

SOAH Docket No. 701-24-12954.IDEA
TEA Docket No. 208-SE-0324

**Before the
State Office of Administrative
Hearings**

—
**Student, by next friend Parent,
Petitioner**

v.

**Lewisville Independent School District
and
Frisco Independent School District,
Respondents**

FINAL DECISION

I. STATEMENT OF THE CASE

Student (Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against Lewisville Independent School District (LISD) and Frisco Independent School District (FISD and, together with LISD, Respondents) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issue in this case is whether each of the Respondents violated their respective child

find obligations by failing to timely evaluate Student and identify Student as a student with a disability in need of special education and related services.

The Administrative Law Judge (Judge) concludes that neither LISD nor FISD violated their child find duty by failing to timely evaluate Student. The Judge further concludes, however, that FISD violated the IDEA by failing to identify Student as a student with disabilities who, as a result of those disabilities, needed special education and related services.

II. DUE PROCESS HEARING

The due process hearing was conducted on April 8-9, 2025. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by attorney Jordan McKnight with the Law Office of Jordan McKnight. Parent was present, and Debra Liva attended the hearing as Mr. McKnight's legal assistant.

Respondents were represented by Meredith Prykyl Walker, Jennifer Carroll, and Naomi Harper with Walsh Gallegos Kyle Robinson & Roalson P.C. ***, in-house counsel for FISD, was present. In addition, Dr. ***, Managing Director of ***, and ***, Managing Director of ***, attended the hearing as party representatives for FISD. ***, Executive Director of Special Education, attended as the party representative for LISD. Both parties timely filed written closing briefs. The Decision in this case is due May 21, 2025.

The parties submitted Joint Exhibits 1-45. They were admitted without objection. Petitioner offered 39 separate exhibits. Petitioner Exhibits 1-5, 8-16, 18-19,

29-30, and 32-34 were admitted over Respondents' objections. Petitioner Exhibits 35-39 were admitted without objection. Respondents offered 20 separate exhibits, and 1-19 were admitted without objection. Respondents Exhibit 20 was admitted over Petitioner's objection.

Petitioner called three witnesses: Parent; Dr. ***, designated as an expert in the area of education, psychology and school psychology; and Student's *** teacher from LISD. Respondents called Student's *** teacher and the assistant principal from LISD as well as Student's *** and *** teachers from FISD. Respondents also offered the testimony of Dr. ***, a licensed specialist in school psychology (LSSP) for FISD. Dr. *** was designated as an expert in the areas of education, school psychology, evaluation, and social competence.

III. PETITIONER'S ISSUES AND REQUESTED RELIEF

A. Issues

The relevant timeframe falls within the two-year statute of limitations, and Petitioner raised the following issues for hearing:

1. Whether Respondents violated their respective child find duties by failing to timely evaluate and identify Student as a student with a disability in need of special education and related services; and
2. Whether each district denied Student a FAPE by failing to timely and appropriately identify Student in all areas of suspected disability.

B. Requested Relief

Petitioner requested the following items of relief:

1. Order FISD to find Student eligible for special education services and to develop an individualized education program (IEP) with appropriate supports;
2. Order an independent educational evaluation (IEE) at public expense in all areas of actual or suspected need, including but not limited to cognitive ability, achievement, a complete psychological evaluation, counseling, and a functional behavior assessment (FBA);
3. Order a meeting of Student's admission, review, and dismissal (ARD) committee to occur after completion of the IEEs to establish supports, accommodations, specific and measurable goals, and an appropriate behavior intervention plan (BIP) to address Student's unique needs;
4. Provide for the participation, at public expense, of each evaluator that conducts the IEE at an ARD committee meeting to review the evaluations;
5. Order compensatory education and related services to address Student's disabilities and/or needs, including private tutoring and counseling;
6. Reimbursement of Parent's expenses related to educational or diagnostic services; and
7. Any and all other remedies that Petitioner may be entitled to under the law.

IV. FINDINGS OF FACT

1. Student is *** years old, lives with Student's parents, *** and is currently a *** in *** at FISD. When Student is not in class, Student enjoys ***.¹
2. During the 2021-22 school year (Student's *** grade year), Student was enrolled in *** Independent School District, received As and Bs, and earned ***.²

¹ Joint Exhibit (JE) 40 at 12; Respondents Exhibit (RE) 8 t 4.

² JE 1 at 1, 4-5; Transcript (Tr.) II at 300.

2022-23 School Year (** Grade)

3. Student transferred to LISD in August 2022 and was enrolled in that district for the 2022-23 school year and the first quarter of the 2023-24 school year.³
4. Student was ** prior to enrolling in LISD. Parent did not share this information with LISD.⁴
5. On September **, 2022, Student reported to one of Student's teachers that ** and that this upset Student because Student **. The teacher offered to accompany Student to the counselor or the assistant principal's office, but Student declined the offer and went home. The assistant principal met with Student the next day to discuss what had happened. Student attempted to ** but was unable to do so. The assistant principal offered Student and Student's family counseling services in a three week program through the district.⁵
6. In December 2022, Student received a 45-day disciplinary placement for **. Student initially indicated that **. LISD rescinded the disciplinary placement, began a Title IX investigation, and contacted the police and child protective services.⁶
7. Student discussed peer related issues with the counselor several times while enrolled at LISD.⁷

³ Tr. I at 116-27.

⁴ Petitioner Exhibit (PE) 4; Tr. I at 117, 145; Tr. II at 300.

⁵ PE 8; Tr. II at 200, 213.

⁶ PE 11; PE 12; JE 3; Tr. I at 122-23, 147-48; Tr. II at 201-03.

⁷ PE 35; PE 36.

8. On October *** and December ***, 2022, Student's *** teacher emailed Parent indicating Student was receiving a failing grade in the class. Student's *** teacher emailed Parent on January ***, 2023. Student was in the *** class, and Student's teacher suggested that Student request a transfer to ***. It is not uncommon for students to transfer from ***, particularly if they—like Student—have historically been in ***.⁸
9. Student received the following grades during the 2022-23 school year:⁹
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
10. LISD teachers and staff described Student as engaged, social, and self-sufficient. They did not have any concerns with Student academically, socially, or behaviorally.¹⁰
11. With respect to meeting grade level expectations academically, Student passed *** assessments and had a *** at LISD. Meanwhile, Student's State of Texas Assessments of Academic Readiness (STAAR) Report Card reflected that Student passed Student's STAAR tests in ***.¹¹

⁸ PE 9; PE 10; PE 13; Tr. I at 120-21, 125-26; Tr. II at 205.

⁹ JE 2 at 1.

¹⁰ Tr. II 184-86, 197, 218, 363-65.

¹¹ JE 2 at 2-3; JE 43.

2023-24 School Year (** Grade)

12. Student's last day in LISD was November **, 2023. Student received the following grades from LISD for the first quarter of the 2023-24 school year:¹²
- **
 - **
 - **
 - **
13. Student began attending classes in Fisd on or about November **, 2023. In December 2023, Student told the school counselor and one of Student's teachers that Student had been diagnosed with **. On December **, 2023, Fisd sent Parent a notice and consent for an evaluation under § 504 along with procedural safeguards and additional resources explaining the protections and services available under § 504. Fisd contacted Parent and Student on December **, 2023, and again on February **, 2024, reminding them that the district was ready to begin the § 504 evaluation process upon receipt of consent and diagnosis documentation.¹³
14. Student did not have any disciplinary referrals during the 2023-24 school year and received the following grades at the end of the first semester:¹⁴
- **
 - **
 - **
15. On February **, 2024, Student's Parent informed the school counselor that Student **. Student remained in ** and had ** days of unresolved absences prior to this time.¹⁵

¹² JE 2 at 6; JE 5; JE 6; JE 7.

¹³ JE 8; JE 9; JE 10; JE 14; Tr. II at 302-03.

¹⁴ JE 32 at 2; JE 33.

¹⁵ JE 11; JE 34; Tr. I at 131.

16. Parent signed consent for the § 504 evaluation on February ***, 2024, and a meeting was held on February ***, 2024. A Section 504 Student Review Committee Report/Plan (§ 504 plan) was developed during the meeting based on Student's ***. (The *** diagnosis was confirmed by Parent in an email on March ***, 2024.) The plan included accommodations to address Student's behavioral and emotional needs.¹⁶
17. After ***, Student participated in *** program and returned to campus on or about March ***, 2024. A return-to-campus meeting was held on March ***, 2024, and a safety plan was created. Student's parents, a district § 504 coordinator, and a campus counselor attended.¹⁷
18. A Notice of Proposal to Evaluate and Consent for Full and Individual Evaluation (FIE) was sent to Parent on March ***, 2024, along with a Notice of Procedural Safeguards. FISD contacted Parent again on April *** and April ***, 2024, to obtain consent. Parent signed consent on April ***, 2024. The district initiated the evaluation process on May ***, 2024, and continued with direct assessments the following week.¹⁸
19. Student mastered grade level standards on the *** assessment, completing Student's ***, and received the following grades at the end of the year:¹⁹
 - ***
 - ***
 - ***
 - ***
 - ***
 - *** and
 - ***

¹⁶ JE 15; JE 19; JE 20 at 1, 2; JE 26 at 1.

¹⁷ JE 24 at 1; JE 25; Tr. II at 307-08, 343-44.

¹⁸ JE 27; JE 30; JE 31; RE 4; RE 6, RE 7; RE 9; Tr. II at 343.

¹⁹ JE 32 at 1-2; JE 40 at 43; JE 43.

2024-25 School Year (Grade)**

20. On September ***, 2024, the scope of the FIE was expanded to include autism and communication skills. An updated Notice of Proposal to Evaluate was sent to Parent the same day. The notice indicated that additional testing was necessary in the areas of communication, speech, and language in order to more thoroughly assess Student and differentiate between a possible emotional disturbance and characteristics of autism. Concerns arose during the evaluation process related to Student's nonverbal communication (eye contact, use of facial expressions), sensory sensitivities, difficulty with change in routine, lack of reciprocity during conversation, and excessive fidgeting (rocking, repeated hand mannerisms). These behaviors led the evaluators to suspect autism as a possible area of disability.²⁰

Evaluation Results

21. Parent signed consent on September ***, 2024, for further testing, and the FIE was completed on September ***, 2024. The evaluation was based on formal assessments, rating scales, and informal data; included teacher and parent input and classroom observations; and assessed Student in the following areas: language and communication skills, physical health, sociological factors, emotional and behavioral functioning, intellectual ability and adaptive behavior, and academic performance.²¹

Language and Communication Skills

22. In evaluating language and communication skills, Student's receptive and expressive language proficiency, articulation, fluency, voice, and pragmatics were assessed. Information was collected on Student's communication skills from teachers and Parent. Neither teachers nor Parent reported any concerns

²⁰ JE 36 at 4; JE 40 at 2-3.

²¹ JE 36; JE 39; JE 40; Tr. at 354-55.

regarding Student's articulation and voice quality, and Student's receptive and expressive language skills fell within the average range.²²

23. Student, however, exhibited relative and normative weaknesses in paralinguistic communication skills. These skills refer to the nonverbal elements of communication that accompany spoken language and convey meaning beyond the actual words used. Deficits in this area can contribute to difficulties with reciprocal interactions and are consistent with characteristics of autism. Student exhibited ***. Student's deficits in this area were also observed while conducting autism- related assessments and align with core features of autism.²³
24. Evaluators determined that Student met the disability criteria for a mild pragmatic language disorder.²⁴

Physical Health

25. Physical factors with the potential to impact Student's education were assessed through screenings and parent and teacher reports. Parent reported that Student was ***. Student has diagnoses of *** and ***. Student is ***.²⁵

Intellectual Ability and Adaptive Behavior

26. Cognitive testing revealed *** cognitive ability, with specific strengths in fluid reasoning and auditory processing. Student's adaptive behavior was evaluated and considered age-appropriate.²⁶

²² JE 39 at 4; JE 40 at 4; Tr. II at 351.

²³ JE 39 at 4-9, 18-19; JE 40 at 4-9, 18-19; Tr. II at 351-52, 359.

²⁴ JE 39 at 9, 49; JE 40 at 9, 49.

²⁵ JE 39 at 11, 14, 17; JE 40 at 11, 14, 17; RE 8 at 10-11; Tr. I at 117.

²⁶ JE 39 at 33-37; JE 40 at 33-37; Tr. II at 350.

Academic Performance

27. Student's academic performance levels were evaluated through formal and informal measures. The Woodcock-Johnson IV Tests of Achievement (WJ-IV ACH) was administered. Student performed in the *** range, with one score falling in the *** range, across the different skill sets assessed in reading, math, and written language.²⁷
28. As of September 2024, Student met all requirements *** and was receiving the following grades in Student's classes:²⁸
- ***
 - ***
 - ***
 - ***
 - ***
 - ***
 - ***
29. Because Student was struggling in Student's *** class, Student switched to ***. And although Student worked hard in Student's *** class, Student's teacher acknowledged it was not translating into good grades.²⁹

Emotional and Behavioral Functioning

30. Student's emotional and behavioral functioning was assessed through formal and informal measures.³⁰
31. Overall, teachers reported that Student is pleasant, hard-working, creative, friendly, cooperative, and respectful. Student is self-sufficient, organized in Student's classes, and comfortable socializing with both peers and adults, particularly in more structured settings. Some teachers noted, however, that Student can be "fidgety" or restless and is anxious in stressful situations or when external

²⁷ JE 39 at 39-45; JE 40 at 39-45; Tr. II at 350.

²⁸ JE 39 at 37, 43; JE 40 at 37, 43.

²⁹ JE 39 at 44-45; JE 40 at 44-45.

³⁰ JE 39 at 13-33; JE 40 at 13-33.

factors (unrelated to academic content) affect Student's emotional state. Student exhibits difficulty with emotional regulation and mood swings which can lead to overreactions to minor setbacks. Student is "hyperaware" of Student's surroundings, and this can negatively impact Student's ability to focus on academic tasks. Student also sometimes struggles with social functioning and reciprocity. Student can be immature, has difficulty with social cues and understanding personal boundaries, isolates ***self from others, and will forego social activities when given the opportunity to do so.³¹

32. According to Parent's input, Student faces similar struggles at home but to a greater degree. Student experiences rapid mood swings, ***, struggles with changes to Student's routine, and has trouble ***. Student is prone to misinterpreting social situations, is easily influenced by peers, and exhibits dependent behavior in social interactions ***.³²
33. Student reported that Student feels overwhelmed and overstimulated during the school day, often suppressing emotions until reaching Student's "safe space" at home.³³
34. The following formal assessments and rating scales were also conducted: the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2); Connors Comprehensive Rating Scales (CBRS); Autism Spectrum Rating Scale (ASRS); Comprehensive Executive Function Inventory (CEFI); and Multidimensional Anxiety Scale for Children, Second Edition (MASC-2).³⁴
35. In administering the ADOS-2, Student's interest in and use of materials, communication skills, and social skills were observed and rated according to

³¹ JE 39 at 24, 28; JE 40 at 24, 28; RE 5; Tr. II at 184-85, 198, 233-37, 247, 256-61, 298-99, 368-72.

³² JE 39 at 17, 22, 49; JE 40 at 17, 22, 49; Tr. I at 132.

³³ JE 39 at 18; JE 40 at 18.

³⁴ JE 39; JE 40.

specific criteria identified in the assessment. Student demonstrated relative weaknesses in nonverbal communication and emotional regulation. Weaknesses in nonverbal communication can interfere with interpersonal relationships and communication. Student appeared to miss social cues, occasionally demonstrated difficulty responding to questions regarding emotional or social nuances, consistently overshared personal information, and provided too many details when describing routine and nonroutine events. While Student did not display any compulsive or repetitive behavior, Student exhibited restless behavior and fidgeted during classroom observations and when discussing certain topics. Student's ADOS-2 score fell within the autism spectrum range.³⁵

36. The results of the CBRS reflected elevations in emotional distress and manic behaviors in the home and unstructured settings (such as *** class). Student's parents and *** teacher reported that Student's emotional challenges occasionally seriously affected Student's school work due to Student's inability to maintain adequate focus. Student's CBRS scores also revealed elevated social difficulty in certain areas. Student generally exhibited difficulty maintaining friendships and poor social connections due to a lack of social reciprocity. Student failed to consistently react appropriately to other people's feelings, to appear interested in them, or to use facial expressions, eye contact, and hand gestures to communicate. Finally, elevated scores were reported in the areas of emotional distress and manic behaviors. Student worried significantly about social and academic demands and demonstrated hyperactivity across settings through constant movement and fidgeting.³⁶
37. The results of the ASRS likewise indicated that Student exhibited many of the features characteristic of individuals with autism. The data showed that Student has difficulty using appropriate verbal and nonverbal communication for social contact, engages in unusual behaviors, has difficulty relating to children and adults, struggles with changes in routine, and overreacts to sensory stimulation.³⁷

³⁵ JE 39 at 18-21, 49-50; JE 40 at 18-21, 49-50.

³⁶ JE 39 at 24; JE 40 at 23-24.

³⁷ JE 39 at 28; JE 40 at 28; Tr. II at 376-77.

38. The CEFI measures a student's executive functioning, and in this case, revealed that Student's skills and abilities were commensurate with, or greater than, Student's same age peers.³⁸
39. On the MASC-2, both Parent and Student reported elevated scores in the areas of obsessions and compulsions, physical symptoms, and panic. An absence of harm avoidance was also identified. Student worries others will think negatively of Student and experiences feelings of panic, including shortness of breath, dizziness, chest pains, racing heart, nausea, sweaty or cold hands, and feelings of strangeness.³⁹
40. The FIE noted that Student's behavior impedes Student's learning.⁴⁰
41. Based on the evaluation data, the evaluators determined that Student met eligibility criteria under the IDEA for autism and speech impairment due to a pragmatic language disorder. Although Student also met the criteria for emotional disturbance, the evaluation team determined that autism more accurately explained Student's behavioral patterns and needs. The district's LSSP further noted that a student cannot be identified with autism if an emotional disturbance is identified as the primary disability.⁴¹
42. The evaluation team made the following recommendations but indicated that all final determinations related to eligibility, educational planning and programming, and services to be provided remained the responsibility of the ARD committee:⁴²
- Provide visual supports to help Student identify signs of frustration, emotional distress, or dysregulation and strategies to help Student cope with Student's emotions and dysregulation;
 - Create a goal focused on effectively identifying and managing emotions experienced in the educational setting;

³⁸ JE 39 at 29; JE 40 at 29; Tr. II at 346-47.

³⁹ JE 39 at 33; JE 40 at 33.

⁴⁰ *Id.*

⁴¹ JE 39 at 50-51, 53, 56; Tr. II at 345.

⁴² JE 39 at 51; RE 40 at 51.

- Help Student learn to describe how Student's emotions and behavior affect ***self and others, to describe how to ease frustrations in hypothetical situations, and to describe situations in which Student exhibits a specific emotion;
 - In light of Student's susceptibility to peer influence and risk-taking behavior, the evaluation team also recommended providing support in identifying appropriate relationships, responding to inappropriate or unreasonable requests, and identifying healthy boundaries.
43. The following positive behavior interventions and supports were also recommended:⁴³
- Clear expectations and visual supports;
 - Scheduled breaks and options for a "safe space";
 - Sensory supports to help with overstimulation in the educational setting (fidgets, headphones);
 - Behavioral cuing and pre-correction;
 - Teach and reinforce coping tools (deep breathing reminders and requests to take a break);
 - Movement breaks;
 - Positive reinforcement systems (verbal praise, allow for preferred teacher attention);
 - Check-in/check-out system with preferred teacher/staff;
 - Provide choice-making opportunities;
 - Praise and acknowledgement for effort;
 - Tiered support for emotional difficulties;
 - Create an individual system for Student and staff to respond to emotional concerns by providing gentle verbal reminders or a cue card system to help Student recognize when Student is becoming overwhelmed;

⁴³ JE 39 at 52; RE 40 at 52; Tr. II at 377-78.

- Allow brief breaks when needed or access to a calm/safe space before rejoining the class; and
 - Opportunities for reflective self-monitoring which may include a behavior tracking sheet that allows Student to reflect on Student's behaviors and self-regulation strategies during specific points of the day. Teachers can assist by reviewing the sheet and providing specific positive feedback on progress.
44. Student's ARD committee met on October ***, 2024, to review the FIE and determine eligibility. The district members of the ARD committee believed that, although Student met the criteria for autism, emotional disturbance, and pragmatic language disorder, Student did not demonstrate a need for specially designed instruction and therefore was not eligible for special education and related services. Parent disagreed.⁴⁴
45. Student's § 504 committee met on November ***, 2024, and incorporated the recommendations from the FIE into Student's § 504 plan. Student's parents and attorneys were invited to attend the meeting but did not.⁴⁵
46. At the time of the hearing, Student was receiving failing grades in ***. FISD nonetheless anticipates that Student ***. Student plans to ***.⁴⁶

***** Testimony and Evaluation**

47. Dr. *** is a licensed psychologist, LSSP, and a board certified behavior analyst. She testified on behalf of Petitioner as an expert in the areas of education, psychology, and school psychology. She reviewed the FISD FIE but did not review any records from LISD.⁴⁷
48. During her testimony, Dr. *** explained that the pragmatic language disorder identified in Student's FIE can result in an inability to express Student's true emotional state and level of distress. Individuals with this disability often

⁴⁴ JE 41 at 5.

⁴⁵ JE 42.

⁴⁶ PE 37; PE 38; Tr. II at 297-300, 329-30.

⁴⁷ Tr. I at 20, 24-25.

struggle to advocate for themselves in stressful situations which can make them vulnerable to manipulation and abuse. It also leads to frustration and exacerbates ***.⁴⁸

49. Dr. *** further observed that Student needs direct instruction in processing information that is confusing or stressful to oneself. She disagreed with the district's speech language pathologist who believed that the appropriate environment for Student to learn strategies to address Student's pragmatic language deficits was in an "authentic environment" (the general education setting). Dr. *** explained that, while responsive interventions (helping Student process a situation after it occurs) are important, proactive, preventative interventions are also necessary.⁴⁹
50. In addition, Dr. *** conducted an independent evaluation of Student on March ***, 2025 (*** Evaluation). During the evaluation, Student reported experiencing social isolation, difficulty falling asleep, early awakening, irritability, lack of motivation, and consistent emotional distress upon returning home from school. She also reported difficulty resisting impulses, managing emotions, shifting between tasks, monitoring Student's behavior, and planning, organizing, and completing assignments.⁵⁰
51. Dr. *** observed that Student's academic performance reflects both Student's intellectual abilities and psychological difficulties. While some grades were high, Student had a failing grade in *** and was missing grades in other classes. Dr. *** noted that Student would fall behind in class and then it was very stressful for Student to catch up, which indicates difficulty with executive functioning. Thus, although Student was often ultimately able to achieve good grades, doing so caused Student a great deal of distress.⁵¹
52. As part of her evaluation, Dr. *** conducted the following assessments: the Minnesota Multiphasic Personality Inventory-3 (MMPI-3); the Post-Traumatic Stress Disorder (PTSD) Diagnostic Scale for the DSM-5; the

⁴⁸ Tr. I at 39-40, 53-54.

⁴⁹ PE 32; Tr. I at 48-50, 52-53, 109-10.

⁵⁰ PE 1 at 1, 7-10.

⁵¹ PE 1 at 2; Tr. I at 42, 71, 107-08, 121; Tr. II at 375.

Outcome Questionnaire (OQ-45.2); and the Behavior Rating Inventory of Executive Function (BRIEF2).⁵²

53. The MMPI-3 assesses personality traits and psychopathology and is intended for individuals suspected of having mental health or other clinical issues. Results of the MMPI-3 suggested over-reporting tendencies but nonetheless revealed serious concerns, including ***. Dr. *** noted that Student has a preoccupation with poor health and experiences significant sleep disturbance, fatigue, and memory problems. Student demonstrated evidence of ***. Dr. *** pointed out that this is particularly dangerous when coupled with poor impulse control.⁵³
54. Based on the results of the MMPI-3, Dr. *** identified diagnostic considerations consistent with ***, and features associated with thought dysfunction and personality disorders.⁵⁴
55. Student's score of *** on the PTSD Diagnostic Scale indicated that Student suffers from severe PTSD. Symptoms included frequent nightmares, intrusive thoughts, emotional reactivity, physical symptoms of distress, hypervigilance, irritability, intense negative feelings, and significant avoidance behaviors. These symptoms can affect students in the educational setting and can be exacerbated in students with autism due to deficits in the ability to communicate their feelings.⁵⁵
56. The OQ-*** is typically used with *** in counseling to obtain a baseline and measure progress. It looks at three specific areas: symptom distress, interpersonal relationships, and social roles. Student's results indicated high levels of symptom distress. Student's score of *** was well above the clinical cutoff of ***, indicating a serious impact on Student's interpersonal

⁵² PE 1.

⁵³ PE 1 at 2-4; Tr. I at 56-57.

⁵⁴ PE 1 at 4-5.

⁵⁵ PE 1 at 5; Tr. at 61-63.

relationships and ability to function in daily social and academic roles. Students with such high symptom distress have difficulty focusing in school.⁵⁶

57. The BRIEF2 is a standardized self-reporting measure used to identify executive functioning deficits and is comprised of a Behavior Regulation, Emotional Regulation, and Cognitive Regulation Index. It also includes a Global Executive Composite. Student's scores were *** in the Behavior and Emotional Regulation Indices as well as the Global Executive Composite. Meanwhile, Student's score in the Cognitive Regulation Index was ***.⁵⁷
58. The Emotional Regulation Index is correlated with autism and measures an individual's ability to sustain attention and not be distracted by emotion. Behavior regulation captures a student's ability to regulate and monitor behavior effectively and includes the ability to inhibit an automatic brain response. Deficits in this area can result in problems with impulse control. Cognitive regulation is the ability to problem solve effectively and complete tasks. Finally, the Global Executive Composite is a summary score that incorporates the results of the indices discussed above and, in this case, suggests *** in one or more areas of executive function.⁵⁸
59. Overall, the BRIEF2 indicates that Student has difficulties with all aspects of executive functioning, including inhibitory control, self-monitoring, emotional regulation and flexibility, the ability to sustain working memory, and planning, organizing, and problem solving to complete tasks such as school work. Deficits across these domains can be addressed through special education.⁵⁹
60. According to Dr. ***, the recommendations made by the evaluators in the FIE would have helped address Student's needs in the educational setting. An IEP was necessary to ensure staff working with Student understood the tiered

⁵⁶ PE 1 at 6; Tr. I at 63-64

⁵⁷ PE 1 at 6-11.

⁵⁸ PE 1 at 6-7, 11-12; Tr. I at 41, 66.

⁵⁹ PE 1 at 11; Tr. I at 66-67.

support system required for students with emotional difficulties and how to implement appropriate strategies to meet their needs.⁶⁰

61. Dr. *** recommended special education and related services and compensatory education due to the denial of eligibility. Dr. *** specifically endorsed speech and language services, psychological services and/or counseling as a related service, as well as direct instruction in executive functioning skills.⁶¹

V. DISCUSSION

A. Burden of Proof

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in a due process hearing is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1991). The burden in this case is therefore on Petitioner to show that Respondents violated their child find duties by failing to timely evaluate and identify Student as a student with a disability in need of special education and related services.

B. Child Find Under the IDEA

The IDEA's child find provisions guarantee access to special education for students with disabilities. 20 U.S.C. § 1400(d)(1)(A). School districts have an affirmative duty to have policies and procedures in place to locate, and timely evaluate, children with suspected disabilities in its jurisdiction, including "[c]hildren

⁶⁰ JE 39 at 51-52; JE 40 at 51-52; Tr. I at 32-35, 42, 59.

⁶¹ PE 1 at 12 -13; Tr. I at 32-34, 108-09.

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. §§ 1401(3)(a), 1412(a)(3); 34 C.F.R. §§ 300.111(a), (c)(1); *El Paso Indep. Sch. Dist. v. Richard R.R.*, 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008).

The child find obligation is triggered when a school district has reason to suspect the student has a disability, coupled with a reason to suspect special education services may be needed to address the disability. When these suspicions arise, the school district must evaluate the student within a reasonable time after school officials have notice of reasons to suspect a disability. *Richard R.R.*, 567 F. Supp. 2d at 950; *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 467 (N.D. Tex. 2016), *aff’d in part and rev’d in part*, 865 F. 3d. 303 (5th Cir. 2017); *Dep’t of Educ., State of Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001).

The analysis for resolving a child find issue therefore is two-fold:

1. Whether the school district had reason to suspect the student has a disability and had reason to suspect the student may need special education and related services as a result of the disability; and
2. Whether the school district acted within a “reasonable” amount of time after having reason to suspect the student may need special education and related services.

Richard R.R., 567 F. Supp. 2d at 950; *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303, 320 (5th Cir. 2017); *A.L. v. Alamo Heights Indep. Sch. Dist.*, No. SA-16-CV-00307-RCL, 2018 W.L. 4955220, *6 (W.D. Tex. Oct. 12, 2018).

1. Reason to Suspect a Disability and the Need for Special Education

a) LISD

Student enrolled in LISD in August 2022 and remained in the district for just over a year. Petitioner argues that, during this period, Student had *** failing grades, was removed from Student’s *** class, was ***, and “frequently access[ed] the counselor.”⁶² Petitioner contends that these events triggered LISD’s child find obligations.

LISD teachers and staff, however, consistently described Student as engaged, social, and self-sufficient. They did not have any academic, behavioral, or social concerns related to Student’s performance and had no knowledge of prior ***. In addition, Student passed Student’s *** assessments in *** between spring 2021 and fall 2023. Student maintained a ***and participated in ***.

With regard to Student’s *** failing grades, case law establishes that “persistent academic underachievement”—rather than an isolated failure—must underpin a referral for an FIE. *See White ex rel. White v. Ascension Parish*, 343 F.3d 373, 379 (5th Cir. 2003). In light of Student’s overall academic performance, Student’s struggles in ***—spanning *** different

⁶² Pet. Closing Brief ¶¶ 54-50.

school years—do not support the conclusion that Student was demonstrating persistent academic underachievement while Student was enrolled in LISD.

As for ***, Student's teacher recommended that Student (along with several other students) ***. This was not viewed as an underachievement on Student's part, but rather a common occurrence among students attempting to move up from an ***.

Finally, Petitioner asserts that the *** incidents, along with the counselor's involvement, should have alerted the district by December 2022 that Student had a disability.⁶³ Petitioner's position, however, relies on hindsight and imputes knowledge of Student's autism to the district even though the district had no evidence of the disability in December 2022. Moreover, a distressed reaction to a traumatic event and seeking counseling to process that trauma are not behaviors specific to individuals with disabilities.

Accordingly, the Judge concludes Petitioner failed to show by a preponderance of the evidence that, during Student's enrollment, LISD had reason to suspect Student had a disability and a corresponding need for special education and related services.

b) FISD

As for FISD, Student enrolled in the district at the end of November 2023. The district learned shortly thereafter that Student had been diagnosed with *** and offered to conduct an evaluation under § 504 on December ***, 2024. The district

⁶³ Pet. Closing Brief ¶¶57, 48[sic]. Petitioner's Closing Brief is not paginated and the paragraph numbering is off, making citation to the brief difficult. The paragraphs cited in the previous sentence refer to paragraphs 57 and 48 found consecutively on what would be page 19 if the document was paginated.

thus had reason to suspect a disability when it learned of Student's *** diagnosis in December 2023. While FISD acknowledges this, it argues that it did not have any reason to suspect Student needed special education as a result of Student's disability until Petitioner filed the due process hearing request on March 1, 2024.⁶⁴ The record supports the district's position.

Student's first semester at FISD ended on or about December ***, 2023, and Student's report card for the semester included a ***. Student did not appear to be struggling academically or behaviorally and, overall, had good attendance. Classes resumed after the winter break in January, and Student was ***. Student's *** by itself, however, was not sufficient to put the district on notice of possible educational need. *See Krawietz*

v. Galveston Indep. Sch. Dist., 900 F.3d 673, 677 (5th Cir. 2018) (finding school district had reason to suspect educational need where—in addition to ***— student demonstrated deteriorating academic performance and incidents of theft). Rather, FISD's child find duty was triggered on March 1, 2024, when Petitioner filed Petitioner's due process hearing request.

⁶⁴ Resp. Closing Brief at 10-11.

2. Reasonable Time Period for Evaluation

The next inquiry in a child find case is whether the school district evaluated the student within a reasonable time after having notice of the behavior likely to indicate a disability. *Woody*, 178 F. Supp. 3d at 468. The reasonableness of a delay is not defined by its length in weeks or months, but by the steps a school district takes during the relevant period. *Woody*, 865 F.3d at 319-20; *Krawietz*, 900 F.3d at 676; *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 790-91 (5th Cir. 2020). A delay is reasonable when, throughout the period between notice and referral, a school district takes proactive steps to comply with its child find duty to identify, locate, and evaluate students with disabilities. *O.W.*, 961 F.3d at 793.

The due process hearing request was filed on March 1, 2024. Student returned to campus on March ***, and FISD requested parental consent for an FIE on March ***, 2024. Parent did not provide consent until April ***, 2024. FISD began the evaluation process in mid-May, but upon identifying additional areas of possible need, it went back to Parent seeking consent for further testing. Parent provided consent on September ***, 2024, and the FIE was completed on September ***, 2024. The evidence thus shows that FISD sought consent for an FIE within days of receiving the due process hearing request and began testing shortly after receiving Parent's consent. Accordingly, FISD acted within a reasonable period of time to evaluate Student. *Cf.* 19 Tex. Admin. Code §§ 89.1011(b)(school districts must respond within 15 days to a written request for an evaluation from parents), 89.1011(c)(an evaluation must be completed within 45 school days of receiving written consent to evaluate), 89.1011(d)(a meeting of the ARD committee must meet within 30 days to review the evaluation and determine eligibility).

More problematic, for FISD, however, is its failure to find Student eligible for special education and related services after the district's evaluation team concluded that Student met the criteria for a student with autism, an emotional disturbance, and a pragmatic language impairment.

C. Eligibility

A critical distinction exists between the child find obligation and whether a school district should have identified a student as eligible for special education under one of the enumerated disability classifications included in the IDEA. Questions of eligibility and identification are resolved on the basis of whether an evaluation shows the student meets the criteria for a disability and demonstrates a need for special education. *See* 34 C.F.R. § 300.8(a), (c)(1)-(13). The parties in this case do not dispute the results of the FIE which establish that Student meets the criteria for autism, emotional disturbance, and a speech impairment due to a pragmatic language disorder. The parties, however, disagree as to whether Student demonstrated a need for special education as a result of those disabilities.

1. Educational Need

Neither the IDEA nor the federal regulations explicitly define what it means to need special education and related services. The Fifth Circuit, however, has indicated that the “unique facts and circumstances” of each student, including parent and teacher input as well as information about the student's physical condition and social or cultural background, must be considered in determining need—not solely grades or standardized test performance. *Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 383 (5th Cir. 2007). *See also* 34 C.F.R. §

300.306(c). The unique facts and circumstances of this case support the conclusion that Student demonstrated a need for special education and related services.

The district's FIE found that Student had r*** communication—facial expression, tone, nonverbal social cues, reciprocity, and pragmatic use of language—consistent with a pragmatic language disorder and autism spectrum characteristics. Physical health screening and history revealed ***. Meanwhile, although Student *** with mostly passing grades, Student struggled in ***, resulting in course changes and failing marks. Formal behavioral and emotional measures (ADOS-2, CBRS, ASRS, CEFI, MASC-2) corroborated deficits in nonverbal communication and emotional regulation, elevated *** and manic tendencies, and social reciprocity difficulties. Overall, evaluators concluded that, while many of Student's academic and cognitive abilities fell within normal limits, Student's paralinguistic deficits, emotional-behavioral challenges, and autism- related features impeded Student's learning.

The evaluation team recommended an individualized plan to address Student's emotional, social, and self-regulation needs. Specifically, they advised incorporating visual cues and goal-setting to help Student recognize and label Student's *** and others. Given Student's vulnerability to peer influence, the team also urged targeted instruction in identifying ***. To promote positive behavior and emotional regulation throughout the school day, the team recommended clear expectations, sensory supports, built-in movement and calming breaks with access to

a “safe space,” and a check-in/check-out system with a preferred staff member. They further suggested proactive behavioral cuing, pre-correction, and positive reinforcement—through praise, choice-making opportunities, and self-monitoring tools such as a reflective behavior-tracking sheet—to ensure timely feedback and reinforcement of adaptive coping and social skills. Rather than finding Student eligible for special education, though, the district incorporated these recommendations into a § 504 plan.

The *** Evaluation likewise reported issues with emotional regulation and ***, but it differed from the district’s FIE in other respects. During Dr. ***’s evaluation, Student reported persistent social isolation, sleep disturbances, irritability, and emotional distress upon returning home from school. In addition, Dr. *** noted that, although Student’s intellectual abilities often enabled Student to achieve high grades, Student also fell behind, creating significant stress indicative of executive functioning difficulties. Standardized measures conducted during the evaluation uncovered serious symptomatology, including ***, and *** in behavioral, emotional, and cognitive regulation. Student’s self-reports corroborated a pragmatic language disorder along with executive functioning deficits in emotional management, impulse control, task shifting, planning, and working memory. These conditions impede Student’s ability to *** and advocate for ***self and exacerbate Student’s *** and vulnerability. Dr. *** determined that Student’s psychological and communication deficits necessitate proactive, direct instruction and comprehensive special education supports (such as speech-language services, counseling, and executive function

training) and concluded that an IEP with tiered, preventative interventions and related services was essential to meet Student's educational and emotional needs.

The district argues, however, that Student's needs were adequately addressed through a § 504 plan.⁶⁵ This argument is not persuasive and ignores important differences between the protections afforded under the IDEA and those available under § 504. Under the IDEA, an IEP must be developed that provides instruction and support tailored to meet a student's unique needs, with measurable annual goals, benchmarks, and related services directly tied to those goals. The IEP process mandates ongoing progress monitoring and timely adjustments to instructional strategies. In circumstances such as those presented here—where a student's deficits in pragmatic language, executive functioning, and emotional regulation present disabling conditions and impede learning—an IEP delivers the individualized supports and procedural safeguards necessary to ensure a free appropriate public education.

Finally, FISD maintains that Dr. ***'s Evaluation was flawed because, among other things, it lasted only 90 minutes and was not thorough, it did not list the medical records Dr. *** reviewed, and listed Parent as a source without including a summary of the information.⁶⁶ This argument relies, in large part, on what appear to be technicalities and is not persuasive, particularly in light of the fact the district's own evaluation determined that Student had disabilities and that one or more of those disabilities impeded Student's learning.

⁶⁵ Resp. Closing Brief at 16.

⁶⁶ Resp. Closing Brief at 13-15.

2. Autism and Emotional Disturbance

Petitioner points out that Student met the disability criteria for an emotional disturbance as well as autism and asserts that students can be eligible under both categories.⁶⁷ Indeed, students often exhibit characteristics of both disabilities and require supports spanning both domains. In such cases, evaluators must determine whether the emotional disturbance is the primary cause of the student's educational impairment or whether the combination of disabilities creates educational needs that cannot be accommodated solely under one category. 34 C.F.R. § 300.8(c)(1)(ii), (4), (7).

The district in this case considered both autism and emotional disturbance and determined that an autism identification better reflected Student's behavior patterns and educational needs. Petitioner, on the other hand, failed to present any evidence establishing that the combination of autism and an emotional disturbance created educational needs that could not be accommodated solely under the autism identification. Moreover, it is well-settled that a student's needs must drive the special education services provided—not the label attached to Student's disability. *See, e.g.,*

J.B. by next friend Lauren B. v. Frisco Indep. Sch. Dist., 528 F. Supp. 3d 614, 634 (E.D. Tex. 2021)(citing *Lauren C. by and through Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 277 (5th Cir. 2018)). Both the district's evaluation team and Dr. *** recommended services and supports to address Student's needs independent of the label attached to Student's disability.

⁶⁷ Pet. Closing Brief ¶5.

D. Conclusion

The Judge concludes that FISD violated the IDEA when it failed to find Student eligible for special education and related services under the categories of autism and a pragmatic language disorder. FISD's failure impeded Student's right to a FAPE. 34 C.F.R. § 300.513(a)(2)(i).

VI. REMEDY

FISD violated the IDEA by failing to find Student eligible for special education and related services between October ***, 2024, and Student's *** on May ***, 2025. Its failure resulted in approximately 26 weeks of instructional time during which Student could have been receiving services but did not. As such, FISD must compensate Student for this failure.

Administrative law judges in special education matters have the authority to grant all relief deemed necessary, including compensatory education, to ensure the student receives the requisite educational benefit denied by the school district's failure to comply with the IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991). Compensatory education may be awarded by the judge after finding a violation of the IDEA. It constitutes an award of services to be provided prospectively in order to compensate the student for a deficient educational program provided in the past. *G. ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295 (4th Cir. 2003).

The Judge in this case has broad equitable powers, as courts do, to fashion appropriate relief where there has been a violation of the IDEA. *School Comm. of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359, 374 (1996). A qualitative, rather than quantitative, standard is appropriate in fashioning compensatory and equitable relief.

Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 523-24 (D.C. Cir. 2005); *see also O.W.*, 961 F.3d at 800 (citing *Reid*, 401 F.3d at 518).

Considering the number of weeks FISD should have provided services but did not and Petitioner's expert testimony as to the type of compensatory services needed, the Judge grants compensatory services of the type and in the amount ordered below.

VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner failed to show by a preponderance of the evidence that LISD had reason to suspect Student had a disability and may need special education and related services as a result of the disability. 20 U.S.C. §§ 1401(3)(a), 1412(a)(3); 34 C.F.R. §§ 300.111(a), (c)(1); *Schaffer*, 546 U.S. at 62; *Richard R.R.*, 567 F. Supp. 2d at 950-51.
3. Petitioner failed to show by a preponderance of the evidence that FISD failed to timely evaluate Student in all areas of suspected disability once it had reason to suspect Student had a disability and a corresponding need for special education. 20 U.S.C. §§ 1401(3)(a), 1412(a)(3); 34 C.F.R. §§ 300.111(a), (c)(1); *Schaffer*, 546 U.S. at 62; *Richard R.R.*, 567 F. Supp. 2d at 950-51.
4. After determining Student met the criteria for autism, emotional disturbance, and a pragmatic language disorder, FISD violated the IDEA by failing to find Student eligible and provide necessary special education and related services. *Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 384 (5th Cir. 2007).

ORDERS

Given the Judge's broad discretion in fashioning relief, the Judge makes the following orders: FISD shall deliver the compensatory services identified below to Student beginning no later than 30 days after the date of this order.

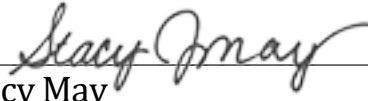
- FISD shall provide Student with 26 hours of executive functioning and emotion-regulation counseling by a licensed social worker, LSSP, or school counselor. FISD shall provide these services in 30-minute sessions twice a week or once a week for 60 minutes.
- FISD shall also provide 26 thirty-minute sessions (13 hours) of pragmatic language and social skills services and support by a licensed speech-language pathologist in a small group setting.
- FISD shall provide 26 thirty-minute sessions (13 hours) of individual speech-language therapy by a licensed speech language pathologist to address Student's deficits in pragmatic language.
- FISD shall appoint a special education teacher or service coordinator to oversee the compensatory services provided to Student under these orders.
- The special education teacher or service coordinator appointed shall conduct weekly case-management check-ins with Student and service providers during each of the 26 weeks in which services are furnished.

These services may be delivered by FISD staff, or by a qualified private provider, at the district's discretion. All services shall occur in an afterschool, weekend, or community-based setting as appropriate to meet Student's needs and in light of Student's *** status.

Providers shall collect goal-specific data weekly and submit a written progress report to Student's parent every six weeks. A final summary report reflecting Student's progress and recommendations for *** supports shall be provided to Parent no later than May 21, 2026.

All other relief not specifically stated herein is **DENIED**.

Signed May 21, 2025.



Stacy May
Presiding Administrative Law Judge

NOTICE TO THE PARTIES

The decision of the Judge in this case is a final and appealable order. Any party aggrieved by the findings and decisions made by the Judge 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).