

DOCKET NO. 021-SE-1016  
(Consolidated with Docket No. 153-SE-0317)

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
KIRBYVILLE CONSOLIDATED	§	
INDEPENDENT	§	
SCHOOL DISTRICT	§	THE STATE OF TEXAS

**DECISION OF HEARING OFFICER**

**Introduction**

On October 25, 2017, the parties in the instant action appeared for the due process hearing. Dorene Philpot, Yvonnilda Muniz, and Olivia Ruiz, attorneys, represented the Petitioners, \*\*\* (“Student”) and next friend and Petitioner, \*\*\* (“Parent”). Parent was present throughout the 2½-day hearing. Paula Maddox Roalson, Christina L. Garcia, and Oscar G. Treviño, attorneys, represented the Respondent, Kirbyville Consolidated Independent School District (“District”). \*\*\*, Director of Special Education, Jasper County Coop, was present throughout the hearing.

**Procedural History**

On October 4, 2016, Petitioner filed a request for due process hearing and complaint under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), Docket No. 021-SE-1016. On January 18, 2017, the assigned hearing officer (“HO #1”) granted Petitioner’s request for a continuance. On February 23, 2017, the Texas Education Agency (“Agency”) reassigned the matter to HO #2.

Petitioner filed a second request for due process hearing on March 15, 2017, docketed as No. 153-SE-0317 (“Request #2”). Respondent sought dismissal of Request #2 on March 22. Respondent filed its response to Request #2, plea to the jurisdiction, partial motion to dismiss, and counterclaim on March 27. HO #2 denied Respondent’s motion to dismiss and consolidated the two requests for due process hearing on March 29, 2017. The case went forward under Docket No. 021-SE-1016. HO #2 granted Petitioner’s March 20 motion to continue and reset the due process hearing for July 24-26, 2017. On July 19, the hearing officer granted Petitioner’s unopposed motion for continuance and reset the hearing for September 18-20, 2017.

On July 27, 2017, the Agency reassigned the due process hearing request to HO #3. On August 29, 2017, the Agency reassigned the instant action to the undersigned-hearing officer.

Prior to the hearing date, Hurricane Harvey made landfall along the Texas Gulf Coast as a Category 4 Hurricane. It made its way into the Houston and Beaumont areas bringing flooding that required area communities to evacuate and schools to close. Respondent requested a continuance of the hearing due to this hearing officer's schedule, the flooding destruction, and unavailability of lodging for those individuals required for the September 18-20, 2017. Petitioner objected to the motion. Petitioner filed a Motion to Recuse this hearing officer due to Petitioner's unavailability to attend the hearing on September 18. The motion was denied and forwarded to the Agency for review in accordance with 19 T.A.C. §89.1170(g). The parties argued the motion to recuse during a telephone hearing on September 12. The motion was denied by order dated September 13.

This hearing officer granted Respondent's motion for continuance. The parties convened on September 15 to discuss a continued hearing date that was scheduled for October 25-27, 2017.

#### **Resolution Session and Mediation**

The parties participated in an unsuccessful resolution session on October 14, 2016. The parties also participated in an unsuccessful mediation session.

#### **Hearing Officer's Authority**

The authority of a hearing officer under the IDEA is limited to determinations relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child. During an October 28, 2016 telephonic prehearing conference conducted by HO #1, the Hearing Officer DISMISSED all non-IDEA claims, requests for attorney's fees and requests for expert witness fees.

This hearing officer lacks jurisdiction to order remedies for systemic violations or determining what constitutes sufficient facts to allow for administrative exhaustion. Thus, the two requests are DISMISSED.

#### **Issues for Hearing**

Petitioner initially requested an open hearing and withdrew the request at the beginning of the hearing. Petitioner alleged that District denied Petitioner's right to a free, appropriate public education ("FAPE") and includes the following remaining issues:

1. Whether District failed to timely and appropriately evaluate Student;
2. Whether District failed to devise appropriate individualized education programs ("IEP") for Student;
3. Whether District failed to comply with Student and Parent's procedural rights;
4. Whether District failed to protect Student and/or Parent from bullying, harassment, discrimination and/or retaliation; and

5. Whether one or more exceptions to the Texas one-year statute of limitations apply in the instant action.

**Additional Issue/District's Counterclaim:** Whether District's \*\*\*, 2016 full individual and initial evaluation ("FIE") is appropriate.

Petitioner also requests that the hearing officer determine if Petitioner's due process hearing request or the case pursued by the family was frivolous, unreasonable, groundless, meritless, without foundation, done in bad faith and/or pursued for an improper purpose after it became obvious it was one of the above. The Texas Administrative Code states, "At the request of either party, the hearing officer must include, in the final decision, specific findings of fact regarding ...whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b)."

#### **Requests for Relief**

As relief, Petitioner requests a determination that Student should be eligible for special education and related services, should have had an IEP and was denied FAPE. Petitioner requests the following:

1. An order directing District to provide eligibility to Student, an appropriate IEP in the least-restrictive environment in compliance with all requirements of the IDEA and Texas special education laws which could include services, accommodations, modifications, goals/objectives and/or evaluations in all areas of suspected disability, potentially including one or more independent education evaluations;
2. Reimbursement for private placement by Parent to include past reimbursement, evaluations and mileage, evaluations and/or related services for the time period determined by the hearing officer; and
3. Any relief deemed appropriate by the hearing officer or recommended by Student's experts and evaluators, including but not limited to compensatory educational services.

#### **Stipulations of Fact/Significant Dates**

The parties stipulated to the following:

1. Student/family moved into District October, 2014;
2. Parent signed consent for evaluation September \*\*\*, 2016;
3. Due process hearing request filed October 4, 2016;
4. Dr. \*\*\* completed evaluation December \*\*\*, 2016;
5. Initial Admission, Review, and Dismissal ("ARD") meeting held December \*\*\*, 2016;

6. Reconvene ARD meeting held January \*\*\*, 2017; and
7. Second due process hearing request filed March 15, 2017.

The parties provided the following significant dates:

1. 2014-2015-Student in \*\*\* grade;
2. 2015-2016-Student in \*\*\* grade;
3. 2016-2017-Student in \*\*\* grade; and
4. 2017-2018-Student in \*\*\* grade.

### **Findings of Fact**

Based on the evidence before this hearing officer, the following are the findings of fact in the instant action. Citations to Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "P" or "R" respectively, followed by the exhibit number. Citations to the transcript are designated with a notation of "T" followed by the page number.

1. Student resides within the geographical boundaries of District. District is responsible for the provision of special education and related services to those within its boundaries who are eligible for such services. District and Buna Consolidated Independent School District provide special education services as the South Jasper County Shared Services Arrangement, commonly referred to as South Jasper County Co-op ("Co-op"). P-31; T-131
2. Student experienced various disruptions in Student's lifetime including \*\*\*. Student currently lives with Student's mother and Student's \*\*\*. Student's family history includes \*\*\*. Additional stressors in Student's life were \*\*\*. P-17; R-32
3. District posts a child-find advertisement each January in two newspapers, The Kirbyville Banner and the Buna Beacon. District has child-find information in the Center for Exceptional Children brochure. P-3; R-4, 5; T-151-152
4. Student Handbooks issued for school years 2014-2015, 2015-2016, and 2016-2017 contain information to parents regarding students with learning difficulties or who need special education services. The information is contained on District's website. R-1, 2, 3, 38; T-262-263
5. Student attended \*\*\* and \*\*\* at \*\*\* ("\*\*\*"). Student attended \*\*\* grade at \*\*\*. P-2, 37
6. Student attended \*\*\* days of \*\*\* grade in \*\*\*, \*\*\*. In October 2014, Student enrolled in District. P-2
7. The Texas state assessment is called the State of Texas Assessments of Academic Readiness ("STAAR"). A score of Level II is considered to be passing the assessment. \*\*\* assessments are given in grades \*\*\* and \*\*\*. In grades \*\*\* and \*\*\*, \*\*\* assessments are given. \*\*\* assessments are given in grade \*\*\*. P-4, 26, 37; R-10, 11, 12, 66, 67; T-270, 275, 277, 278, 497:

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8. In order for students to be promoted to \*\*\* grade, they must have passing averages in \*\*\* classes as well as passing the STAAR math and reading tests. Student was promoted to \*\*\* grade. T-494
9. While enrolled in \*\*\*, Student made A's and B's in \*\*\* grade. P-5
10. From \*\*\* through \*\*\* grade, Student's report card averages were A's and B's with one exception in \*\*\* grade, a \*\*\* in reading during one grading period. P-5, 26; R-7, 8, 28, 47, 68
11. Student made the honor roll \*\*\* times in \*\*\* grade and \*\*\* in \*\*\* grade. P-5, 26; R-8, 28, 47, 68
12. In \*\*\* grade, Student had \*\*\* Safety Report that described Student as \*\*\* and \*\*\*. Other students reported that Student did not \*\*\*. Student received \*\*\* Discipline Referrals during the same school year (\*\*\*) that resulted in Student receiving \*\*\*. The disciplines were the result of \*\*\*. P-7; R-14; T-156-158
13. In \*\*\* grade, Student received \*\*\* discipline referrals. In February 2016, Student received \*\*\* \*\*\* for being disrespectful to the teacher. In May 2016, Student \*\*\*. \*\*\*. Parent and District agreed to a compromised disciplinary action that consisted of \*\*\* of \*\*\*, \*\*\* of \*\*\*, and \*\*\* of \*\*\*. P-8; R-16; T-158-162, 286; T-823
14. Student began Student's \*\*\* \*\*\* year in \*\*\*. Per instructions, Student's teachers \*\*\* during their conference times. During that time, teachers were to ensure that Student's assignments were \*\*\* during that time. P-9; T-162-164
15. Approximately a week following \*\*\* from \*\*\*, Student was given a warning for \*\*\*. On September \*\*\*, 2016, Student received a Discipline Referral for involvement in a \*\*\*. \*\*\*." Student received \*\*\* at \*\*\* of District. The following day, Student received a Discipline Referral for \*\*\* and received \*\*\* of \*\*\*. P-9; R-16; T-288-289, 487
16. Student received a discipline referral in January 2017 for \*\*\*. Student received \*\*\* of lunch detention. On March \*\*\*, 2017, Student \*\*\* and was originally suspended for \*\*\* with a due process hearing regarding a DAEP assignment to be held upon Student's return; the DAEP assignment was suspended and Student was sent to \*\*\* until \*\*\*. P-26, 41; R-44, 74
17. Student attended individual \*\*\* sessions at \*\*\* ("\*\*\*\*") from June-August, 2016, and again from April-August, 2017. \*\*\*'s sources of information were Parent, Student, and Petitioner's Expert. \*\*\* diagnosed Student with \*\*\*. According to \*\*\*, the diagnosis is standard for \*\*\* students because \*\*\*. \*\*\* developed goals to assist Student in reducing disruptive, defiant behaviors, along with improving emotional control. Parent's goal was to establish and maintain appropriate

parent-child boundaries. \*\*\*. Generally, \*\*\* described Student's cognitive functioning as oriented/alert, mood as euthymic, functional status as intact, affect as appropriate, and interpersonal as interactive. P-15, 52; T-341, 375-376

18. iStation is a computer based student-driven reading instruction program that can diagnose specific weaknesses or strengths in students. Student performance on the iStation compares one child to a national standard. iStation is used to help students prepare for the STAAR test. iStation has a prediction rate that is an indicator of a student's ability to pass the STAAR test. P-49; T-496
19. Student's \*\*\* and \*\*\* grade iStation indicators of progress reflected Student to be performing moderately below grade level and in need of intervention in overall reading. Student was performing at or above grade level in text fluency. P-10, 49; T-184-185
20. iStation can assist in measuring skill level. It is one factor used to evaluate student progress. In \*\*\*, Student's progress using the iStation reading program indicated that Student was performing moderately below grade level in overall reading skills and in need of intervention. Student performed at or above grade level in text fluency. During a three-month period, comprehension scores remained at the same level while trajectories indicated an upward trend in word analysis, vocabulary, and text fluency. P-49; R-43; T-496-497
21. In October of Student's \*\*\* grade year, Student was added to a group of students who were in need of response to intervention ("RTI"), Tier 2. The list consisted of students in Section 504, special education, and general education. Student was noted to be around a \*\*\* grade reading level. Student was pulled from Student's \*\*\* class once per week for small group \*\*\* tutorials. The \*\*\* tutorials were in addition to weekly \*\*\* tutorials open to all students. On December \*\*\*, 2016, District notified parents of the \*\*\* tutorials. P-16, 49; R-39, 40; T-450, 496-497, 710
22. In the spring of Student's \*\*\* grade year, Student surpassed the iStation prediction mark \*\*\*, making \*\*\*, and passed the \*\*\*. T-710-712
23. District uses the Accelerated Reader ("AR") program. Students read books on their own and take tests after each book. Students earn points after successful test scores. They are required to earn sufficient points in order to pass \*\*\* in \*\*\*. T-649
24. The STAR AR is one component of the AR program. It provides a reading range of books that students can select to read so that their selections are not too easy. Student selected books in a reading range that Student's reading teacher would read. The ultimate goal of the STAR AR component is to develop an enjoyment for reading. T-697-698
25. Fluctuation of scores on the STAR AR is typical with any test administered multiple times within a short period. The focus is on the general direction emerging after multiple administrations of the

test rather than on the ups and downs between individual scores. In Student's \*\*\* grade year, Student's results showed an upward trend. P-49

26. In response to Parent's concern about Student's level on the STAR \*\*\*, in January 2017, the teacher reported that Student was a level \*\*\*. In the teacher's \*\*\* grade class, \*\*\* of the students tested below an \*\*\* grade level. \*\*\* students were on the \*\*\* grade level. R-42
27. Student attended an \*\*\* grade \*\*\*. The \*\*\* is an intervention program for those who failed the \*\*\* STAAR in \*\*\* grade. Student's grade average for the fall semester was \*\*\*. Student passed the \*\*\* grade STAAR. R-41; T-465
28. On October \*\*\* and \*\*\* and November \*\*\* and \*\*\*, 2016, Dr. \*\*\*, Ph. D. ("Petitioner's Expert"), conducted a \*\*\* ("private evaluation"). He completed the report on December \*\*\*, 2016. Petitioner's Expert is a licensed psychologist and a licensed specialist in school psychology. He has a Master's Degree in counseling and a Ph.D. in school psychology. P-17; R-31; T-513
29. Based on Parent's information, Petitioner's Expert described Student as thoughtful and considerate of others at times. Student is a \*\*\*. The expert indicated that Student is healthy overall and sleeps soundly. Student struggles with anger, \*\*\* and is defiant toward Student's parents. Parent reported that Student struggles with \*\*\*. P-17, 31; R-32
30. Petitioner's Expert charges totaled \$3830.00 including preparation and appearance at the due process hearing. P-48
31. As part of his report, Petitioner's Expert observed Student in the school environment for approximately \*\*\* hours. He reported that Student spoke to Student's peers individually and in small groups in a non-disruptive manner. \*\*\*. In Student's \*\*\* class, Student participated in a group activity that culminated in a group presentation. Petitioner's Expert considered Student's performance to be similar to other students. While transitioning to lunch, Student spoke with peers in line and \*\*\*. Student was interactive and the other \*\*\* appeared to orient to Student. \*\*\*. P-17, 31, R-32; T-232-233
32. Petitioner's Expert interviewed Student in his office. He reported that Student was very polite and cooperative, well-groomed and was able to understand the purpose of the assessment. Student denied feeling depressed or sad and indicated the only anxiety is in regard to grades. Regarding the \*\*\* incident, Student believed that \*\*\* had recovered. \*\*\*. Student reported that Student \*\*\*." Student indicated the importance of \*\*\* to Student because \*\*\*. P-17

33. Result of the \*\*\*\*\*, indicated that Student's \*\*\* fell within the average range. \*\*\* testing was consistent with Student's assessed \*\*\*. Student's \*\*\* subtest on the \*\*\* was in the average range. Student scored in the superior range in \*\*\*. P-17
34. Student's scores were in the low average range in \*\*\* and \*\*\*. Scores were average in all other \*\*\* subtests. P-17; R-32; T-541-542
35. Petitioner's Expert used the \*\*\* (error corrected from \*\*\* to \*\*\* by expert at hearing) as one evaluation tool. In the \*\*\*, scale scores in the clinically significant range suggest a high level of \*\*\*. Scores in the at-risk range may identify a \*\*\*. R-32; T-528, 533-534
36. \*\*\* scales on the \*\*\* were clinically significant in \*\*\*; at-risk in \*\*\*. In terms of \*\*\* rating fell in the clinically significant range. In terms of \*\*\*, \*\*\* rating fell in the typical range. The expert found that Student \*\*\*; Student may also see Student's home as being \*\*\*. P-17; R-32; T-527-530
37. In \*\*\* ratings of \*\*\* on the \*\*\*, \*\*\* score indicated a degree of \*\*\* rating. \*\*\* ratings were clinically significant and at-risk \*\*\* a rating of average in activities of \*\*\*. P-17; R-32, 48; T-575-578
38. One teacher completed ratings on the \*\*\*. She rated Student in the average range in \*\*\*, \*\*\* and \*\*\*, with a better than average rating in \*\*\*, indicating a higher degree of control and ability to maintain Student's \*\*\*. Scores reflected in the average range for \*\*\* and \*\*\* and lower than average range for \*\*\*. Student was rated in the average range on \*\*\* and lower than average for \*\*\*. \*\*\* index was rated in the lower than average range. The teacher reported that she had known Student \*\*\* and found Student to display relatively few \*\*\* behaviors compared to others Student's age. She reported that Student displayed \*\*\* no more often than others Student's age and \*\*\* about the same degree as others Student's age. P-17; R-32, 49, 51
39. The \*\*\* teacher completed a questionnaire for Petitioner's Expert. She described Student as a hard worker and excellent student who asks for assistance when needed, receives feedback, and corrects mistakes as needed. The teacher had no concerns regarding physical presentation, health, developmental skills or handwriting, attention, recall, reflection, or analysis. Student had no challenges with organization of materials, time or tasks, behavioral regulation or compliance. P-17; R-26, 32
40. Teachers reported no instructional or behavioral concerns, above average receptive language skills, above average expressive language skills, average emotional, behavioral, and social skills and motor coordination except for one teacher who describe Student as having below average ability to \*\*\*. \*\*\* gave similar feed back except for differences with a poor rating at \*\*\*, below



average ability \*\*\*, and above average motor coordination. The \*\*\* teacher described no instructional or behavioral concerns, rated all language, emotional, behavioral, and social skills in the above average range and rated motor coordination in the superior range. R-32

41. Student's \*\*\* ("\*\*\*\*") teacher and \*\*\* ("\*\*\*\*") teacher gave similar ratings although all of the emotional, behavioral, and social skills and motor coordination skills were in the average to above average range. The \*\*\* teacher rated Student in the average to above average range for academic characteristics while the \*\*\* teacher rated all academic characteristics in the average range. R-32
42. Petitioner's Expert noted that teachers completed evaluations after approximately \*\*\* days of school, \*\*\* of which Student was in \*\*\*. They did not complete the forms as a group. P-17; R-32; T-640
43. The \*\*\* assessment of Student described significant problems with \*\*\* at home. P-17
44. Student completed a \*\*\* ("\*\*\*\*"). The results of the assessment reflect that Student does not perceive that Student has significant difficulties in Student's life beyond looking at \*\*\* and \*\*\*. Student considers \*\*\*\* The information from the \*\*\* suggested that when Student feels stressed, Student tends to become more \*\*\* and \*\*\*. P-17; T-531-532
45. The private evaluation indicated that Student has some difficulty with \*\*\* but the results did not support a diagnosis of a learning disorder. Petitioner's Expert suggested that Student be monitored for possible response to intervention approaches. P-17
46. In October, 2016, Petitioner's Expert identified Student's only \*\*\* was related to Student's grades. T-573
47. Petitioner's Expert determined that Student qualified as a student with \*\*\*. He cited Student's history of problems with anger, \*\*\*, \*\*\*, \*\*\*, as well as problem with conduct. P-17, R-32; T-540, 547-552
48. Petitioner's Expert explained that Student's characteristics consistent with \*\*\* would be the ability to \*\*\*. He testified that for Student, "it's more the \*\*\*, you know, also impacted with \*\*\*." T-542
49. Petitioner's Expert reported that Student had significant problems regarding \*\*\*. He considered the characteristics be "to a marked degree," described as a variation from a normal range of functioning resulting in impairment in functioning so that the degree to which the person has it can range from being personally impairing to personally painful to impairing functioning. T-544, 545

50. Regarding whether Student's difficulties adversely affect Student's educational performance, Petitioner's Expert opined that Student's problems \*\*\* caused an adverse affect on Student's educational performance. T-545-546
51. Petitioner's Expert indicated that Student's social self-presentation is very important to Student such that behaviors such as \*\*\*\*\* more likely manifested at home only. T-547
52. After his evaluation was completed, Petitioner's Expert was given additional information. Petitioner's Expert indicated that the information would have had no bearing on the results of the \*\*\* or the \*\*\*, T-593, 594
53. Petitioner's Expert recommended an audiological evaluation and review of Student's reading needs by a reading specialist. P-17
54. Parent emailed a request for a comprehensive evaluation of Student for special education and/or Section 504 services to District on September \*\*\*, 2016. Parent and District met for a referral meeting on September \*\*\*. Parent completed a Referral for Special Education Services. On the referral documents, Parent indicated behavioral issues, bullying and mental absence, and academic difficulties as reasons for referral. Parent gave written consent for the FIE on the same date. District sent its Notice of a Full and Individual Evaluation with a Notice of Procedural Safeguards ("Safeguards"). The Notice cited reason for the FIE as behavioral problems and Parent's request. The Safeguards did not include local contact information. Parent emailed questions to District on October \*\*\*. Promptly upon notice of the oversight, District sent a copy of Safeguards with contact information to Parent. P-12, 16, 31; R-20, 21, 22, 23, 24; T-140-141, 203-212, 217, 789
55. Teachers provided referral information about Student in late September and mid-October. R-25, 26
56. District conducted its initial FIE on October \*\*\* and \*\*\*, 2016. \*\*\*, Ph.D. and \*\*\*, Ed.D. performed the evaluation ("District's Expert"). Dr. \*\*\* is a licensed psychologist and a licensed specialist in school psychology. Dr. \*\*\* is an educational diagnostician, registered professional educational diagnostician, speech and language therapist, and certified in generic special education, elementary education and early childhood education. R-33, 35, 36
57. District's FIE was completed \*\*\*, 2016. A copy was provided to Parent on that day. R-55
58. Listed sources of data/assessments in District's FIE included: Oral and Written Language Scales-2 ("OWLS-2"), Beery-Buktenica Developmental Test of Visual-Motor Integration ("Beery VMI"), Differential Ability Scales-II School Age Battery ("DAS II"), Woodcock Johnson IV Tests of Cognition ("WJIV Cog."), Kaufman Tests of Educational Achievement-3 ("KTEA 3"),

Tests of Silent Word Reading Fluency-2<sup>nd</sup> Edition (“TOSWRF-2”), Gray Oral Reading Tests-\*\*\* Edition (“GORT 5”), Key Math 3, Classroom Observations, Parent Interview, Teacher Interview, Student Interview, Mental Status Checklist for Adolescents, Review of School Records, Resiliency Scale for Children and Adolescents, Conners Comprehensive Behavior Rating Scale (“CBRS”): Parent, Teachers, Student, Reinforcer Questionnaire, Behavior Rating Inventory of \*\*\* Second Edition (“BRIEF-2”): Parent, Teacher, and Student, Multidimensional Anxiety Scale for Children-Second Edition (“MASC-2”): Parent and Student, and Rating Scale of Impairment (“RSI”)-Parent and Teacher. R-33; T-214

59. The FIE contained no discussion regarding a classroom observation. R-33
60. Teacher interviews reflected that Student works well in groups and sometimes \*\*\*. They indicated that Student caught up quickly with classmates after spending \*\*\* in a \*\*\*. Student often helps others with their work, participates in classroom discussions, and volunteers to answer questions. Teachers reported that Student is very conscientious and wants Student’s work to be perfect. Student demonstrated some skill deficits in \*\*\*, but was doing better with \*\*\* than with \*\*\*. R-33
61. The parent interview contained similar information as given to Petitioner’s Expert. P-17; R-33
62. Student was interviewed for approximately \*\*\* hours. Student presented no symptoms of emotional distress, \*\*\*, \*\*\*, impulsivity or inattention. Student described positive school years including \*\*\* and \*\*\* grades. Student enjoys \*\*\*. Student indicated that Student’s \*\*\* has high expectations and Student is expected to have at least \*\*\* on Student’s report cards. Student reported that Student is usually pretty stress for a couple of weeks before report cards come out due to worry about getting into trouble about Student’s grades. Student indicated relief when Student makes the honor roll because Student knows it makes Student’s parents happy. Student admitted to having trouble sometimes following the rules. R-33
63. The OWLS-2 assesses a child’s oral language skills. Student’s scores on the OWLS-2 were in the average range. R-33
64. The \*\*\* was used to gather information about \*\*\* of Student. Scores are reported using \*\*\*, a standardized score that allows the assessment tool to reflect what is “typical” or atypical” for a particular age and gender. \*\*\*. \*\*\*. \*\*\*. \*\*\* ratings indicated clinically significant scores \*\*\*. The \*\*\* report indicated that two teachers rated Student. One teacher rated Student at risk in the areas of \*\*\*. The other teacher had no at risk or clinically significant ratings. Student’s scores were between \*\*\* (at-risk) in the areas of \*\*\*. R-33

65. Regarding the \*\*\* teacher ratings, the \*\*\* FIE indicated that the \*\*\* teacher did not complete the measure so scores could not be retrieved. R-33
66. A \*\*\*, 2016 draft of the FIE included the \*\*\* teacher's \*\*\* scores. Those scores indicated at risk scores on \*\*\*. They indicated clinically significant scores on \*\*\*. The \*\*\* teacher's scores on the \*\*\* Scales indicated three at risk scores: \*\*\*. P-31:Part C SDT: 104-105; R-33
67. In the draft FIE, the interpretation of scores paragraph differed from the \*\*\* FIE. In the \*\*\* draft FIE interpretation of scores, the evaluator stated that Teacher ratings indicated that Student did not display any more difficulty than the average \*\*\* of Student's age with the exception of At-Risk scores in the area of \*\*\*, and Clinically Significant scores for \*\*\*. It indicated that \*\*\* ratings of Student's \*\*\* behavior reflected At-Risk scores for \*\*\*. P-31: Part C SDT: 104-105; R-33
68. In contrast to the \*\*\* interpretation of scores, the \*\*\* FIE stated that teacher rating indicated that Student did not display any more difficulty than the average \*\*\* of Student's age with the exception of At-Risk scores in the area of \*\*\* and \*\*\* (\*\*\*.) It continued to state that \*\*\* rating indicated that Student perceives that Student has more trouble with \*\*\* than other \*\*\* of Student's age but \*\*\* does not report any unusual problems with Student's activity level or physical well-being. P-31: Part C SDT: 104-105; R-33
69. The \*\*\* indexes the range and severity of \*\*\*, and can assist in a diagnosis of \*\*\*. As with the \*\*\*, \*\*\*, \*\*\*, \*\*\* score of \*\*\* on \*\*\* was slightly elevated. \*\*\* scores were either low probability or average in all areas, indicating that \*\*\* does not perceive \*\*\* as being any more \*\*\* than other \*\*\* of Student's age. Neither \*\*\* nor \*\*\* scores indicated a perception that Student's behaviors reflected symptoms of \*\*\*. R-33
70. The \*\*\* is used to explore \*\*\*. \*\*\*, \*\*\* rating for the \*\*\* fell within the elevated range. \*\*\* ratings reflected average performance in comparison to Student's peers. \*\*\* rating reflected mild problem for the index score. R-33
71. Results of the \*\*\* indicated that \*\*\* may not perceive that Student is as capable as other \*\*\* in coping with stress, but \*\*\* does not see \*\*\* as losing Student's ability to function if something adverse occurs. R-33
72. Parent and a \*\*\* teacher completed the \*\*\*. Results varied significantly. \*\*\* indicated no evidence of impairment. \*\*\* ratings of Student's behavior indicated that \*\*\* Student has considerable difficulty in the areas of \*\*\*. \*\*\* rated Student's \*\*\* skills and \*\*\* skills within the average range for youth of Student's age. \*\*\* rating of Student's behavior \*\*\* indicated problems that would be classified as Mildly Impaired. R-33

73. Statistically significant differences between parent and teacher ratings for a child's behavior in the school versus the home setting can be attributed to actual differences in a child's behaviors in the two settings and with different people, differences in expectations of the individuals rating a child, or rater confusion or misunderstanding of the instructions. R-33
74. The FIE results indicated that Student's \*\*\* skills were in the average to below average range. Student's \*\*\* skills were in the average range along with \*\*\* skills. Student's \*\*\* skills were in the below average range. R-33
75. Both Petitioner's and District's evaluations indicated that Student has average \*\*\* abilities. P-17; R-33
76. District's evaluators determined that symptoms of \*\*\* are not affecting educational performance adversely to a significant degree \*\*\* in the school setting. P-17; R-33
77. Like Petitioner's Expert, District's evaluators determined that Student did not meet the criteria for a learning disability condition. P-17; R-33; T-201-202
78. District sent notice of the December \*\*\*, 2016 initial ARD committee meeting was sent to Parent December \*\*. The stated purpose of the meeting was to consider eligibility for special education, consider development of an IEP and placement, and to consider provision of FAPE. R-56
79. Both Parent and Student's \*\*\* attended the initial ARD committee meeting that was held \*\*\*. During the meeting, both evaluators' evaluation results were reviewed. Neither evaluator qualified Student as having a learning disability, and Parent agreed. Petitioner's Expert indicated no signs of psychopathology. He qualified Student with \*\*\*. District's Expert did not find that Student met the criteria as a student with \*\*\* for special education services for the reason that Student's behaviors \*\*\* were not such that Student was unable to learn at school. Parent was concerned that the teachers who gave reports for the initial FIE had insufficient time with Student to provide an accurate report. In response to Parent's concern, the ARD committee asked its evaluators to collect additional information from the teachers. District members of the ARD committee did not find Student eligible for special education; Parent disagreed and a 10-day recess was called. R-56; T-241
80. The following day, Parent emailed her refusal to provide consent for additional assessment by contacting Student's teachers. Parent indicated she would not allow District to access Student's \*\*\* records. Ultimately, Parent signed consent for District's evaluators to access Student's \*\*\* records and dated it December \*\*\*, 2016. District received some \*\*\* records on December \*\*\*. P-15, 26; T-248-250, 324

81. The ARD meeting reconvened after hours on January \*\*\*, 2017 (“reconvened ARD”). Parent was present. Although Parent requested the presence of Student’s \*\*\* teacher, the teacher had another commitment after school hours and did not attend. Parent felt that new information wouldn’t affect District’s evaluation. District members of the ARD committee agreed that Student did not qualify as a student with \*\*\* or learning disability. Parent disagreed. Prior Written Notice was sent to Parent. P-27; R-56; T-179-180, 255-256
82. At the reconvened ARD meeting, Parent presented \*\*\* reports from Student’s \*\*\*, Ms. \*\*\*. The ARD committee reviewed the records. District’s Expert indicated that there were few \*\*\* and the information was not necessary for the evaluation. She indicated that \*\*\* is not considered an evaluation. P-27; T-484-485
83. In January 2017, in response to a complaint by Parent regarding Student’s safety at school, District interviewed witnesses and determined that the \*\*\* about whom Parent complained posed no potential threat to Student. The following week, District Principal monitored the classroom in question and observed comfortable communication between \*\*\* and Student. Parent refused to allow Student to provide a written statement in the investigation. P-41
84. During the reconvened ARD, District’s evaluator reviewed both evaluations. The parties discussed Student’s \*\*\*. In the private evaluation, the standard score was \*\*\*. District’s Expert explained that \*\*\* is in the average range. In District’s evaluation, the comprehension score was \*\*\*, which is comparable to Petitioner’s Evaluator’s reported score of \*\*\*. District’s Expert explained that although the grade level was \*\*\*, the test is normed nationally and a \*\*\* grade level is average for children in Student’s grade. District evaluator explained that Student was receiving intervention, and neither the private nor District’s evaluation indicated a reading disability. P-27; R-56
85. Parent filed an Office of Civil Rights complaint to which the teacher responded by letter in March 2017. The teacher indicated receipt of her students’ iStation results from their \*\*\* grade year. She indicated that iStation is one of many factors used to evaluate her students’ progress, but that it is not indicative of overall grade level performance. It is a helpful tool to identify students who may need additional practice taking standardized tests. P-43, 49
86. In 2014-2015, \*\*\* consents for evaluation for special education services were provided to District. District determined \*\*\* children eligible for services. In 2015-2016, District received \*\*\* consents. It found \*\*\* children eligible for services. P-31; R-6
87. Petitioner’s attorney provided Respondent the appropriate information in the requests for due process hearing. See October 4, 2016 and January \*\*\*, 2017 requests for due process hearing.

88. Parent's concern regarding Student's education was a legitimate concern. Nothing in the record supports a finding that either party unreasonably protracted the final resolution of the issues in controversy in the hearing. 19 T.A.C. §89.1185(m)

### Discussion

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005). This includes the burden of proof with regard to harm or a deprivation of educational benefit.

Petitioner failed to produce evidence of a denial of procedural rights. District provided procedural safeguards when Parent requested an evaluation. Following disagreement at the reconvened ARD meeting, District provided prior written notice to Parent. 34 C. F. R. §§ 300.503, 300.504.

The authority of a hearing officer under the IDEA is limited to determinations relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child. 34 C. F. R. §300.507.

Petitioner alleged that District failed to protect Student and/or Parent from bullying, harassment, discrimination and/or retaliation. District investigated bullying allegations when Petitioner complained. Bullying is not in this hearing officer's jurisdiction unless it arises to the level of a denial of FAPE. As reflected in this decision, Student did not qualify as a child with a disability in need of special education; thus there is no need for further discussion regarding bullying. Discrimination and retaliation are outside this hearing officer's jurisdiction.

### Did District fail to timely and appropriately evaluate Student?

The IDEA requires a two-pronged analysis for determining whether a student should be identified as eligible for special education services. The "Child Find" obligation is triggered when the school district has reason to suspect the student (i) has a disability; and (ii) the student is in need of special education services. 34 C.F.R. §§ 300.8(a)(1); 300.111(a); *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 (5<sup>th</sup> Cir. 2007); 34 C.F.R. § 300.111(a); *Carrollton-Farmers Branch Ind. Sch. Dist.*, 113 LRP 14998 (SEA Tex. 2013) (school district had no reason to suspect student who performed well academically, behaviorally and socially had a disability or was in need of special education).

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. The decision of whether a student who is advancing from grade to grade is in need of special education must be determined on an individual

basis. *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176, 207, n. 28 (1982). *Venus Indep. Sch. Dist. V. Daniel S.*, 36 IDELR 185 (N.D. TX 2002).

Parent believes that Respondent should have evaluated Student as early as \*\*\* 2014 when Student enrolled in District. Student's grades were \*\*\* in Student's previous school where Student attended \*\*\* grade for approximately \*\*\*. Parent testified that upon enrollment in District, she visited with the school principal about Student's struggles due to \*\*\* and about Student's reading.

District's counselor testified that District has an RTI process. All general education students are on Tier I. When a student needs additional intervention, he is placed on Tier II. District's special education operating guidelines state, "Complete referral for evaluations after the child has been through the Response to Intervention process..." In addressing criteria for identifying specific learning disabilities, Texas adopted criteria must permit the use of a process based on the child's response to scientific, research-based intervention. 34 C. F. R. §300.307. In the instant action, Student was placed on Tier II and made some progress. Throughout the \*\*\* - \*\*\* grades, Student made mostly A's and B's. Student passed the STAAR in \*\*\* each year with one exception--\*\*\* grade \*\*\*. Student passed the \*\*\* grade \*\*\* portion of STAAR.

Petitioner argues that the child find duty extends to students whose behavioral progress and acquisition of appropriate social skills reflect a need for special education. *Venus Indep. Sch. Dist. V. Daniel S.*, 36 IDELR 185 (N.D. TX 2002). In *Venus*, the child had good marks and was advancing from grade to grade; however, he had a number of disciplinary referrals for disruptive behaviors. He received 5 one-to-three day suspensions and 12 in school suspensions ("\*\*\*\*") in a 5-month period. In contrast to the child in *Venus*, Student had approximately \*\*\* disciplinary reports over a \*\*\*-year period. According to testimony, these sporadic disciplinary incidents were not unlike behaviors of \*\*\*. The evidence indicated that Student's behavior fluctuated. Most of the behaviors were manifested at home, such as \*\*\*. *Huntsville City Board of Education*, 22 IDELR 931.

Petitioner argues that Student's grade level on iStation program remained essentially the same from \*\*\* grade through \*\*\* grade, and that should have given District reason to suspect a disability. The \*\*\* teacher testified that the iStation and AR programs are used for preparation for the STAAR test and to learn enjoyment of reading, only a portion of the overall \*\*\* program. In considering Student's overall academic performance, the credible evidence supports a finding that Student made academic progress throughout those years. Student consistently made A's and B's on report cards, advanced from grade to grade, and passed the STAAR tests in \*\*\* with the exception of the \*\*\* grade \*\*\* portion after which District provided intervention and Student passed the \*\*\* portion in \*\*\* grade.



Immediately upon Parent's request for evaluation, District obtained consent for evaluation, and commenced the FIE. Prior to such time, District had no reason to suspect that Student had a disability and was in need of special education; thus, District did not violate its child find duty.

**Is District's Full Individual and Initial Evaluation Appropriate?**

The IDEA requires an initial evaluation to be conducted within 60 days of receiving parental consent for the evaluation, or within the timeframe that the State establishes. 34 C. F. R. §300.301(c)(1)(i) and (ii). In Texas, a written report of a full individual and initial evaluation of a student must be completed not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent. 19 T.A.C. §89.1011 (c). Parent signed consent for evaluation September \*\*\*, 2016. The FIE report was dated \*\*\*, 2016. A review of the 2016-2017 school calendar confirms that the report was completed not later than the 45<sup>th</sup> school day following District's receipt of Parent's signed consent.

In the conduct of an evaluation, a public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. A single measure or assessment may not be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. A public agency must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Assessments and other evaluation materials used to assess a child must be selected and administered so as not to be discriminatory on a racial or cultural basis and provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. Evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable, administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessments. The public agency must ensure that assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. Assessment tools and strategies should provide relevant information that directly

assists persons in determining the educational needs of the child are provided. 34 C. F. R. §§300.301, 300.304.

Section 34 C.F.R. § 300.305 sets forth additional requirements for a school's initial evaluation of a child: the IEP team must review existing evaluation data on the child including information and evaluations provided by the parents, current classroom-based, local, or State assessments, classroom-based observations, and observations by teachers to identify, with input from the child's parents, what additional data, if any, are needed to determine eligibility.

District argues that its FIE used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information including information from Parent. It argues that the FIE multi-disciplinary team assessed Student in all areas of suspected disability, including in the areas of intellect, achievement, social/emotional/psychological and behavior. District asserts that its FIE report was sufficiently comprehensive to identify all of Student's educational needs, and provided the ARD committee with information necessary to determine whether Student had an IDEA-eligible disability that required special education services.

To the contrary, Petitioner argues that the FIE is not appropriate. The FIE listed a classroom observation as one source of data/assessment. Petitioner points to the absence of a classroom observation discussion in the FIE. Classroom observation is a requirement in an initial evaluation. 34 C. F. R. §300.305. Failure to include information regarding a classroom observation is a procedural violation.

As part of an evaluation for a specific learning disability, the public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. 34 C. F. R. §300.310 (a). Again, there is no evidence of a classroom observation by District's Expert. The expert acknowledged at hearing that it was missing from the report. Despite the absence of that information, District's Expert reported to the ARD committee that Student did not have a reading disability. Classroom observation information may have been useful for the ARD committee in its determination of eligibility of Student.

Both the private evaluation and the FIE were conducted in the fall of Student's \*\*\* grade year. Student began that year in \*\*\* and \*\*\* before actually attending classes. By virtue of the timing of both evaluations, teacher questionnaires were completed after having Student in their classrooms approximately \*\*\* days. Petitioner's complaint that teachers had Student too short a time period is simply a matter of timing that could not be helped. District's evaluation was required to be completed within a 45 school day period after Parent's consent for evaluation. Petitioner's Expert testified that he couldn't say that the time frame would invalidate the teacher's \*\*\* questionnaire. When Parent brought attention to the

shortened time period, the ARD committee offered to seek additional information, but the Parent declined the offer.

As another reason for Petitioner's argument that the FIE is inappropriate, Petitioner points to District's Expert's testimony and the documentary evidence in the instant action. Petitioner asserts that District's Expert did not tell the truth and falsely reported \*\*\* scores to skew the results of the evaluation and eligibility determination. In the \*\*\* FIE report, there are three columns for teacher rating in the \*\*\*. In the column for the \*\*\* teacher's ratings, it is stated, "Teacher did not complete the measure so scores could not be retrieved." When questioned at hearing, District's Expert testified that when she left the District, "it wasn't obvious to me that that was incomplete until I was already back home." When asked about sending the questionnaire back for completion, she responded, "Yes, I could have done that but I did not."

Petitioner pointed to a \*\*\* draft version of the teacher ratings on \*\*\*. There were ratings under the \*\*\* teacher's column in the draft. The \*\*\* teacher's ratings indicated at risk scores on the \*\*\* and clinically significant scores on the \*\*\*. On the \*\*\*, the \*\*\* teacher's scores indicated at risk scores on the \*\*\*.

The Interpretation of Scores section in the draft-FIE report and the final FIE report differ similarly. The reality was that the \*\*\* teacher had completed the questionnaire as evidenced by its inclusion in the \*\*\* draft version of the FIE.

The blatant discrepancy between the \*\*\* draft version and the \*\*\* FIE report regarding the omission of \*\*\* teacher's \*\*\* and the contention that she did not complete the \*\*\* cause considerable concern about the credibility of District's Expert and the validity of the \*\*\* report. It is unknown whether the omitted information would have made a difference in the ARD committee's decision regarding eligibility; however, it was information that should have been shared with the committee. This portion of the FIE was inappropriate. Petitioner requested reimbursement for the private evaluation. In light of the absence of a classroom observation and the appearance of a false or inaccurate statement regarding the teacher \*\*\* and the subsequent omitted information for the ARD committee, I find that Petitioner should be reimbursed for the cost of the private evaluation.

### **Does Student meet eligibility requirements for special education services?**

Under the IDEA, a child with a disability means a child evaluated as having a qualifying disability and who, by reason thereof, needs special education and related services. 34 C. F. R. §300.8. Under both federal and state standards of eligibility, the presence of a disability alone is not enough to qualify a child to receive special education services; the law also requires that the child be in need of those services to progress and obtain the requisite educational benefit. IDEA requires that a child exhibit

symptoms of a qualifying disability *and* exhibits them to such a degree that they interfere with the child's ability to benefit from the general education setting. *J.M. v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Filed Aug. 10, 2007); *Alvin Indep. Sch. Dist. v. A.D.*; *J.D. by J.D. v. Pawlet School District*, 33 IDELR 34 (2nd Cir. 2000).

There was consensus between the private evaluation and the FIE report regarding Student's \*\*\* and achievement. Both evaluations found that Student's \*\*\* fell within the average range. Both agreed that Student's \*\*\* testing was consistent with Student's assessed \*\*\*. Student's \*\*\* subtest on the \*\*\* was in the average range. Student scored in the superior range in \*\*\*. Although there may be weaknesses in the area of \*\*\* in particular, the two evaluators agreed that Student did not qualify for special education services as a child with a learning disability.

The evaluators parted ways regarding a finding of \*\*\*. Petitioner's Expert determined that Student met the criteria as a child with \*\*\*.

\*\*\*.

\*\*\*.

Parent provided a bulk of the information regarding Student's history on which Petitioner's Expert relied. He cited \*\*\*. He noted Student's history of \*\*\*. He opined that Student had \*\*\*. For Student, he indicated it was more \*\*\* rather than \*\*\*. Student's \*\*\* found Student to be \*\*\*.

Petitioner's Expert indicated that Student's \*\*\* adversely affects Student's educational performance. When explaining the requirement of a \*\*\*, Petitioner's Expert indicated his belief that the intent of the requirement is that one shouldn't just look \*\*\*, but more of a disabling condition that \*\*\* warrants modifications and interventions. \*\*\*. When asked if Student presented with \*\*\*, Petitioner's Expert replied that Student has significant problem \*\*\*, along with problems with \*\*\*. \*\*\*. He opined that Student's problems \*\*\* impact Student's educational performance.

The overall evidence does not support that Student's condition adversely impacts Student's educational performance. While Student had behaviors during Student's \*\*\*, the record reflects that those behaviors were sporadic and had no consistent pattern. The behaviors were infrequent as reflected in the approximately \*\*\* disciplinary reports over a \*\*\*-year period. At the time of hearing, Student was in \*\*\* grade and no disciplinary incidents were reported.

Student reported to District's Expert that \*\*\*, \*\*\*, \*\*\*. Student reported that Student enjoys \*\*\*.

During his observation at school, Petitioner's Expert saw Student interacting with peers during \*\*\* both individually and in groups and encouraging a \*\*\*. Student followed instructions and paid attention, and helped \*\*\*.

Student transitioned to a \*\*\* class where Student was called on to answer a question and did so correctly. When another class passed by, Student waived to a friend. Student took part in a group performance in a manner similar to the other students. At lunch, Student was interactive, and the other \*\*\* appeared to orient to Student. Overall, Petitioner's Expert indicated that Student presented as cooperative, well-regulated, in good spirits, and social. Student volunteered, communicated, and asked questions.

Academically, Student continuously made A's and B's on report cards, being on the A-B Honor Roll from time to time. Student moved from grade to grade \*\*\*. Further, Student passed the STAAR \*\*\* tests \*\*\* with one exception. Student did not pass the \*\*\* portion in \*\*\* grade. District put Student in a \*\*\*, Student responded to the intervention, and passed the \*\*\* portion in \*\*\* grade. When considering the entire record, I do not find that Student's educational performance is adversely affected by the \*\*\* of Petitioner's Expert. Student is not eligible for special education services.

Although neither expert found a learning disability, recognizing that there is some evidence of struggles with reading, comprehension in particular, District will want to closely monitor Student's progress in that area. It may choose to consider Petitioner's Expert's suggestion and look further into those struggles with the aid of a reading specialist.

### **Statute of Limitations**

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows. 20 U.S.C. §1415(f)(3)(C). Texas established a one-year time limitation within which a petitioner must request a special education due process hearing. 19 Tex. Admin. Code § 89.1151(c).

There are two exceptions to the limitations rule. The limitations timeline does not apply to a parent if the parent was prevented from requesting a due process hearing due to-

- 1) specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint; or
- 2) the local education agency's withholding of information from the parent that was required to be provided to the parent under Part B of the IDEA. 34 C. F. R. §300.511(f); 20 U.S.C. §1415(f)(D).

Petitioner alleged that one or more exception should apply in the instant action. In the instant action, Petitioner requested production of documents and Respondent complied with the request. It supplemented its production throughout the course of the due process hearing. Parent complained that she

could have used some of that information to obtain the assistance that she believed Student needed. Petitioner failed to present sufficient evidence to show that Parent was *prevented from requesting a due process hearing* due to specific misrepresentations by District that it had resolved the problem or due to Respondent's withholding information that it was required to provide under the IDEA. The one-year limitations period applies in the instant action

The evidence is clear that the parties experienced numerous differences involving \*\*\*, District responses to Parent's complaints of bullying, \*\*\*, \*\*\*.

As relations deteriorated, Parent filed a complaint with the Office for Civil Rights and alleged discrimination against Student based on disability and sex, discrimination \*\*\*, and inaccessibility of District's website by students with disabilities.

By Parent report, Petitioner's Expert indicated that Parent believes an element of small-town politics is involved in the dynamics with District. She believes there may be a type of favoritism involved at school based on reasons unrelated to student capabilities. Efforts to dissuade this perception may be beneficial to Student and Student's school experience. Student enjoys \*\*\* and works toward expectations of Student's family \*\*\*. Student's been successful in accomplishing that. Focus on Student's future educational success should be of utmost importance to both parties.

#### **Conclusions of Law**

1. Petitioners have the burden of proof to establish a violation of IDEA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005);
2. Petitioners did not prove that the student's difficulties were sufficient to warrant special education and related services. There was no denial of FAPE. *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Alvin Indep. Sch. Dist. v. A.D.*, 503 F.3d 378 (5th Cir. 2007); 34 CFR 300.8(c)(4)(i) and (c) (10);
3. Petitioners did not establish an exception to the one-year statute of limitations. 34 C. F. R. §300.511(f);
4. Petitioners did not prove that Respondent failed in its child find duties. In order for the district to be liable for a denial of FAPE, the student must be a student with a disability. *D.G. v. Flour Bluff Indep. Sch. Dist.*, 59 IDELR 2(5<sup>th</sup> Cir. 2012, *unpublished*); 34 C. F. R. §300.111;
5. District's \*\*\*, 2016 full individual and initial evaluation is inappropriate. 34 C. F. R. §§300.301, 300.304, §300.305.

#### **Order**

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **GRANTED IN PART AND DENIED IN PART** as follows: Respondent is ordered to reimburse

Petitioner for the private evaluation in the amount of \$3830.00. Respondent shall tender the reimbursement in full to Petitioner no later than 15 days following the entry of this decision. All other relief not specifically granted is hereby DENIED.

**SIGNED** on the 7th day of January, 2018.

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Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas

**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 his or her written decision in the due process hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).