Student's phone; Student spoke loudly in class with a peer, used profanity, and failed to return to class after a break [R.9.6].
 - b. ***: Petitioner was late to class; Student did not engage in the classwork, choosing to talk with Student's classmates; Student returned late to the class following a break given to the entire class; Student spoke loudly with Student's peers, used inappropriate language, and failed to initiate or complete assignments [R.9.6].
24. The MDT administered the Behavior Assessment Scale for Children ("BASC") – Third Edition to evaluate Petitioner's emotional/behavioral performance using the self-report of personality, the Parents' and the teachers' rating scales. Petitioner manifested behavioral difficulties in the areas of inattention, hyperactivity, and impulsivity [R.9.32]. Overall, Petitioner demonstrated characteristics of ADHD that would qualify Student for special education services under the category Other Health Impairment ("OHI"), pending physician verification. The evaluation results demonstrated that

Petitioner has executive functioning difficulties in the areas of attentional control and problem solving. In the educational setting, Petitioner has difficulty maintaining self-control and regulating impulsive behaviors [R.9.14 & 32].

25. A Cross-Battery Assessment is a process by which assessors use information from multiple tests. It allows the examiner to conduct assessments that approximate the total range of broad and narrow cognitive abilities more adequately than what is possible with a single intelligence battery. The cross-battery approach systematically integrates data across cognitive, achievement, and neuropsychological batteries. This allows practitioners to expand their traditional assessments to address referral concerns more comprehensively. To do that, the District completes cognitive and achievement testing and uses the Cross-Battery Assessment Software System ("X-BASS") to analyze the results and look for a pattern based on how the cognitive and academic profiles align.
26. Petitioner's MDT used the cross-battery approach to interpret all cognitive assessments. The cognitive areas are broken into seven (7) broad abilities, and the first step is to determine if there is a pattern of strengths and weaknesses in the cognitive areas. The next step is to look at achievement to determine if there are deficits or discrepancies. The last step is to determine whether there is consistency between the cognitive discrepancy and achievement discrepancy, *i.e.*, does the cognitive deficit explain why the student may be having the identified academic difficulties? This is known as the dual discrepancy/consistency model.
27. The MDT administered the Wechsler Intelligence Scale for Children, Fifth Edition ("WISC V"), the Comprehensive Test of Phonological Processing, Second Edition ("CTOPP-2"), and the Woodcock Johnson Tests of Cognitive Abilities, Fourth Edition ("WJ IV Cog") to assess Petitioner's intellectual functioning [R.9.16].
 - a. The WISC-V assesses cognitive skills for children aged 6-16. It was used as the primary test battery for the purpose of determining higher cognitive abilities. It measures various facets of intelligence [R.9.16].
 - b. The CTOPP-2 assesses phonological processing, which refers to the use of phonological information, especially the sound structure of one's oral language, in processing written language and oral language. Specifically, it was used to assess Petitioner's abilities in the areas of Phonological Awareness [R.9.16].
 - c. The WJ IV Cog measures the processing and cognitive abilities of children and adults ages 2-90. This test yields the following cognitive performance clusters: Verbal Ability measures different aspects of language development; Thinking Ability measures long term retrieval, fluid reasoning, auditory processing, and visual-spatial thinking; and Cognitive Efficiency measures the capacity to process information automatically [R.9.16].
28. Petitioner's MDT used the WISC-V to assess the seven broad cognitive abilities: Petitioner's Comprehension Knowledge, formally known as Crystallized Intelligence; Fluid Reasoning; Long-Term Storage and Retrieval; Visual Spatial; Short-Term Working Memory; Processing Speed; and Auditory Processing. The WISC-V rendered the following results on these seven categories:

- a. Comprehension Knowledge: This includes the breadth and depth of a student's acquired knowledge, the ability to communicate one's knowledge, and the ability to reason using previously learned experiences or procedures. The application of this knowledge involves verbal concept formation, reasoning, and expression. These skills are developed through formal education as well as general learning experiences. The MDT administered three subtests: Similarities, Vocabulary, and Information. Petitioner achieved an overall score of ***, which is in the well-below-average range [R.9.18].
- b. Fluid Reasoning: This is the ability to use and engage in various mental operations when faced with a novel task that cannot be performed automatically. It includes the ability to reason and solve problems that often involve unfamiliar information or procedures. Identification and application of conceptual relationships requires inductive and quantitative reasoning, broad visual intelligence, simultaneous process, and abstract thinking. Petitioner achieved an overall score of ***, which is in the average range [R.9.18].
- c. Long-Term Storage and Retrieval: This is the ability to store information after it has been displaced from immediate awareness and to retrieve information fluently through association later in the process of thinking. The MDT used the Long-Term Retrieval Associative Memory cluster, which is composed of immediate Symbol Translation (learning visual-verbal pairs and then translating symbol strings into phrases or sentences); the MDT also used the Long-Term Retrieval Naming Facility cluster, which is based on one's ability to name letters and numbers as quickly as possible. Petitioner achieved an overall score of *** for the Long-Term Storage and Retrieval Associative Memory cluster, which is in the well below average range. Petitioner achieved an overall score of *** for the Long-Term Storage and Retrieval Naming Facility cluster, which is in the average range [R.9.18-19].
- d. Visual Spatial Thinking: This is the ability to perceive, analyze, synthesize, and think with visual patterns, such as putting together puzzles or interpreting graphs or charts. This includes the ability to store and recall visual representations, attend to visual detail and visual motor integrations. Petitioner achieved an overall score of *** [R.9.19]. The FIIE evaluates the *** as falling within an "average" range; however, Respondent's expert corrected this description to "below average" [T.III.658].
- e. Short-Term Working Memory: This is the ability to apprehend and hold information in immediate awareness and then use it or manipulate it to carry out a goal. Working Memory requires attention and concentration as well as visual and auditory discrimination. Petitioner achieved an overall score of ***, which is in the average range [R.9.19].
- f. Processing Speed: This is the ability to perform quickly both simple and complex cognitive tasks, particularly when measured under pressure to sustain controlled attention and concentration. Petitioner achieved an overall score of ***, which is in the extremely below average range [R9.20].

- g. Auditory Processing: This is the ability to perceive, analyze, and synthesize patterns among auditory stimuli and to discriminate subtle nuances in patterns of sound and speech when presented under distorted conditions. This includes phonological awareness, resistance to auditory stimulus distortion, and memory for sounds. Petitioner achieved an overall score of ***, which is in the average range [R.9.20].
29. The MDT determined that Petitioner's overall Intelligence Quotient ("IQ") was ***. Petitioner argues that if the assessments were conducted properly, Student's IQ would be ***, which is far different than the recorded IQ of **. The evidence failed to establish that Petitioner's IQ is ***, the evidence supports a finding that Petitioner's IQ is ***.
30. The MDT assessed Petitioner's educational and developmental performance using the WJ IV ACH Form A. This assessment consisted of six clusters [R.9.25]:
- a. Basic Reading Skills: Petitioner scored ***, which placed Student in the average range [R.9.26];
- b. Reading Comprehension: Petitioner scored ***, which placed Student in the low range [R.9.26];
- c. Reading Fluency: Petitioner scored ***, which placed Student in the low average range [R.9.26];
- d. Math Calculation Skills: Petitioner scored ***, which placed Student in the low average range [R.9.27];
- e. Math Problem Solving: Petitioner scored ***, which placed Student in the low average range [R.9.27]; and
- f. Written Expression: Petitioner scored ***, which placed Student in the low average range [R.9.27].
31. Petitioner's adaptive behavior was assessed using informal measures. These assessments measure the effectiveness with which individuals meet the standards of personal independence and social responsibility [R.9.20]. Petitioner exhibited age-appropriate adaptive behavior necessary to live independently and to function safely and appropriately in daily life. Based upon the data reviewed, Petitioner's level of cognitive functioning was found to be consistent with Student's adaptive behavior. No concerns regarding adaptive behavior were identified [R.9.20].
32. Petitioner's need for assistive technology ("AT") was assessed using informal measures [R.9.27], which indicated that Petitioner needed low tech assistive technology to facilitate the acquisition of academic skills, such as graphic organizers, guided notes for notetaking, assignment notebooks to organize homework assignments, and visual cues/prompts [R.9.28].
33. Petitioner's assessments revealed significant educational/developmental deficits. Based upon the results of the evaluations, Petitioner's MDT reported that Petitioner meets the TEA criteria as a

student with a SLD in Math Calculation and Reading Fluency [R.9.31]. Petitioner also struggles with Reading Comprehension due to Student's deficits in Reading Fluency.

34. The MDT likewise found that Petitioner manifested characteristics of ADHD. However, a licensed physician must be part of the MDT [R.9.32]. Accordingly, Petitioner's MDT determined that Petitioner's ARDC would make the ADHD eligibility determination if the doctor's information is received and an OHI disability form is completed [R.9.32].

Petitioner's May *, 2022, Initial ARDC Meeting:**

35. The District tried to contact Petitioner's Parents on April ***, 2022, to set up a time to review the FIIE; however, Petitioner's Parents did not respond. The District again contacted Petitioner's Parents on May ***, 2022, but received no response. Finally, on May ***, 2022, the District was able to review the FIIE with the Parent, who agreed with the evaluation [R.11.1; TIII.612-613].
36. Petitioner's ARDC met on May ***, 2022, to review Petitioner's FIIE as well as informal data provided by Petitioner's teachers, Parents, and Petitioner. The Committee determined that Petitioner was eligible for special education services as a student with SLDs in Reading Fluency and Math Calculation [R.14.3]; Student was not diagnosed with dyslexia or a Speech Impairment ("SI") [R.14.3].
37. The Committee developed Petitioner's IEPs and a BIP; considered whether Extended School Year ("ESY") services were required, and discussed Petitioner's *** [R.14]. The Committee determined that ESY services were not warranted.
38. The ARDC developed statements of Present Levels of Academic Achievement and Functional Performance ("PLAAFP") utilizing data from the FIIE and input from teachers, administrators, Petitioner's Parents, and Petitioner [R.14.4].
39. The ARDC determined that Petitioner would receive In Class Support ("ICS") from a special education teacher in ***, as well as accommodations across all instructional areas. Accommodations included using an assignment calendar/notebook, chunking assignments, using ***, and positive reinforcers. Petitioner's teachers were to preview work with Petitioner prior to lessons, use proximity control and visual aids, including providing a copy of the aids for Petitioner's use at home when needed to study or complete homework [R.14.5].
40. The ARDC discussed Petitioner's failing End Of Course ("EOC") State Assessments in spring 2021 in the areas of *** [R.14.6]. Student had retaken the EOC assessments in ***, but Student did not retake the EOC *** assessment because Student was absent. Scores from the *** EOC assessments were not yet available at the time of this ARDC meeting. The ARDC informed Petitioner that if Student did not pass the EOC assessments, accelerated instruction would be provided [R.14.6 & 8 & 14]. The ARDC determined that Petitioner would take all required STAAR tests [R.14.14].
41. The ARDC determined that Petitioner should continue to receive all instruction in the general education classroom with ICS by a special education teacher [R.14.10].
42. Petitioner's ARDC reached consensus [R.14.12-13].

Petitioner's August *, 2022, ARDC Meeting:**

43. Prior to the beginning of the 2022-23 school year, Petitioner's ARDC convened, at the request of Petitioner's Parent, to review Petitioner's schedule of services for the upcoming school year, to address the Parent's concerns regarding Petitioner's ***, and to review the physician information supporting an OHI eligibility [R.15.4 & 8].
44. Petitioner had passed all of Student's classes; however, Student's excessive absences meant Student could not receive *** because Student did not meet seat time obligations under the law. State attendance law requires that students must be present for at least 90% of all instructional days in each of those classes to obtain ***. Petitioner's Parent stated that she was not aware of Petitioner's numerous absences. Respondent confirmed that notification of absences is provided to the parents (1) by an automated system, and (2) by the dropout prevention counselor who reaches out to families if attendance becomes an issue [R.15.8].
45. The ARDC worked together and agreed to reduce the total "seat time" required for Petitioner to earn *** for Student's *** classes. The Committee agreed that Petitioner's "seat time" would be reduced to *** hours: ***. Once Petitioner completed Student's "seat time," Student could recoup Student's *** [R.15.8].
46. The ARDC meeting ended in consensus. As the ARDC meeting ended, Petitioner's Parent informed the Committee that Petitioner would be transferring immediately to *** within the District [R.15.8]. The Committee agreed that Petitioner's "seat time" requirements would transfer to ***. Petitioner's *** were reinstated on September ***, 2022. [R.15.8; 16.1].

School Year 2022-23: Petitioner's * Grade Year**

47. Petitioner had a rough start at ***. On September ***, 2022, Petitioner violated the Code of Conduct when Student ***. Shortly thereafter, a teacher overheard ***. School administrators and the school police officer conducted ***. Petitioner was *** and thereafter referred for expulsion and placement in the Juvenile Justice Alternative Education Program ("JJAEP") for *** [R.19.1].
48. Petitioner's ARDC convened on October ***, 2022, to conduct a Manifestation Determination Review ("MDR") related to the disciplinary incident of September ***. Following a review of all relevant information, the ARDC determined that Petitioner's behavior did not result from, or have a direct and substantial relationship to, Petitioner's disabilities; the behavior did not result from Respondent's failure to implement Student's IEP/BIP. The ARDC determined that the least restrictive environment ("LRE") was placement at the JJAEP for *** [R.17.9]. This ARDC did not reach consensus.
49. Petitioner enrolled at the JJAEP, where Respondent provided Petitioner with special education services, including implementation of Petitioner's IEP, BIP, ICS, and accommodations [R.32-39].⁵

⁵ All issues related to Petitioner's disciplinary removal were resolved by the Parties. Those issues were filed under Docket No. 257-SE-0423-A and assigned to the undersigned SEHO. The undersigned issued an Order of Dismissal in that matter on June 21, 2023.

50. Petitioner completed the 2022-23 school year successfully. Student earned passing grades in every class and *** [R.22.4; R29].

School Year 2023-24: Petitioner's * Grade Year**

51. Petitioner enrolled in *** ISD for the 2023-24 school year. *** ISD accepted Respondent's FIEE and with minor modifications, accepted Petitioner's IEP and BIP developed and implemented by Respondent [R.25.2; R.27; T.III.697].
52. Petitioner reports Student is doing well in *** ISD, although Student admits Student's prior behavior continues [T.III.519].

Respondent's FIEE:

53. Petitioner alleged that Petitioner's FIEE is invalid based upon numerous errors. Petitioner challenges the results of numerous tests/subtests based on the MDT's alleged failures to (1) add and subtract correctly; (2) query Petitioner during some tests; (3) conduct some tests; and (4) follow correct assessment protocols.
54. In conducting Petitioner's evaluations, Respondent 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 Petitioner and did not use any single measure as the sole criterion for determining the Student's eligibility and developing Student's educational program.
55. Respondent's assessments and other evaluation materials 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.
56. Respondent assessed Petitioner in all areas of suspected disabilities; Respondent's evaluations were sufficiently comprehensive to identify all of Petitioner's needs; Respondent's assessment tools and strategies provided relevant information that directly assisted Respondent's ARDC in determining Student's educational needs.
57. Petitioner's FIEE met the requirements of 34 C.F.R. §300.304 and completed a comprehensive picture of Student.

Student's IEPs and BIPs developed at the May *, 2022, and August ***, 2022, ARDC Meeting:**

58. At the conclusion of the FIIE, Petitioner's ARDC met on May ***, 2022, to review the assessments, recommendations, and any new data. This ARDC meeting was convened timely in compliance within the thirty-day timeline established by 19 TEX. ADMIN. CODE §89.1011 [R.14]. The ARDC reviewed the evaluation report; identified, and established Petitioner's PLAAFPs; developed an IEP and BIP; identified needed supplementary aids and services; and determined Student's educational placement. The ARD committee reached consensus on all elements of Student's program.⁶
59. The IEPs and BIPs were individualized based on valid evaluation data and PLAAFPs. They were developed in a coordinated and collaborative manner by key stakeholders, including Petitioner's Parents.
60. The IEPs and BIPs were implemented in the LRE.
61. The IEPs and BIPs were designed to allow Petitioner to make progress both academically and non-academically.

Respondent's Child-Find Obligation:

62. Respondent had no reason to suspect that Petitioner qualified for special education and related services when Student initially enrolled in the District in August 2020.
63. Respondent's child-find obligation to evaluate Petitioner was triggered in November 2021 when Petitioner's counselor began assembling data for a possible special education referral. At that time no one had referred Petitioner for such evaluations, including Student's Parents.
64. On January ***, 2022, Petitioner's Section 504 Committee convened to conduct a Section 504 re-evaluation and to consider a special education referral [R.4; R.5.10].
65. On February ***, 2022, Petitioner's Parents executed consent for an FIIE. Petitioner's MDT began the FIIE and completed it on April ***, 2022.
66. Respondent complied with its child-find obligation when it completed Petitioner's FIIE on April ***, 2022.
67. The time between Respondent's child-find trigger date in November 2021 and the satisfaction of that obligation by the completion of Petitioner's FIIE was reasonable.

⁶ Petitioner's ARDC convened on August ***, 2022, at the Parents' request [R.15.4].

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 754, 762-63 (5th Cir. 2018) (*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:

The lion's share of Petitioner's special education issues involve child find. Petitioner alleges that Respondent violated its child-find obligations when Respondent failed to evaluate Petitioner timely; failed to convene an ARDC timely; failed to identify Petitioner's special education needs; failed to develop appropriate IEPs containing appropriate goals and objectives and Petitioner's Present Levels of Academic Achievement and Functional Performance statements ("PLAAFPs"); failed to provide Petitioner Extended Year Services ("EYS"); and failed to develop and implement disability accommodations.

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 needs 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. 34 C.F.R. §300.111 (a)(1); *Alvin Ind. Sch. Dist. v. A.D.*, 503 F. 3d 378, 384 (5th Cir. 2007); *Carrollton-Farmers Branch Ind. Sch. Dist.*, 113 LRP 14998 (SEA Tex. 2013).

Once the child-find obligation is triggered, the District must initiate the evaluation process within a reasonable time. *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018). A child-find violation turns on three inquiries: (1) the date the child-find requirement was triggered due to notice of a disability; (2) the date the child-find duty was satisfied; and (3) the reasonableness of the delay between these two dates. *Spring Branch Indep. Sch. Dist. v. O.W. ex rel. Hannah W.*, 961 F.3d 781, 793 (5th Cir.)

1. Respondent's "Child Find" Obligation Was Triggered November ***, 2021:

Petitioner alleges that upon Petitioner's enrollment in August 2020, Respondent should have suspected that Petitioner qualified for special education services. Petitioner asserts that from the time Petitioner enrolled in fall 2020, Respondent failed to refer and evaluate Petitioner in a timely manner for special education services.

At the time of Student's enrollment, the COVID-19 Pandemic had forced Texas schools to close and refrain from face-to-face instruction. Respondent provided virtual learning between March and October 2020. Petitioner first set foot in *** in October 2020, following three (3) months of virtual instruction. The impact of virtual instruction did not equitably compare with face-to-face learning. This protocol was stressful for teachers and students. This has likewise impacted schools' child-find obligations. When a student's difficulties are noted upon a change in educational setting, these difficulties do not warrant a suspicion of disability. *D.S. v. IDEA Public Charter Schools*, 82 IDELR 203 (S.D. Tex. 2023).

The Pandemic also affected the file-sharing capabilities of schools to exchange records when a student changes school districts. On September ***, 2020, Petitioner's Parents informed Respondent that Petitioner had a Section 504 Plan that was developed at Student's prior school district. Respondent had not received a copy of this Plan, but immediately requested the Plan and upon receipt, sent all of Petitioner's teachers copies of Student's Section 504 Plan with instructions to implement the accommodations.

At the time, Petitioner was having trouble with the mandated virtual instruction, as did many students. Despite that, Petitioner's teachers implemented Student's accommodations. They noted that Petitioner did not stand out from any other student during school year 2020-21. This performance was evidenced not only by the observation of the educators working with Petitioner, but also by Petitioner's classwork and grades.

Petitioner continued to demonstrate the same or similar level of academic and behavioral performance throughout the spring semester of the 2020-21, except for the final grading period when Petitioner's Parents removed Student from face-to-face instruction and placed Student remotely on a virtual platform. Even with the challenge of failing the second semester of ***, Student was able to retake the class in summer school 2021 where Student returned to face-to-face instruction. Student not only passed the *** class and ***, but Student did well enough to earn an "above-average" grade.

Petitioner returned to *** for school year 2021-22. Student's grades at the end of the first grading period were passing; however, Student's grades began to drop during the second nine-weeks grading period. At the end of the fall semester, Petitioner failed ***.

During the fall of 2021, Petitioner began exhibiting negative behaviors and was difficult to redirect. Petitioner ***; Student was unmotivated and would not do Student's work. Student was chronically late for school and classes and began missing multiple days of school. Petitioner's Parents believed this change in attitude and performance was attributable to Petitioner's ***.

On November ***, 2021, Petitioner's counselor sent a copy of Petitioner's Section 504 Plan and a fillable teacher input form to Student's teachers to gather information regarding Student's behaviors and academics. Based upon Student's behavior and academic changes, plus Student's poor performance on the spring 2021 STAAR and *** scores, Petitioner's counselor began to suspect that Petitioner may be a student with a disability in need of special education services.

2. Respondent's "Child Find" Obligation Was Satisfied on April ***, 2022:

On January ***, 2022, Petitioner's Section 504 Committee convened to conduct a re-evaluation and to consider referring Petitioner for a special education evaluation. The Committee reviewed Petitioner's academic and behavioral performances, updated Petitioner's Section 504 Plan, including the addition of a specific BIP, and referred Petitioner for a FIIE. A copy of the updated Section 504 Plan, including the BIP, was distributed to Petitioner's teachers on January ***, 2022, with instructions to print and implement the new Plan. A copy was provided to Petitioner's Parents on January ***, 2022 [R.7].

On February ***, 2022, Petitioner's Parent reviewed the referral paperwork for the FIIE; received Procedural Safeguards and Prior Written Notice of the Evaluation; and provided written consent for the initial FIIE. Respondent immediately started the assessments.

Respondent complied with its child-find obligation when it completed Petitioner's FIIE on April ***, 2022. Respondent assessed Petitioner in all areas of suspected disabilities; Respondent's evaluations were sufficiently comprehensive to identify all of Petitioner's needs; Respondent's assessment tools and strategies provided relevant information that directly assisted Petitioner's ARDC in determining Student's educational needs. Petitioner's FIIE met the statutory requirements. 34 C.F.R. §300.304.

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. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). The correct FAPE standard is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress considering the student's individual circumstances.

The Fifth Circuit Court of Appeals has articulated a four-factor test to determine whether a Texas school district's program meets the IDEA's FAPE requirements. Those factors are: (1) whether the program is individualized based on the student's assessment and performance; (2) whether the program is administered in the least restrictive environment; (3) whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and (4) whether positive academic and non-academic benefits are demonstrated. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 26 IDELR 303 (5th Cir. 1997). This four-part test remains the appropriate standard for determining if a public school district has provided a student with FAPE

1. Petitioner's Program Was Individualized, Based Upon Petitioner's FIIE and Performance, and Administered in the Least Restrictive Environment:

a. Individualized IEP:

(1). Missing Services in Petitioner's IEP:

Petitioner argues that Student's IEPs were inappropriate because Student required a more specially designed instruction. The evidence failed to prove that Petitioner required additional academic IEP instruction. The evidence established that Petitioner's ARDC considered academic IEP instruction and determined it unnecessary. The ARDC reached consensus with the approval of Petitioner's Parents.

Petitioner next argues that Student's IEPs were inappropriate because they failed to include EYS services. There is no proof that Petitioner requested or needed EYS. The ARDC reached consensus on this matter in May 2020, with the approval of Petitioner's Parents.

Petitioner next argues that Student's IEP was deficient in that it did not contain*** planning. The May ***, 2022, IEP paperwork notes that the ARDC completed the *** supplement and other related information. However, there is little reference to Petitioner's *** planning. Even so, issues regarding incomplete *** planning are *de minimis* under this scenario. Petitioner's IEP was not implemented until the start of the 2022-23 school year. At that time Petitioner was attending ***. Within a month Petitioner was *** and enrolled in the JJAEP class and remained there for the remainder of that school year.

Petitioner failed to put on any evidence of harm regarding *** planning. Petitioner's ARDC ensured that Student ***. This program was appropriate to facilitate Petitioner's ***. Any error regarding the *** planning was *de minimis* and did not deprive Petitioner of FAPE.

b. Least Restrictive Environment:

Under the IEP, Petitioner's educational placement was in the general education class; Student was allowed thirty (30) minutes per week in a resource room. There were no restrictions on Petitioner's recess, lunch, or travel within the school. On the face of the IEP, Petitioner's educational placement was in the LRE.

Petitioner's ARDC convened on May ***, 2022, following the completion of the FIIE on April ***, 2022. This meeting was timely in that it complied with the thirty-day timeline. 19 Tex. Admin. Code §89.1011; [R14]. The Committee reviewed the evaluation report; identified, and established, Petitioner's PLAAFPs and Functional Performance; developed an IEP and BIP; identified needed supplementary aids and services; and determined Petitioner's educational placement. The ARDC reached consensus on all elements of Petitioner's program. The evidence established that Petitioner was the recipient of an instructional program that was based on evaluations, collaborations, and continuous progress monitoring, and was calculated to enable Petitioner to make progress considering Student's unique circumstances.

2. Petitioner's Services Were Provided in a Coordinated and Collaborative Manner by the Key Stakeholders and Would Allow Petitioner to Garner Academic and Nonacademic Benefits:

"Key stakeholders" are the parents, administrators, and teachers who are familiar with a student's needs. As such, they should all be involved in the highly coordinated and collaborative effort of crafting a student's IEP. *Michael F.*, 118 F.3d at 253. Petitioner asserts that Student disagrees with Student's May ^{***}, 2022, Plan, in that it was not developed in a coordinated and collaborative manner and Student's Parents' participation in developing Student's Plan was significantly impeded. To rise to the level of a denial of FAPE, Petitioner had to prove that Student's Parents' participation in developing Student's Program was significantly impeded by Respondent's actions done in bad faith. 34 C.F.R. §300.513(a)(2)(ii); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 811-13 (5th Cir. 2003). The evidence does not support this assertion.

a. Coordinated and Collaborative Issue:

The evidence demonstrates that Petitioner's Parents frequently collaborated with Petitioner's teachers by phone and e-mail and actively participated in the ARDC process. Respondent's staff provided Petitioner with Notice of the Procedural Safeguards and Prior Written Notice.

Petitioner alleged that Respondent failed to maintain appropriate data and logs and to share those using IEP Progress Reporting. The evidence established otherwise. Respondent maintained both data collection, logs of services, and routinely provided Petitioner with IEP Progress Reports. Petitioner failed to introduce any evidence demonstrating that Respondent denied Petitioner any procedural right that significantly impeded Student's participation in the development of Student's IEP or that resulted in a loss of Petitioner's educational opportunity. As such Petitioner's allegation fails.

Finally, Petitioner alleged Respondent predetermined Petitioner's special education program. Petitioner presented no evidence to support this allegation. The record does establish that Respondent's staff prepared for ARDC meetings and completed some attendant paperwork. But this preparation does not mean the ARDC predetermined Petitioner's plan. The operative rules and regulations allow school districts to engage in preparatory activities to develop a proposal or response to a parent's proposal that will be discussed at a later meeting without affording the parents an opportunity to participate. 34 CFR 300.501(b)(1) & (b)(3). *T.P. v. Mamaroneck Union Free School Dist.*, 51 IDELR 176, 554 F.3d 247 (2nd Cir. 2009).

b. Academic and Non-academic Progress:

Analyzing the issue of whether Petitioner received academic and non-academic progress under Student's IEPs is difficult in this case. Petitioner's IEPs were developed in May 2020 following a timely, appropriate FIIE. School ended just days following the ARDC meeting, which meant that Petitioner's program would not be implemented until fall 2022. Petitioner's ARDC met in August 2022 to discuss Petitioner's lack ^{***} due to Student's excessive tardies and absences. It was at that ARDC meeting that Petitioner informed the Committee that Student would not be returning to ^{***} but was transferring to ^{***}. A few weeks later, Petitioner was ^{***} and spent the rest of the year in JJAEP.

Petitioner failed to establish by a preponderance of credible evidence that Student did not demonstrate positive academic and non-academic benefits in response to Student's special education program.

There is no evidence to establish that Petitioner's IEPs were not provided in a coordinated and collaborative manner by the key stakeholders or to demonstrate that Petitioner garnered no 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, Respondent did not deny Petitioner FAPE.

VI. CONCLUSIONS OF LAW

1. Respondent is a local education agency responsible for complying with IDEA. 20 USC § 1400 *et. seq.*
2. Petitioner had 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 the IDEA are appropriate and that the party challenging the decisions always bears the burden of proof.
3. Petitioner failed to prove that the Respondent violated its child-find duty in a timely manner under the IDEA 34 C.F.R. § 300.111; 19 TEX. ADMIN. CODE § 89.1151 (c).
4. Petitioner failed to meet Student's burden of proving that the District's FIIE was inappropriate, not comprehensive, and not in compliance with 34 C.F.R §300.304-306.
5. Petitioner failed to meet Student's burden of proving that Petitioner's IEPs were not reasonably calculated to enable Student to make appropriate progress considering Student's individual circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).
6. Petitioner failed to prove that the District violated Student's procedural rights. 34 C.F.R. §300.503
7. Petitioner failed to prove that Respondent denied Petitioner a FAPE.

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.

SIGNED this the 2nd day of February 2024.

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).

Deborah Heaton McElvaney
Special Education Hearing Officer

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