DOCKET NO. 297-SE-0524B

STUDENT, B/N/F PARENT AND PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
v.	§	
	§	HEARING OFFICER FOR
KLEIN INDEPENDENT SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

FINAL DECISION OF THE HEARING OFFICER

Introduction

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing federal and state regulations. Petitioner Student brings this case against the Respondent, Klein Independent School District (Respondent, the District, or Klein ISD), and generally alleges that the District failed to comply with its Child Find obligations under the IDEA.

Procedural History

Student filed Student First Amended Complaint or Request for Due Process Hearing on May 6, 2024. The amended complaint superseded Student original filing, which was either not perfected or served before Student amended Student pleading. The amended complaint raised both expedited and non-expedited issues under the IDEA, so the Hearing Officer bifurcated the amended complaint into two separate cases. The expedited case, challenging a disciplinary placement that was later rescinded, was dismissed in TEA Docket No. 297-SE-0524A. The District requested a short continuance for good cause in the remaining, non-expedited case – i.e., this proceeding.

The Hearing Officer conducted a hearing on the merits in this case on September 24, 2024. At the conclusion of Student's case in chief, the District stated that it had no additional evidence to offer besides what it elicited during Student's case and therefore rested its own case.

Throughout these proceedings, Holly Griffith Terrell with the Law Office of Holly Terrell, PLLC, and Jennifer Firmin with Firmin Law represented Student. Erik Nichols and Matthew Acosta with Spalding Nichols Lamp Langlois represented the District.

Issues from the Pleadings

The First Amended Complaint raises the following issues before the Hearing Officer:

1. Whether the District failed to meet its Child Find obligations by not identifying and evaluating Student for special education services;
2. Whether the District failed to provide Student with disability accommodations; and
3. Whether the District predetermined placement changes for Student.

Student seeks the following relief in Student complaint:

1. An order directing the District to conduct an Independent Educational Evaluation (IEE) of Student in all areas;
2. An order directing the District to implement an Individualized Educational Program (IEP) based on Student IEE; and
3. An order directing the District to pay for ADHD coach services to Student by a private, professionally trained ADHD coach.

In response to Student's complaint, the District generally denies the allegations and asserts that it had no reason to suspect Student had any disability requiring special education services. The District also asserts that any claim by Student arising more than two years before Student filed Student complaint is barred by the statute of limitations.

Findings of Fact [1]

1. Student is a ***year-old *** School within the Klein Independent School District. *(Tr. at 10, 241-242; JX 17 at 1).*
2. It is no overstatement to describe Student as a remarkable***. Student has excellent grades, typically in the A's and B's, and is in in the***. Student recently scored***, placing Student in the *** percentile inhe nation. Student also participates in many *** activities such as ***and other activities. *(Tr. at 226-233; RX 10).*
3. Student also is in the ***Student school. The ***program is a very rigorous academic program for ***school students. Students who graduate from ***school with an ***received ***credit hours if they go to ***in Texas. Students in the ***program often deal with lots of stress and feelings of overwhelm ***. *(Tr. at 100, 135-141).*
4. It is that stress and overwhelm that began affecting Student in Student ***years, resulting in Student parents taking Student for evaluation and therapy with a psychiatrist, ***, in the summer of 2022. *(Tr. at 195-198).*
5. Currently, Student is diagnosed with***, ADHD (combined), and *** (recurrent). *(JX 2 at 1; Tr. at 197-198).*

[1] In this decision, references to the Transcript of the Hearing on September 24, 2024 will be "Tr. at _." References to Joint Exhibits will be "JX_ at _"; Petitioner's Exhibits will be "PX_ at _"; and Respondent's Exhibits will be "RX_ at _."

6. After Student's parents informed the District that Student had received these diagnoses, school counselor *** advised the parents that Student may be well served by a Section 504 plan. *(Tr. at 199-200).*
7. Student, Student parents, and various school staff met to develop a 504 plan for Student. *(PX 10).* Student receives various accommodations pursuant to a Section 504 Plan, which has been in place since Student began the 2022-2023 school year. *(RX 3).* Student's 504 plan accommodations include:

    - Hard copies of teachers' notes
    - Teacher checks for understanding and reteaching materials at student's request
    - Extra time for completing assignments and tests
    - Positive reinforcement
    - Preferential seating
    - Redirection of student behavior if Student engages in negative self-talk

    (JX 2 at 2).
8. After Student had in place a 504 plan with accommodations, Student teachers implemented and tracked implementation of Student various accommodations. *(Tr. at 124, 148-149, 152-153).*
9. Student thrived at school, particularly in the ***program. On occasion, Student would feel stress and overwhelm like many of Student peers and would visit the counselor or mental health specialist, *** Student first saw *** – or actually ***first saw Student – in January 2024 when Student refused to leave a classroom and ***. *(Tr. at 18-20).* Eventually they left the classroom and went to *** office to talk. Since that first incident when *** met Student, ***has met with Student about 20 times to talk about issues troubling to Student. According to ***Student's issues are general stress and anxiety. *(Tr. at 76).*

10. ***testified that Student often reacted to stressors or anxiety by "catastrophizing" or believing Student was going to experience worst-case scenarios. Student would then snowball into further worst-case scenarios. In addition, ***explained that Student may tend to engage in negative self-talk when Student's not doing well, thinking Student's stupid or an idiot who can't do anything. *(Tr. at 69-70).*
11. On February ***, 2024, Student was in Student ***class with teacher ***r, who emailed Student's parents about an incident when *** reminded Student to focus on the group task in the class. Student responded by ***. *(PX 39).* Student explained that Student didn't ***. *(Tr. at 248-249).*
12. On April ***, 2024, Student was involved in another incident with***. Student had been late for Student class and when it was over, Student approached ***and asked if Student was going to be disciplined for Student tardiness. ***replied that *** didn't know and that the assistant principal was in charge of addressing tardy issues. Student then ***. *(PX 46 & 48).* Student then immediately left the classroom, stating, "***." *(Id.)*
13. Other than this blurt Student made when Student left the classroom after the *** incident, ***stated that Student never told *** during class that Student wanted to ***. *(Tr. at 113).*
14. Although Student did *** as Student was leaving the classroom, this was part of Student melodramatics that Student counselor and teachers were aware of and typically would de-escalate with Student. For example, counselor ***testified that in an episode of catastrophizing when Student said ***, "I did not perceive – in that moment I did not perceive it like a true, ***. So it wasn't a concern that I was like, we need to get you to a hospital it was more we need to help calm you down." *(Tr. at 23-24).* It is also worth noting that ***is trained in part to work with students who may exhibit ***, and they did not believe Student's actions rose to that possible level. *(Tr. at 17).*

15. ***teacher, also mentioned that Student recalled Student spiraling down emotionally and saying Student ***, after which ***would walk Student down to the counselor's office to get Student some help. *(Tr. at 176-177).*
16. After the *** incident, the District recommended discipline for Student but that matter was later resolved outside the present case. *(JX 5 & 14).*
17. In connection with this incident, ***testified that Student spoke with Campus Administrator ***about Student and mentioned that Student, ***was not concerned about Student's mental state. *(Tr. at 50-52).* Nor had ***mentioned to anyone else within the District that Student was concerned about Student's mental state. *(Id.)* ***also testified that *** had not witnessed any impulsivity issues with Student. *(Tr. at 63).*
18. Noteworthy, ***testified that he has referred students to ***colleagues who might need special education evaluations. *(Tr. at 82).* *** made no such referral here for Student.
19. ***offered some insight into stress and anxiety issues facing Student and Student peers in the ***program. ***r testified:

> Q. With your ***students, you know, generally, that you have in your class, is it common for them to exhibit indicators of anxiety?
> A. Yes. Anxiety comes along with the ***, what's in store for them. So they -- yes, anxiety is pretty normal.
> Q. The anxiety that you have observed from Student in your class, does that exhibit substantially different than Student peers that are in your class?
> A. No, no. Normally, it's just what I've seen here. It's more anxiety the *** year ***.
> So there are more -- ***.
> But this year, even it's -- they work it out. It's -- it's pretty -- I haven't seen anything out of the norm.

(Tr. at 147-148).

20. ***whom Student spent considerable time with a school, also testified that Student did not experience problems across the board in all Student classes; rather, Student seemed only to have issues with teachers in a ***. *(Tr. at 165-168).* ***also concluded, like *** fellow teachers, that Student did not need any additional accommodations besides Student 504 plan to help Student succeed in school. *(Tr. at 182, 186).*
21. ***also testified about an interesting phenomenon within the ***program teachers and students, noting how they help support each other to succeed:

> But within the ***program we're a very close knit family and all the kids are very close to each other.
>
> So there was a lot -- there's always been a lot of support, you know, it's a very like kind of non-judgmental environment.
>
> So people are going to support, you know, whatever is going on and lift each other up quite a bit.

(Tr. at 160-161).

22. On July ***, 2024, the District contacted Student's parents to obtain their consent to conduct a full and individual evaluation (FIE) of Student. *(JX 16).* Parents returned their consent for the FIE on August ***2024. *(JX 17; Tr. at 200-202).*
23. Student's parents did not request that Student be evaluated for special education until the MDR meeting relating to Student's *** incident in the spring of 2024. *(Tr. at 235-236).*

Discussion

Burden of proof

There is no distinction between the burden of proof in an administrative hearing such as this case or a district court proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*,

580 F.3d 286, 292 n.4 (5th Cir. 2009). In a due process hearing under the IDEA, the burden of proof rests upon the party challenging a proposed IEP and placement or seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993).

Child Find

Under the IDEA, a school district's Child Find obligations impose an affirmative duty to locate and timely evaluate students with suspected disabilities within its jurisdiction "who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade." 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.8(a)(1), 300.111(a), (c)(1). This obligation is "triggered when the local educational agency has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability." *El Paso Indep. Sch. Dist. v. Richard R.R.,* 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008). Thus, it is clear that the suspicion must be of *both* the disability and the need for special education services.

Educational need of special education services is not strictly limited to academics, but also can include behavioral progress and development of appropriate social skills. *E.g., Venus Indep. School Dist. v. Daniel S.,* 2002 WL 550455 at *11 (N.D. Tex., April 11, 2002). But not every student who struggles in school requires an evaluation for special education. Mixed academic performance and some behavior issues do not automatically suggest a student has a disability. *Leigh Ann H. v. Riesel Indep. Sch. Dist.,* 18 F.4th 788, 797 (5th Cir. 2021).

After a potential Child Find violation has been triggered – i.e., a finding that the District suspects or has notice of a disability *and* that the student needs special education services – the next consideration is that of timing. This inquiry examines the "reasonableness" of time from the date of suspicion until the referral for evaluation.

Dallas Indep. Sch. Dist. v. Woody, 865 F.3d 303, 320 (5th Cir. 2017); *Krawietz v. Galveston Indep. Sch. Dist.,* 900 F.3d 673 (5th Cir. 2018); *Spring Branch Indep. Sch. Dist. v. O.W. ex rel Hannah W.,* 961 F.3d 781, 790-791 (5th Cir. 2020).

There are three relevant inquiries in assessing whether there has been a Child Find violation: (1) the date the Child Find requirement was triggered; (2) the date the Child Find duty was satisfied; and (3) the reasonableness of the delay between these two dates. *Krawietz, supra, at 677; O.W., supra, at 793*. The courts have also indicated that the reasonableness of a delay is not defined by its length in weeks or months, but rather by the steps taken by a district during the relevant period. *Krawietz at* 677*; O.W. at* 793.

Based on the above legal framework, I cannot find that the District violated its Child Find obligations toward Student in any material respect. First, although the District was on notice that Student had a potential disability under the IDEA – i.e., Student***, ADHD, or ***[2] – the District did not have reasonable notice that Student might need special education services. To the contrary, the facts suggest otherwise.

Student's parents did not request or hint at Student's possibly needing any special education testing or services until Student was the subject of discipline for the *** incident in April 2024. As already noted, the District obtained consent in August 2024 to have Student evaluated. Also, the mental health counselor, ***never referred Student for special education evaluation even though *** had referred other students for such evaluations and saw Student several times throughout 2024.

[2] Student argues in Student posthearing brief that Student may also have an emotional disturbance, but there was no expert or medical evaluation suggesting Student suffered from this disability. Student could very well have an emotional disturbance, which Student upcoming evaluation (if it has not yet taken place) may reveal. I would note, however, that characteristics of emotional disturbance must be exhibited for "a long period of time and to a marked degree that adversely affects a child's educational performance." 34 C.F.R. § 300.8(c)(4). That was not the case here with Student's behavior or educational performance.

Student's academic performance did not appear to suffer at all. In fact, Student performance shows Student to be an outstanding student, with high grades throughout Student ***school years and just recently scores on Student ***in the upper *** percentile nationwide. If mixed academic success does not automatically trigger a district's obligation to evaluate a student under Child Find, high academic success certainly does not either. *See Leigh Ann H., supra* at 797.

The record evidence did show a couple isolated behavioral issues in 2024 – e.g., an incident of *** in class, ***, and intentionally *** Student ***. But those incidents were not frequent and did not show a pattern, nor did they appear to materially impact Student's overall ability to learn. "Behavioral issues do not *ipso facto* signify a disability." *Leigh Ann H., supra*, at 797. In fact, to trigger Child Find, a student's behavior must be both egregious and persistent *on a daily basis. O.W., supra*, at 794. That was not the case here with Student's behavior.

I do not find it necessary to examine the reasonableness of the time between the District's notice of any need for evaluation and the date the Child Find duty was satisfied.[3] For the reasons above, I find that the District was *not* on reasonable notice that Student needed special education services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.8(a)(1), 300.111(a), (c)(1); *Richard R.R., supra,* 567 F. Supp. 2d at 950. Consequently, there was no Child Find violation in this case.

Student's disability accommodations

[3] The District plans to evaluate Student under the IDEA. *(JX 16, 17 & 18).* The District states in its posthearing brief that it issued a notice to evaluate Student for special education services in response to allegations in Student's Due Process Complaint filed in this case in May 2024, not in response to any suspicion that Student needed special education services.

Student asserts that Student was denied disability accommodations in this case, but this assertion fails for two reasons. First, there was no evidence of what accommodations Student was denied. Student teachers testified about implementing and tracking the accommodations under Student 504 plan. Second, the only accommodations at issue in this case were those required by Student 504 plan, not an IEP under the IDEA. Since compliance with a Section 504 plan is outside the Hearing Officer's jurisdiction, I am unable to conclude whether Student's accommodations satisfied Section 504 of the Rehabilitation Act. There are no IDEA issues for me to decide on this subject.

Predetermination

Student also argues that the District predetermined its placement change for Student, presumably relating to Student disciplinary issues in connection with the *** incident in April 2024. Because those disciplinary issues were the subject of a separate proceeding that has since been dismissed, the Hearing Officer finds no need to address predetermination allegations in the present case. If the predetermination allegation relates instead to the present case, I find no evidence of predetermination by the District on any placement decision.

Conclusion

On the record before this Hearing Officer, I find that there was no Child Find violation in this case. Even if Student had a qualifying disability under the IDEA, the District was not on reasonable notice or suspicion that Student had a need for special education services. I further find that there was no evidence that the District failed to provide Student any accommodations required by the IDEA. And finally, I do not find any evidence of predetermination by the District in its treatment of Student.

In sum, I find that Student did not meet its burden of proving the District violated the IDEA in any substantive or procedural respect. That said, I reiterate what I suggested earlier that Student's parents have done a wonderful job raising Student and caring for Student educational progress. Student likewise has done a remarkable job in *** school that would make any parent proud, and there is no doubt Student will be successful with Student ***and ***.

Conclusions of Law

1. The Respondent Klein Independent School District is responsible for identifying, evaluating, and serving students under the IDEA. 20 U.S.C. §§ 1412, 1414; 34 C.F.R. § 300.301; Tex. Admin. Code § 89.1011.
2. Petitioner Student has the burden of proving a violation of the IDEA by the District. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct 528 (2005).
3. Student failed to meet Student burden of proof to establish that the District violated its Child Find obligations under the IDEA. 34 C.F.R. §§ 300.111, .301.
4. Student failed to meet Student burden of proof to establish that the District violated the IDEA, either by failing to make accommodations under the IDEA or by predetermining any placement decision for Student.

Orders

Based on the record in this case, as well as the above Findings of Fact and Conclusions of Law, it is hereby ORDERED that:

1. All relief requested by Petitioner is DENIED and all of Petitioner's claims are DISMISSED WITH PREJUDICE.
2. All relief not specifically granted herein is DENIED.

Signed: November 4, 2024 By: _____

Christian A. Bourgeacq
Special Education Hearing Officer
for the State of Texas

Notice to the Parties

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. §1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).