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B/n/f █ & █
Petitioner

v.

HAYS CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT
Respondent

§ BEFORE A SPECIAL EDUCATION
§
§
§ HEARING OFFICER FOR THE
§
§
§ STATE OF TEXAS

**ORDER GRANTING RESPONDENT’S AMENDED MOTION
FOR SUMMARY JUDGMENT AND RENDERING
FINAL JUDGMENT FOR RESPONDENT**

PROCEDURAL HISTORY

1. Petitioner’s request for a due process hearing was filed on October 5, 2018. Petitioner’s Complaint, and █ Amended Complaint filed on January 10, 2019 alleged that the District did not identify and evaluate Student for special education and related services in a timely manner, a so-called “Child-Find” violation.

2. On November 21, 2018, Respondent filed *Briefing on Consent Issues and Motion to Dismiss*. By order dated January 22, 2019, this Hearing Officer scheduled a telephonic pre-hearing conference on January 30, 2019 for argument on Respondent’s *Motion to Dismiss*. By order dated, February 27, 2019, this Hearing Officer denied Respondent’s *Motion to Dismiss*.

3. Respondent, in its *Surreply to Petitioner’s Brief for Hearing on Motion to Dismiss and Motion for Summary Judgment*, dated February 4, 2019, requested that the Hearing Officer grant Respondent’s *Motion to Dismiss* filed November 21, 2018, or alternatively, enter summary judgment in favor of Respondent.

4. On January 23, 2019, Respondent filed its *Counterclaim to Compel authorization for a Full Individual and Initial Evaluation*. This Hearing Officer granted Respondent's *Motion for Summary Judgment on Respondent's Counterclaim* on March 21, 2019, and overriding the parents refusal to provide consent for Student's FIE, ordered that "within ten days of the date of the order, the parents shall make Student available to and cooperate with Respondent for purposes of allowing Respondent to conduct an FIE of Student."

5. On March 26, 2019, Respondent filed its *Motion to Dismiss Petitioner's Claims Outside the One-Year Statute of Limitations*. Petitioner did not file a response to Respondent's motion. Respondent's motion was granted by this Hearing Officer on April 10, 2019.

5. On April 9, 2019, Respondent filed its *Motion for a Revised Order Regarding Consent for Observations of [REDACTED] at [REDACTED]* because parents refused to allow Respondent to observe Student in the current classroom setting. This Hearing Officer determined that Petitioner was not in compliance with the order of April 10, 2019 because Parents had not allowed Respondent to observe Student in the current classroom setting. Respondent's motion was granted on April 23, 2019.

6. Respondent's Full Individual and Initial Evaluation (FIE) of Student was completed on June [REDACTED], 2019.

7. On June 14, 2019, Respondent filed the pending *Amended Motion For Summary Judgment, or Alternatively, Renewed Motion to Dismiss*.

SUMMARY JUDGMENT STANDARD OF REVIEW

The Texas Rules of Civil Procedure govern the proceedings of the due process hearing except to the extent they are modified or otherwise limited by the provisions of the relevant federal and state special education regulations. *19 Tex. Admin. Code § 89.1185 (d)*. Therefore, Respondent's *Amended Motion for Summary Judgment, or, Alternatively, Renewed Motion to Dismiss*, must be considered under the applicable standards of the Texas Rules of Civil Procedure.

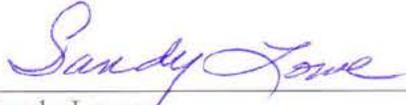
The standard to obtain a summary judgment under Rule 166a(c) of the Texas Rules of Civil Procedure is whether the movant has carried its burden of showing that there is no genuine issue of fact and that judgment should be granted for movant as a matter of law. In reviewing the summary judgment evidence, the trier of fact must resolve any doubts about the existence of a genuine issue of material fact against the moving party and in favor of the non-movant, *Little v. TDCJ*, 148 S.W. 3d 374 (Tex. 2004), and every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W. 2d 546, 548-49 (Tex. 1985).

After full consideration of the evidence and arguments submitted by the parties, I find that there is no genuine issue of material fact and that Respondent is entitled to judgment as a matter of law for the reasons stated below:

The summary judgment record establishes as a matter of law that Respondent did not violate its "Child Find" responsibilities under IDEA and did not fail to identify and evaluate Student for special education and related services in a timely manner beginning October 5, 2017, through November 27, 2018, which is the period of Petitioner's claims, because the evidence shows that Student was not eligible for special education and related services during that time period.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that FINAL JUDGMENT is rendered in favor of Respondent.

SIGNED on August 12, 2019.



Sandy Lowe
Special Education Hearing Officer
For the State of Texas