

STUDENT., B/N/F PARENT.,	§	BEFORE A SPECIAL EDUCATION
Petitioner & Counter-Respondent,	§	
	§	
V.	§	HEARING OFFICER
	§	
PRINCETON ISD,	§	
Respondent & Counter-Petitioner.	§	FOR THE STATE OF TEXAS

FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

I. STATEMENT OF THE CASE

On April 24, 2024, Student., *b/n/f* Parent., (“Petitioner” or “Student” or “Counter-Respondent”) filed a Complaint with the Texas Education Agency (“TEA”) against Princeton Independent School District (“Respondent” or “the District” or “Counter-Petitioner”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On April 25, 2024, 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. The issues in this proceeding concern multiple allegations that Respondent deprived Student of a free, appropriate public education (“FAPE”) by violating certain substantive and procedural rights.

A. STUDENT’S COMPLAINT ISSUES: ¹

Student alleges the following violations of IDEA denied Student a FAPE in the following particulars:

1. Respondent did not evaluate Student, in a timely manner, in all areas of suspected need;
2. Respondent did not identify Student’s disabilities;
3. Respondent did not develop an appropriate Individualized Education Program (“IEP”) to address Student’s unique needs; Respondent failed to develop specific and measurable goals to ensure meaningful benefits;
4. Respondent did not convene meetings of Student’s Admission, Review, and Dismissal Committee (“ARDC”) with required ARDC members;

¹ All of Student’s issues related to Student placement in the DAEP were dismissed without prejudice on May 16, 2024, upon Student’s request.

5. Respondent did not conduct a Functional Behavior Assessment (“FBA”) to establish a behavior plan; and
6. Respondent did not provide Student with social skills training; speech in the areas of pragmatic language and expressive/receptive language; Occupational Therapy (“OT”) for sensory support; and a mentor.

B. STUDENT’S REQUESTED RELIEF: ²

Student asks the SEHO to enter an order finding that Respondent denied Student FAPE; did not identify and evaluate Student timely for special education and related services; and failed to provide Student with an appropriate program and placement. Student requests the SEHO to award the following:

1. Compensatory education and related services specifically in social skills; transition services; post-secondary and employment opportunities;
2. An Independent Educational Evaluation (“IEE”) at public expense for all suspected disabilities in the areas of autism; academic and achievement; OT, to include sensory support; and an FBA to determine Student’s needs;
3. An ARDC meeting to occur after completion of Student’s IEE; and
4. Any and all other remedies that Student may be entitled to under the law.

C. RESPONDENT’S COUNTERCLAIM ISSUE:

1. Whether the District’s Full and Individual Evaluation (“FIE”) of Student is appropriate under 34 C.F.R. §300.304.

D. RESPONDENT’S REQUESTED RELIEF:

1. An Order confirming that the Student is not entitled to an IEE at public expense because Respondent’s March 2024 FIE (REED) of Student was appropriate; or
2. An Order confirming that the Student is not entitled to an IEE at public expense because the IEE obtained by the Parents did not meet Respondent’s criteria.

² Several items of Student’s requested relief were rendered moot or beyond the jurisdiction of a Texas Special Education Hearing Officer.

II. PROCEDURAL HISTORY

Student'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.

A. Docket No. 285-SE-0424 (Pre-Bifurcation)

Student filed Student Complaint on April 24, 2024. The undersigned issued the Initial Scheduling Order on April 25, 2024, which set out the timelines for a non-expedited case: Prehearing Conference ("PHC"): June 12, 2024; Disclosure Deadline: June 20, 2024; Due Process Hearing: June 27, 2024; and Decision Deadline: July 9, 2024. The undersigned noted in the Initial Scheduling Order that Student's Complaint requested an expedited hearing. However, the undersigned did not believe that Student had pled any specific issues that would allow for the activation of IDEA's expedited process, which is available when disciplinary actions result in a change of placement. 34 C.F.R. §§300.507-516; 300.532(a)(c); 19 TEX. ADMIN. CODE §§89.1151(c) & 89.1191.

On April 25, 2024, Student's counsel responded to the scheduling order by asserting that because Student made mention of issues involving disciplinary actions, the entire case should be carried under the expedited proceeding.

On April 26, 2024, the undersigned explained the limited availability of the expedited process and requested additional information from Student regarding the precise disciplinary action Student believed activated the expedited timelines. Student's counsel provided information related to the April 2024 disciplinary placement in the District's Disciplinary Alternative Education Program ("DAEP") and the Manifestation Determination Review ("MDR") held to review the placement. The undersigned suggested that the disciplinary issues be bifurcated from the non-expedited issues, to which Student's counsel objected. The undersigned requested briefing from the Parties regarding the bifurcation issue. Both Parties provided briefing with Student's counsel arguing that all issues pled, including those that concern substantive and procedural violations of the IDEA, were activated and an expedited hearing on all issues was mandated.

B. Docket No. 285-SE-0424-A (Expedited Case)

On April 29, 2024, the undersigned issued Order No. 2, which bifurcated the case, resulting in an expedited process to hear the disciplinary matter (285-SE-0424-A) and a non-expedited process to hear all other substantive and procedural matters (285-SE-0424-B).³ Under the scheduling order for the expedited case, the following statutory deadlines were established: PHC: May 7, 2024; Disclosure Deadline: May 15, 2024; Due Process Hearing: May 22, 2024; and Decision Deadline: August 10, 2024.

³ The Initial Scheduling Order timeline designations for the non-expedited case (now Docket No. 285-SE-0424-B) were not affected by this Order.

On May 13, 2024, Student filed a Motion to Dismiss Without Prejudice the expedited case in Docket No. 285-SE-0424-A. On May 16, 2024, the undersigned dismissed expedited Docket No. 285-SE-0424-A without prejudice to refiling.

C.

Docket No. 285-SE-0424-B (Non-Expedited Case)

Also on April 29, 2024, Respondent filed its Plea to the Jurisdiction, Answer to Complaint, Notice of Insufficiency, and Response to Request for Expedited Due Process Hearing. Respondent argued that the plethora of non-IDEA laws contained in Student's Complaint were inapplicable to this proceeding and should be dismissed. Respondent likewise objected to certain issues and requests that were outside the SEHO's jurisdiction, such as awarding attorneys' fees, costs, and punitive damages. Included in Respondent's Response was a Notice of Insufficiency. On May 4, 2024, the undersigned issued Order No. 3B: Order Denying Respondent's Notice of Insufficiency in the Non-Expedited Case 285-SE-0424-B.

On June 6, 2024, Student filed an unopposed continuance motion seeking the continuance of the PHC, Due Process Hearing, and by necessity, the Decision Deadline in the non-expedited case. At that time, the Initial Scheduling Order dated April 25, 2024, remained in effect. Student noted scheduling conflicts with the PHC and Due Process Hearing dates; further, Student was scheduled for an IEE in June, which required time to complete and present to Student's ARDC. Finding good cause for the requested and unopposed Motion for Continuance, the undersigned granted this request and on June 16, 2024, issued Order No. 4B, which rescheduled the PHC, Due Process Hearing, and Decision Deadline as follows: June 27, 2024: PHC; August 22, 2024: Disclosure Deadline; August 29, 2024: Due Process Hearing; and September 19, 2024: Decision.

On June 26, 2024, the Parties convened the PHC. In attendance were the following: (1) Ms. Janelle L. Davis, Student's counsel; (2)***, Student's Advocate; (3) Ms. *** and Ms. ***, Respondent's counsel; (4) the undersigned SEHO; and (5) the court reporter, who made a record of the PHC. The Parties discussed the issues, requested relief, and determined to maintain the current Due Process Hearing schedule: August 22, 2024: Disclosure Deadline; August 29, 2024: Due Process Hearing; and September 19, 2024: Decision Deadline. On July 26, 2024, the undersigned issued Order No. 5B, which reaffirmed the hearing schedule, delineated the Student's issues and requested relief, and dismissed all claims alleged under non-IDEA statutes, including Student's request for attorneys' fees.

On August 19, 2024, Student filed a second Motion for Continuance on the grounds that (1) Student had not been assessed under the IEE previously scheduled for June 2024; (2) Student was unable to pay for the IEE in advance due to insurance issues; (3) Respondent allegedly had failed to respond timely to Student's IEE requests; and (4) Respondent allegedly failed to produce all of Student's education records. Student requested a continuance of the Due Process Hearing to either September 19, 2024, or September 25, 2024.

On that same day, the undersigned sent an email to the Parties alerting them the continuance would probably be granted. Additionally, the undersigned instructed Respondent to respond to the requested IEE by noon, August 20, 2024. Respondent did not meet the noon deadline but did file a response that evening stating that it did not have any objections to the requested continuance or the proposed continued dates. Respondent likewise reported that it declined to provide the IEE at public expense and would be filing a Counterclaim in response to Student's IEE request.

D.
Docket No. 285-SE-0424-B (Respondent's Counterclaim)

**Student., B/N/F Parent., (Petitioner & Counter-Respondent) v.
Princeton ISD, (Respondent & Counter-Petitioner)**

On August 21, 2024, Respondent filed its Counterclaim seeking a ruling from the undersigned that (1) the Respondent's FIE of Student was appropriate, and therefore, (2) Student is not entitled to an IEE at public expense. Respondent's Counterclaim referenced an attached Exhibit 1. However, Exhibit 1 was not attached to the Counterclaim until August 29, 2024. The timeline for Respondent's Counterclaim excludes the Resolution Period and provides for a forty-five-day timeline for convening the Due Process Hearing and issuing the Decision.⁴ In this case, the Respondent's forty-five-day timeline began on August 22, 2024, the day after Student received the Counterclaim, with a Notice of Insufficiency deadline of September 5, 2024, and a Decision deadline of October 5, 2024.

On August 23, 2024, Student again requested that the District fund an IEE for Student on the grounds that Student had been requesting an IEE at public expense since the April 24, 2024, filing of the Complaint.⁵ Student listed IEE requests on July 10, 2024; July 16, 2024; July 18, 2024; and July 31, 2024.

On August 30, 2024, the undersigned issued Order No. 6B, which granted Student's continuance request and denied Student's request for an immediate order granting Student an IEE at public expense prior to the Due Process Hearing. The Due Process Hearing was rescheduled per the Parties' agreement: September 10, 2024: second PHC; September 18, 2024: Disclosure Deadline; September 25, 2024: Due Process Hearing; October 5, 2024: Decision Deadline.

On September 5, 2024, Student filed a Notice of Insufficiency based upon Respondent's Counterclaim. On September 9, 2024, the undersigned issued Order No. 7B, which denied Student's insufficiency claim.

On September 13, 2024, the Parties convened a second PHC. In attendance were the following: (1) Ms. Janelle L. Davis, Student's counsel; (2)***, Student's Advocate; (3) Ms. Rebecca L. Bradley, Respondent's counsel; (4) the undersigned SEHO; and (5) the court reporter, who made a record of the PHC. The Parties discussed the status of the case and agreed to add a second day to the Due Process Hearing; Student requested information regarding certain requested documents that Student had not received from Respondent. Respondent stated that it was in the process of uploading the requested documents.

On September 16, 2024, Student filed a third unopposed Motion for Continuance alleging that Respondent had not provided all of the promised documents and as such, Student had little time to receive and review the promised documents prior to the September 18, 2024, Disclosure Deadline. Finding good cause for this continuance, the undersigned informed the Parties that the continuance would be granted and that the

⁴ When a district files a due process complaint, the district does not have to convene a resolution meeting. Accordingly, the forty-five (45) day timeline for issuing a decision begins the day after the other party receives the due process complaint.

⁵ The specific IEE request is contained in Student's Proposed Resolution No. 2: "Order an IEE for all suspected or known disabilities in the area of autism, academic and achievement, occupational therapy to include sensory, and a functional behavior assessment and to determine needs at district expense."

Parties had to provide the SEHO with their two-day availability for convening the Due Process Hearing in either October or November 2024. The Parties complied with this request, and on September 23, 2024, the undersigned issued Order No. 8B, which rescheduled the hearing timelines as follows: third PHC: November 4, 2024; Disclosure Deadline: November 13, 2024; Due Process Hearing: November 20-21, 2024; and Decision deadline: December 1, 2024.

On November 4, 2024, the Parties convened the third PHC. In attendance were the following: (1) Ms. Janelle L. Davis, Student's counsel; (2) Ms***, Respondent's counsel; (3) the undersigned SEHO; and (4) the court reporter, who made a record of the PHC. The Parties discussed the status of the case, document production, and location information.

The Parties made their Disclosures, including their Joint Exhibits, timely as well as their respective objections to Exhibits. On November 19, 2024, the undersigned issued Order 9B, which ruled on Respondent's Objections to Petitioner's Exhibits. Also on November 19, 2024, the undersigned issued Order 10B, which ruled on Petitioner's Objections to Respondent's Exhibits.

E. The Due Process Hearing

The Due Process Hearing covers acts and/or omissions occurring two years prior to Students April 24, 2024, Complaint filing.

The SEHO convened the ZOOM Due Process Hearing on November 20, 2024, and completed the Hearing on November 21, 2024. The Parties' Exhibits were admitted; the Parties called a total of eight witnesses, who (1) presented direct testimony and (2) were cross-examined by the opposing counsel.

During the Hearing, the Parties were represented by the following: (1) Ms. Janelle L. Davis, Student's counsel; (2)***, Student's Advocate; (3) Ms***, Respondent's counsel; (4)***. Parent., Student's Parent; and (5)***Respondent's Executive Director of Special Programs.

At the conclusion of the Hearing, the Parties requested additional time to file and serve their Closing Arguments and requested that the Decision Deadline be continued to address the post-hearing schedule. Allowing time to review the record, prepare the Closing Arguments, and prepare the final Decision presented good cause for these continuances. On November 25, 2024, the undersigned issued Order No. 11B, which set January 8, 2025, as the due date for the Parties' Closing Argument and January 22, 2025, as the due date for the SEHO's Final Decision.

This Final Decision of the Special Education Hearing Officer is rendered timely on January 22, 2025.

III. RESOLUTION SESSION

The Parties convened the Resolution Session on May 1, 2024, but did not settle the issues.

**IV.
FINDINGS OF FACT ⁶**

1. Respondent is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is an ***-old *** who enrolled in the District in school year 2019-20, Student ***grade year [JE.1]. Student continued to attend school in the District during school years 2020-21; 2021-22; 2022-23; and 2023-24 [JE3.12; JE16; JE18].
3. Student ***from the District in May 2024.

*****ISD: ***(2011-12)**

4. During school year 2011-2012, Student attended ***at ***Independent School District (“***”) [P1.1]. Student’s Parent was concerned about Student teacher’s reports of inappropriate behaviors. Although Student was progressing adequately in Student academics, Student was exhibiting disruptive conduct in Student class, such as difficulty maintaining alertness, attention, organization, or correction; and difficulty following directions/directives [R1.2].
5. Student’s Section 504 Committee met on February***, 2012, and determined that Student qualified for services as a student with a disability, ADHD, due to a physical or mental impairment that substantially limited major life activities in the areas of learning, concentrating, and emotional needs [R1.2].
6. Student’s Section 504 Committee adopted accommodations for Student: (1) visual, verbal, tactile reminders to stay on task; (2) cool-off period by going to a designated safe place; (3) concrete positive reinforcers; (4) preferential seating close to the teacher; (5) check for understanding by having Student repeat directives; (6*** [R1.2].
7. In April 2012, and in response to ***ISD’s proposed evaluation of Student under Section 504, ⁷ Student’s pediatrician diagnosed Student with ***Disorder (“***”), and ***Disorder***”, ⁸ and prescribed medication to address behaviors reported by Student’s teacher and Parents [R1.16].
8. Student’s ***teacher implemented the accommodations. By the end of the school year, Student had made significant improvement in Student behaviors, such as keeping hands and feet safe and listening while the teacher was talking [R1.2]. Likewise, Student made significant improvement in academic areas. Student ended Student ***year on grade-level reading [R1.3].

⁶ References to the Due Process Hearing Record are identified as follows: “T#.#.#” refers to the two-volume Court Reporter’s Transcription of testimony made on November 20-21, 2024, and the specific volume, page, and line numbers contained therein; “JE#.#” refers to the Joint Exhibits by number and page; “PE#.#” refers to Petitioner’s Exhibits by number and page; and “RE#.#” refers to Respondent’s Exhibits by number and page.

⁷ Section 504 of the Rehabilitation Act of 1973 (“Section 504”) as amended, 29 U.S.C. §794, is a civil rights statute which prohibits discrimination against individuals with disabilities.

⁸ “Intermittent Explosive Disorder” is a mental health condition that causes people to have impulsive, angry outbursts that are disproportionate to the situation. These outbursts can be verbal or physical and can cause property damage, domestic violence, and road rage.

*** (2012-13):

9. During school year 2012-13, Student was in the ***grade in ***ISD [R1.3]. Student's ***-grade teacher noted behavior concerns in October 2012. Student refused to use some accommodations, such as (1) using the picture schedule cards for Student morning routines; and (2) posting pictures on Student desk of Student working safely. Student was unable to complete Student morning routines independently. Student's reading level had regressed by the beginning of the school year and it had not improved by October 2012. Student had difficulty focusing on reading concepts in small group intervention and one-on-one with the teacher. Student was not able to follow multi-step directions. During independent work time, Student often played in Student seat or out of Student desk. Student acted out to make others laugh. Student exhibited an understanding of math concepts but did not complete Student assignments. On a more positive note, Student's physical contact with other students decreased. A couple of new accommodations were suggested and accepted by Student teacher [R1.3].
10. On November***, 2012, Student's Section 504 Committee convened to review Student academic and behavioral functioning. The Committee removed the accommodations for the picture schedule and pictorial reminders to keep Student hands and feet safe and agreed on the following accommodations: (1) check for understanding; (2) positive reinforcers; and (3) preferential seating [R1.4].
11. Over the course of school year 2012-13, Student continued to struggle with hyperactivity and impulsivity [R.1.5]. Student teachers reported Student as a very energetic student with a sweet heart who is eager to please others. When focused and engaged, Student manifested attempts to control Student impulsiveness, but Student hyperactivity and impulsivity were more severe than at the end of ***[R.1.5]. Occasionally, Student exhibited *** behaviors, such as ***. Student likewise exhibited overt body movements, such as ***with Student whole body, adding ***when Student is walking, ***when walking in a hallway, and acting***.
12. Over school year 2012-13, Student had two office referrals: (1) one was written on November ***, 2022, when Student was disruptive and refused to follow directions; (2) a second referral was written on March ***, 2013, when Student left the waiting area for after-school walkers without permission [R1.7].
13. In spring 2013, Respondent conducted a Functional Behavioral Assessment ("FBA") of Student's behaviors. The report was issued on April 23, 2013 [R1.1].⁹ The assessor noted that Student's overt body movements, *i.e.*, ***with Student whole body, adding ***when Student is walking, ***when walking in a hallway, and acting ***, are characteristics of Student ADHD and serve three functions: (1) automatic reinforcement, behaviors that "rev up" or calm down the student's sensory system; (2) socially mediated positive reinforcement, *i.e.*, behaviors that draw significant attention from peers; and (3) socially mediated negative reinforcers, *i.e.*, behaviors that draw significant behaviors of attention from peers and the removal of work/task demands. When Student is drawing peer attention or attention of an adult who corrects Student, Student is escaping the demand of the task Student might be finding challenging to organize and complete [R1.8].

⁹ An FBA is an assessment to ascertain the basis of behavior challenges. The basic idea is that behavior actually serves a purpose. If schools and families know what is causing the behavior, they can find ways to change it, usually through a Behavior Intervention Plan ("BIP").

14. The FBA assessor made multiple recommendations for the implementation of a behavior plan that included (1) strategies targeting behaviors associated with overactivity; (2) direct and concrete teaching of pro-social behaviors expected at school; and (3) a disciplinary action plan that focused on correcting behaviors that violated the Student Code of Conduct (***, persistent refusal to follow adult directives, etc.) [R1.9].

*****ISD: ***Grade (2013-14) & ***Grade (2014-15):**

15. Student's Parent requested an evaluation for special education services and in addition to assessing for ADHD, the Parent requested additional assessments for Autism ("AU") and Emotional Disturbance ("ED") [R3.10-11].

*****ISD: School Year 2015-16: ***Grade:**

16. During school year 2015-16, Student attended school at *** Independent School District ("WISD") [R3.1]. Student Parent again requested an FIE to consider a health impairment due to ADHD, an AU spectrum disorder, and a serious ED [R3.1]. The FIE report issued on November ***, 2015.
17. Student's Multidisciplinary Team ("MDT") consisted of an Educational Diagnostician and a Licensed Specialist in School Psychology ("LSSP"). The MDT reviewed Petitioner's educational records and Student Section 504 Plans, including a behavior plan [R3.4]. The MDT garnered parental input, teacher observations and recommendations, and provided Student various standard evaluations in the areas of aptitude, achievement, and behavior [R3.].
18. Student's cognitive skills and academic development proved to be adequate but for some skill gaps in classroom performance due to Student ADHD [R3.18]. Student's Full-Scale IQ was ***, which is in the average range of intelligence [R3.15]. Notwithstanding this IQ of ***, the evaluation demonstrated that without specific instruction and practice, Student would struggle in academics to sustain attention to paper-pencil work for longer than 1-2 minutes and struggle to maintain stamina and positive outlook long enough to complete tasks on Student own. Regarding social interactions, Student had not been successful in permanently changing negative behavior towards peers, but Student consistently sought peer interaction at times to avoid work; Student had trouble managing both positive interactions and dealing with the aftermath of negative interactions [R3.18].
19. Student's educational performance was assessed using formal measures. These measures demonstrated that Student's academic profile showed that Student was functioning commensurate with Student intellectual functioning [R3.17].
20. Student's Multidisciplinary Team found that an AU spectrum disorder did not explain Student's difficulties in educational progress [R3.10].
21. Student's Multidisciplinary Team found that Student did not demonstrate criteria for a finding of an ED [R3.10-11].
22. Student's Multidisciplinary Team determined that an attention disorder adversely impacted Student's educational progress both academically and socially [R3.18]. Student qualified for special education and related services under the OHI category for Student ADHD.

23. In 2018, Student's re-evaluation was conducted by Student's ARDC via a Review of Existing Evaluation Data ("REED") [RE3-4]. The Committee determined that Student did not qualify for services for AU or ED, but Student continued to qualify under the OHI category for Student ADHD [RE.3-4].

Princeton ISD: School Years 2019-20 - 2023-24: *Grades:**

24. On April ***, 2021, Princeton Independent School District ("PISD") conducted Student's re-evaluation via a REED [JE1]. The Multidisciplinary Team consisted of an Educational Diagnostician and an LSSP [JE.20]. The Team reviewed prior evaluations; information provided by Student's Parent; performance on curriculum-based local and state assessments; classroom-based observations; and observations by teachers and related service providers [JE1.1].
25. The Multidisciplinary Team determined that Student did not qualify for special education and related services under the AU and ED categories. The Team did find that Student continued to qualify for services under the OHI category for ADHD [JE1.18-19].
26. On March ***, 2022, Student's ARDC met for Student's annual ARDC to develop Student's program that would run from March ***, 2022, through March ***, 2023. The ARDC maintained Student's OHI qualification, maintained Student's placement in general education for fifty minutes per class per day and special education *** placement for fifty minutes per day. The ARDC drafted new goals and objectives; maintained Student's accommodations and modifications, and updated Student's Transition Plan [JE3]. The ARDC reached consensus [JE3.21].

School Year 2022-23: *Grade:**

27. On September***, 2022, Student's ARDC convened a Revision ARDC meeting upon the request of Student's Parent. At that time, Parent was concerned about Student grades, accommodations, supports, and behaviors [JE6.6]. Student's Parent requested that Student be removed from the ***group, which met daily during Pride Time, and placed in a setting that could help Student acquire executive functioning skills.[T2.285-286].
28. The ARDC agreed to remove Student from the ***group and to place Student in the ***. The *** afforded Student opportunities to work on Student assignments, social skills, and organization skills.
29. The ARDC maintained Student's placement in general education for fifty minutes per period per day and added thirty minutes per day in the special education setting ***. Student's then-current IEP ran from March ***, 2022, to March ***, 2023 [JE6.4]. The ARDC reached consensus [JE6.4].
30. On December *** 2022, Student's ARDC again convened a Revision ARDC meeting to address Student's failing grades, frequent tardies, and absences. The ARDC added a new plan to Student's IEP to address accountability and help Student be successful. The following actions were adopted by the ARDC: Student would (1) check in with the *** Class *** and then go to ***and ***Classes for help; (2) sign up for tutoring for ***and***; (3) change lunch to C lunch instead of split lunch or move Student to another ***Class. The ARDC reached consensus [JE7.5].

31. On February *** 2023, Student's ARDC convened Student annual ARD [JE4]. Student was on track academically and met grade level on the State of Texas Assessments of Academic Readiness ("STAAR") test in***, mastered the ***STARR test, and met grade level for English ***[JE4.2]. The ARDC implemented a Behavior Intervention Plan ("BIP"); developed new goals to address Student's organizational skills and maintained Student's placement in general education with thirty minutes per day in the *** for Pride Time, which would allow for help checking grades, completing missing work, and organizational strategies [JE4.19].
32. On May *** 2023, Student's ARDC convened a Manifestation Determination Review ARD ("MDR") to address a disciplinary action that resulted in Student's placement in the DAEP for twelve days. Respondent had tried other disciplinary actions such as lunch detention, In-School Suspension ("ISS"), and changing Student's *** placement per the Parent's request. Initially Student's Parent agreed with the MDR determination that Student had violated the Student Code of Conduct. However, after Student joined the meeting, Student Parent changed Parent mind and blamed Respondent for allegedly failing to help Student's executive functioning. The MDRC did not reach consensus.

School Year 2023-24: *Grade:**

33. On February ***, 2024, Respondent conducted Student's re-evaluation via a REED [JE2]. The Multidisciplinary Team consisted of an Educational Diagnostician and an LSSP [JE.20]. The Team reviewed prior evaluations; information provided by Student's Parent; performance on curriculum-based local and state assessments; classroom-based observations; and observations by teachers and related service providers [JE2.1].
34. The Multidisciplinary Team determined that Student did not qualify for special education and related services under the AU and ED categories. The Team did find that Student continued to qualify for services under the OHI category for ADHD [JE2.18-19; 25-26].
35. On April***, 2024, Student's ARDC convened Student annual ARD [JE11]. This annual ARD was also an MDR to address Student's disciplinary assignment due to allegations of theft. The Committee reviewed Student's OHI information and REED from February ***, 2024 [JE11.2]. The ARDC maintained Student's current OHI eligibility and Student current IEP. The ARDC agreed to place Student at the DAEP for thirty days as a result of the MDR finding. The MDRC did not reach consensus.
36. The Committee provided Student with an OHI form to be prepared by Student's physician [J11.15]. Student failed to return this form to the ARDC.
37. On April ***, 2024, Student's MDRC reconvened the meeting because consensus was not reached at the April ***, 2024, Committee meeting. Student's Parent and Advocate did not attend this meeting. Student's Advocate called the Committee stating that there would be no reconvened meeting [JE12.24-25]. Student again failed to return the executed OHI form to the Committee.
38. As a result of Student's disciplinary infraction, the MDRC assigned Student to the DAEP for thirty days.

- 39. Student was not allowed to attend Student *** due to Student disciplinary infraction [T2.371-372].
- 40. Student did *** with Student class.

Child Find Issue:

- 41. The evidence presented in the Due Process Hearing failed to establish that Respondent had any reason to suspect that Student (1) had a[n additional] disability; and (2) needed special education services in support thereof. Student was found eligible for special education services when ***ISD conducted the FIE in 2016. The ***ISD ARDC found that Student did not qualify for special education and related services under any qualifying category other than OHI for ADHD.
- 42. All subsequent re-evaluations – 2018, 2021, and 2024 - confirmed the eligibility finding of OHI solely.
- 43. Other than the AU and ED assessments, Student did not inform Student ARDC of any other suspected qualifying disabilities.
- 44. Student's continued difficulties, *i.e.*, excessive tardies, absences, missing assignments, and failing/passing grades, did not constitute notice that Student had different disabilities. All of Student's struggles were attributable to Student ADHD.

Inappropriate IEPs:

- 45. Respondent evaluated Student timely in all areas of suspected need. Student's resulting IEPs were individualized based upon Student assessments and performance.
- 46. Student's IEPs were administered in general education with allotted time in special education. This is Student's LRE.
- 47. Student's IEPs were provided in a coordinated, collaborative manner by the key stakeholders.
- 48. Student's IEPs provided positive academic and non-academic benefits.
- 49. Student's IEPs addressed Student unique needs.
- 50. Student's IEPs contained specific and measurable goals and objectives.

Failure to Convene ARDC Meetings with Required ARDC Members:

- 51. The ARDC meetings subject to this issue are the May***, 2023, Revision Annual ARD/MDR and the August *** 2023, Revision of the Annual ARDC meetings [JE8.5; 9.4.].
- 52. Student alleges that***, the Special Education Teacher, was not in attendance at the May 2023 ARDC/MDR meeting. The evidence established that ***was present based upon her signature on the Signature Page as an attendee [JE8.5] and the testimony of***, also in attendance, who stated without hesitation that ***was in attendance.

53. Student alleges that the August ***2023, ARDC meeting convened without all required members. Student erroneously refers to this meeting as the one in which ***was listed as both the assessor and General Education Teacher. ***attended the May 2023 ARDC meeting and registered as both Student's General Education Teacher, and (2) Student's assessor [JE8.5]. However, ***was not Student's General Education Teacher. This presented a *di minimis* procedural violation.
54. Student's August 2023, ARDC meeting consisted of appropriate ARDC members.

Failure to Provide an IEE at Public Expense:

55. Student would only be entitled to an IEE at public expense if Student disagreed with Respondent's REED evaluations and Respondent failed to demonstrate at the Due Process Hearing that its own evaluation was appropriate.
56. Student's Complaint lists this IEE as an issue.
57. On July 10, 2024, Student's counsel informed Respondent's counsel that Student Parent attempted to obtain the IEE, but at the appointment Parent was informed that insurance would not pay for the IEE, which would cost \$3,500.00. Following that event, Student's counsel "formally" requested that Respondent provide the IEE at District expense.
58. Respondent requested a list of the specific IEE evaluations that Student requested. Student would be entitled to an IEE only in the specific areas that Respondent had already evaluated. Respondent made these requests on July 16, 2024, July 18, 2024, and July 19, 2024. Student provided Student list of IEE assessments on July 31, 2024.
59. Also on July 31, 2024, Respondent's counsel responded by thanking the advocate's clarification and stated that counsel would share the information with the District and would get back in touch with Petitioner's counsel/advocate as soon as possible.
60. On August 20, 2024, Respondent notified Student that it would not fund the IEE prior to the Hearing.
61. On August 21, 2024, Respondent filed its Counterclaim.

Respondent's August 21, 2024, Counterclaim:

62. Respondent's Counterclaim seeks a determination that its evaluations were appropriate. As such, Student would not be entitled to an IEE at public expense.
63. Respondent's Counterclaim was filed timely. The time between Student's "formal" IEE request on July 10, 2024, Respondent's August 20, 2024, notification that it would not fund the IEE prior to the Hearing, and its filing of a Counterclaim on August 21, 2024, was not an "unnecessary delay."
64. The REED was conducted by a duly constituted ARDC consisting of qualified professionals who reviewed (1) existing evaluations and information provided by Student's Parent and Student; (2) current classroom-based, local, or State assessments, and classroom-based observations; and (3)

observations by teachers and related service providers [JE2].

65. The REED assessors considered whether additional evaluations were required to determine whether Student continued to be a student with a disability in need of special education and related services [JE2.3]. Petitioner's Parent reported no additional concerns and agreed that no additional evaluations were required [JE2.3].
66. The REED assessors identified Student's present levels of academic achievement and related developmental needs. Student's teachers and Parent reported no new concerns [JE2.2, 21], although Student's attendance in some classes was concerning [JE2.4]. Student manifested improvements in behavior, attendance, and grades in Student *** year, 2023-24 [JE2.16].
67. The ARDC reported that as of the date of this ARDC meeting, Student had acquired 23.5 credits [JE2.21]. If Student completed Student current credits, Student would *** in May 2024 [JE2.21]. At the time of this ARDC meeting, Student was passing all of Student *** courses [JE2.21].
68. Respondent's 2024 REED was appropriate. As such, Student is not entitled to a publicly funded IEE.

Failure to Provide an FBA:

69. An FBA is a process designed to uncover the purpose behind a student's problem behaviors. Its purpose is to isolate a target behavior and develop a hypothesis regarding the function of the target behavior. A target behavior is one that interferes with a student's ability to progress in the curriculum and to achieve IEP goals. Once the target behavior is identified and the hypothesis developed, a positive behavior intervention plan can be prepared to address the target behavior with strategies and interventions. *Broward County Sch. Bd.*, 110 LRP 38160 (SEA Fl. 05/07/10).
70. An FBA is required when a student's ARDC determines that a student's conduct that gave rise to a change in placement was a manifestation of the student's disability. Such is not the case before this SEHO.
71. A student's ARDC may decide to conduct an FBA if it determines that doing so is necessary in order to develop an appropriate IEP.
72. Student's prior school district developed a BIP for Student in May 2020. Student's February ***, 2023, ARDC continued the use of the BIP, which defined targeted behaviors as noncompliance and verbal aggression. The BIP presented multiple strategies for addressing these targeted behaviors. Based upon these facts, Student's ARDC was not required to conduct an FBA.

V. DISCUSSION

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). 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 (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).

A. DUE PROCESS HEARING ISSUES

1. Statute of Limitations:

Under IDEA a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2). The two-year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. In that case the state timelines apply. 20 U.S.C. §1415 (f)(3)(C); 34 C.F.R. §300.507 (a)(2). Texas has an explicit statute of limitations rule. In Texas, a parent must file a request for a due process hearing within two (2) years of the date Student or Parent knew or should have known about the alleged action that serves as the basis for the hearing request.

The IDEA only allows two limited exceptions to the statute of limitations. It is only where a parent was prevented from filing a due process complaint due to (1) specific misrepresentations by the District that it had resolved the problem forming the basis of the due process complaint or (2) the District's withholding of information from the parent that it was required under IDEA to provide to the parent. 20 U.S.C. § 1415 (f) (3) (D); 34 C.F.R. § 300.511 (f) (1) (2). Neither exception applies here.

The United States Department of Education left it to hearing officers to decide on a case-by-case basis the factors that establish whether a parent knew or should have known about the action that is the basis of the hearing request. 71 Fed. Reg. 46540, 46706 (Aug. 14, 2006).

In the instant case, Student failed to plead either of the two exceptions in Student Complaint. Although Student vaguely argues Student right to go back to at least school year 2019-20, Student's first year in the District, Student presented no probative evidence to support either exception. Accordingly, the applicable timeline for this case is April 24, 2022, - April 24, 2024.

2. Child Find:

A "child with a disability" is a defined term under the IDEA. The student must meet the criteria under one or more of the enumerated disability classifications. 34 C.F.R. § 300.8 (a). A child with a disability may qualify for

special education services under more than one classification. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 758 F. 3d 1162(9th Cir. 2014), *cert. denied*, 2015 U.S. Lexis 204 (2015). Even if a student can meet the criteria of one or more of the disability classifications, a student must also demonstrate a need for special education and related services for eligibility purposes. 34 C.F.R. § 300.8 (a)(1). The determination of whether a student is “in need of special education” must be assessed 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. *Alvin Ind. Sch. Dist. v. A.D.*, 503 F. 3d 378, 384 (5th Cir. 2007); 34 C.F.R. §300.111 (a)(1); *Carrollton-Farmers Branch Ind. Sch. Dist.*, 113 LRP 14998 (SEA Tex. 2013).

Educational need is not strictly limited to academics but also includes behavioral progress and the acquisition of appropriate social skills as well as academic achievement. *Venus Ind. Sch. Dist. v. Daniel S.*, 2002 U.S. Dist. LEXIS 6247 (N. D. Tex. 2002). While the achievement of passing marks and the advancement from grade to grade is important in determining educational need, it is but one factor in the analysis. *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. at 207, n. 28 (1982).

In the instant case, since 2016 Student’s multiple evaluations have resulted in the same findings. Student qualified for special education services under the OHI category for Student ADHD; Student did not qualify for special education services under the only other categories mentioned by Student’s Parent, Student, and Student education providers: AU and ED.

In the instant case, the evidence shows that the District did not violate its child find obligations with respect to Student.

3. FAPE:

IDEA defines FAPE as special education and related services that (1) are provided at public expense; (2) meet the standards of the state education agency; (3) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§300.320-324.

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. The Court defined “educational benefit” as one that is meaningful and that provides a “basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.” *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). In a more recent opinion, the Court affirmed that IDEA cannot and does not, promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). The correct standard for providing FAPE is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress in light of the student’s individual circumstances. *Id.* at 999.

a. The District Did Not Deny Student FAPE Under the Michael F. Factors:

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

(1). Student's IEPs Developed Between April 24, 2022, and April 24, 2024, Were Individualized on the Basis of Student's Assessments and Performance and Administered in the Least Restrictive Environment:

It has already been determined that Student's April ***, 2021, and February ***, 2024, REEDs assessed Student in all areas of suspected disabilities. The District's evaluations were sufficiently comprehensive to identify all of Student's needs; the District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs. Student's IEPs were individualized to Student's needs, based on assessment data, performance, and were reasonably calculated to allow Student to make progress appropriate in light of Student's unique circumstances.

The ARDC reviewed Student's REEDs and determined that Student qualified for special education and related services under the OHI category for Student ADHD.

The ARDC reviewed Student's PLAAFPs and found that they were based on multiple data sources, such as Parent and Student input, teacher input, achievement of previous goals, STAAR assessment results, grades and earned credits. The Committee determined that Student needed a BIP and developed one in 2020. Each ARDC following that BIP development continued and added behavioral strategies. Student benefited from the implementation of Student's BIP.

The February ***2023, ARDC noted that Student was on track academically and that Student met grade level in STAAR***, mastered the ***STAAR test, and met grade level in *****[JE4.2].

Student's ARDC developed and tweaked modifications and accommodations for Student to enable Student progress in the general education curriculum. Throughout Student time in the District, Student was placed in the general education setting for all academics with a short amount of time each day that allowed Student to go (1) to Student academic classrooms and receive help from the teachers; (2) to receive organizational and social skills; and (3) to spend Pride Time with Student friends. This program placement was the LRE for Student.

(2). Student's Services Were Developed and Provided in a Coordinated and Collaborative Manner By Key Stakeholders Resulting in Student's Demonstrating Positive Academic and Non-academic Benefits.

(a) Development of IEPs by Key Stakeholders:

Student's services were planned in a coordinated and collaborative manner by key stakeholders. The District convened over ten ARDC meetings, including Revision ARDs. The District never denied Student's Parent access to these numerous meetings. When Student's Parent had concerns, the District scheduled ARDC meetings to address those concerns. The record is full of email correspondence between staff and Student related to scheduling the requested ARDC meetings to ensure the Parent's and Student's attendance [JE24]. Further, the District offered Student the opportunity to reconvene ARDC meetings that ended in disagreement.

Student's ARDC generally changed Student's IEPs as a result of Student's input. The District provided executive functioning support per Student's request, through goals [JE3.5], accommodations [JE3.12], acquiring special curriculum and purchasing an organizer; and giving Student access to BAU [JE9.4]. The District changed Student's placement from Resource to Mainstream in 2023 at the request of Student [T2.299.9-18].

The evidence shows that Student and Student Parent had the ability to be equal participants in the development of Student's IEPs.

(b) Positive Academic and Non-academic Benefits:

Notwithstanding Student's claims to the contrary, the record shows that Student achieved academic and non-academic benefits from Student programs and placement.

There is no dispute that Student's ADHD led to negative behaviors, such as chronic tardiness, absenteeism, and aggression. Student routinely failed to turn in assignments, which resulted in failing grades at the time of Progress Reports. However, Student rallied and obtained passing grades in academic courses. Student *** with average-to-high grades, especially in Student *** year [JE18]. Student's absences and tardies decreased. Student's behaviors improved from ten incidents in school year 2022-23 to four incidents in school year 2023-24. Student enjoyed Student friends at school and behaved appropriately.

Student passed ***and STAAR exams [JE3.12]. Student participated in ***where Student was named ***Student of the Year ***. Student participated in community events. Although Student did not immediately attend***, Student was ***where Student hoped to participate in *** program.

Student had many problems during Student stay at ***ISD, but with the help of Student family, school staff/administrators, as well as teachers who would not give up on Student, Student obtained an education that provided Student with academic and non-academic success. Student and Student family should be very proud.

**VI.
CONCLUSIONS OF LAW**

1. Student had the burden of proof on all of Student 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.
2. Student failed to prove that Respondent violated its child-find duty under the IDEA. 34 C.F.R. §300.111; 19 TEX. ADMIN. CODE §89.1151 (c).
3. Student failed to meet Student burden of proving that Student IEPs were not reasonably calculated to enable Student to make appropriate progress considering Student individual circumstances. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).
4. Student failed to meet Student burden of proof that Student met the qualifications of a child not yet identified for special education; Student already was identified as a student who qualified for special education and related services.
5. Student failed to meet Student burden of proof that Respondent committed any procedural violations that resulted in a loss of educational opportunity.
6. Student failed to prove that Respondent denied Student a FAPE.
7. Respondent met its burden of proving that Respondent's 2024 REED wase appropriate and that Student was not entitled to the publicly funded IEE . 34 CFR 300.305(a) & 300.502(b)(1).

**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 22nd day of January 2025.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

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

COPIES SENT TO:

Via Email: janelle@janelledavislaw.com

Ms. Janelle Davis

JANELLE L. DAVIS LAW PLLC

P.O. Box 1311

Prosper, TX 75078

Petitioner's Counsel

Via Email: rbradley@abernathy-law.com

Ms. Rebecca Bradley

Via Email: asander@abernathy-law.com

Ms. Angelica Sander

ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

1700 Redbud Blvd., Ste. 300

McKinney, TX 75069

Respondent's Counsel