

DOCKET NO. 096-SE-1218

STUDENT, B/N/F PARENT and §	BEFORE A SPECIAL EDUCATION
PARENT, §	
Petitioner §	
V. §	HEARING OFFICER FOR
COPPERAS COVE INDEPENDENT §	
SCHOOL DISTRICT, §	
Respondent §	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, ***, by Petitioner’s next friends *** and *** (Student or, collectively, Petitioner), filed a request for an impartial due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA) and its implementing state and federal regulations on December 4, 2018, with Notice of the Complaint issued by the Texas Education Agency (TEA) on December 5, 2018. The Respondent to the Complaint is the Copperas Cove Independent School District (Respondent or District). The main issue in this case is whether Petitioner has demonstrated that the District violated its Child Find duty under the IDEA. The Hearing Officer concludes that the District did not violate its Child Find duty.

II. PROCEDURAL HISTORY

A. Legal Representatives

Petitioner was represented throughout this litigation by Petitioner’s legal counsel, Elizabeth Angelone and Meera Krishnan of The Cuddy Law Firm, P.L.L.C. Respondent was represented throughout this litigation by its legal counsel, Kelly Janes and Jamie Turner of Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

B. Resolution Efforts

The parties participated in a resolution session on December 18, 2018, but did not reach an agreement. The parties engaged in informal settlement negotiations throughout the pendency of the litigation. However, the parties were unable to resolve this matter informally. The parties did not elect to attend mediation.

C. Continuances

One continuance was granted in this case to allow sufficient time to conduct a Full Individual Evaluation (FIE), continue informal settlement negotiations, and conduct discovery. The parties agreed to reschedule the hearing for April 16-18, 2019, and extend the decision due date to May 30, 2019, to accommodate the new hearing dates. The decision due date was extended to June 14, 2019, at the request of both parties, at the conclusion of the hearing to allow for submission of written closing arguments.

D. Preliminary Motions

The Hearing Officer addressed four preliminary motions. First, Respondent challenged the sufficiency of the Complaint, which was denied in Order No. 2 on December 18, 2018. Second, Petitioner's request to amend the Complaint was granted and Petitioner's Amended Complaint was filed on February 22, 2019. Third, a preliminary motion addressed the application of the one-year statute of limitations. Petitioner stated both statutory exceptions under the IDEA applied to the one-year statute of limitations rule. The Hearing Officer determined in Order No. 8 that neither exception applies to this case. Fourth, all issues and requested relief pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act, and any statute other than the IDEA raised in the Amended Complaint were dismissed by Order No. 9 on March 20, 2019, due to the Hearing Officer's lack of jurisdiction.

III. DUE PROCESS HEARING

The due process hearing was held in the District April 16-18, 2019. Petitioner continued to be represented by attorneys Elizabeth Angelone and Meera Krishnan. In addition, Student's mother, ***, attended the hearing. Respondent continued to be represented by its legal counsel, Kelly Janes and Jamie Turner. ***, Director of Special Education for the District, also attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter.

At the conclusion of the hearing, the parties requested the record remain open to allow for submission of written closing arguments. The parties also requested access to the hearing transcript prior to submitting their arguments. Both parties submitted timely closing arguments on May 20, 2019. The Hearing Officer's decision is due on June 14, 2019.

IV. ISSUES

A. Petitioner's Issues

Petitioner submitted the following issues, as clarified in Order No. 9:

1. Whether Respondent failed to meet its Child Find responsibility under the IDEA by failing to identify and provide a timely and comprehensive evaluation of Student for special education and related services.

If the Hearing Officer concludes Respondent failed to meet its Child Find responsibility and that Student is eligible for special education and related services, then Petitioner submits the following additional issues:

2. Whether Respondent failed to provide Student a Free Appropriate Public Education (FAPE) individualized to Student's unique needs.
3. Whether Respondent denied Student's parents an opportunity for meaningful parental participation.
4. Whether Respondent failed to develop an appropriate Individualized Education Program (IEP) for Student.

5. Whether Respondent failed to develop an appropriate Behavior Intervention Plan (BIP) for Student.
6. Whether Respondent failed to educate Student in Student's Least Restrictive Environment (LRE) with the appropriate supports and services in order to provide Student a FAPE in that setting.

B. Respondent's Legal Position and Additional Issues

Respondent generally and specifically denied each and every allegation raised by Petitioner and denied Petitioner was entitled to any of Petitioner's items of requested relief. Respondent also raised the one-year statute of limitations as an affirmative defense to bar any claims that arose prior to December 4, 2017, the date one year prior to the date on which Petitioner filed the Complaint.

V. REQUESTED RELIEF

Petitioner requested the Hearing Officer order the following requested relief:

1. Respondent reimburse Student's parents for the cost of private educational evaluations in all areas of suspected disability.
2. Respondent convene an Admission, Review, and Dismissal (ARD) Committee meeting to implement the results of the private evaluations and develop an IEP with all of the elements described on pages 24-25 of the Amended Complaint.
3. Respondent place Student at *** at District expense to ensure Student has the same rights as if Student were educated in the District.
4. Respondent reimburse Student's parents for tuition at ***, related services and related service evaluations, and the cost of transportation for Student to obtain reasonable and necessary educational services including for school, evaluations, private tutoring, related services, and other educational services.
5. Respondent provide Student compensatory services.
6. Respondent provide any additional relief the Hearing Officer deems just and proper.

VI. FINDINGS OF FACT

Background

1. Student is *** years old and in the *** grade at ***, a private school in ***, Texas.
2. Student attended school in the District from the 2011-12 school year until the end of the 2016-17 school year.¹ Student withdrew from the District at the end of the 2016-17 school year.
3. During the 2017-18 school year, Student attended the ***, *** as part of the *** Independent School District, from home.² Student re-enrolled in the District in August 2018 for the 2018-19 school year.³
4. Student attended school in the District from August ***, 2018, until January ***, 2019, when Student again withdrew from the District. On February ***, 2019, Student began attending *** after Student's parents unilaterally placed Student there.⁴

The 2015-16 and 2016-17 School Years

5. Student was in *** grade during the 2015-16 school year. Student passed the State of Texas Assessment of Academic Readiness (STAAR) exams in all areas and finished the school year with at least *** average in each of Student's subject classes.⁵ Student ended Student's ***-grade year reading at a ***-grade level.⁶
6. Student was in *** grade during the 2016-17 school year. Student attended ***.⁷ Student again passed the STAAR exams in all areas during the 2016-17 school year.⁸ However, Student's grades declined. Although Student passed all of Student's classes, Student's ***, ***, ***, and *** grades were each in the ***s at the end of the school year.⁹

¹ Respondent's Exhibit 1, at page 4 (R__, at __); Petitioner's Exhibit 60, at page 2 (P__, at __).

² Hearing Transcript page 587 (TR __).

³ R1, at 1.

⁴ *Id.*; P60, at 3.

⁵ P83, at 5.

⁶ TR 899.

⁷ TR 550.

⁸ P83, at 5.

⁹ P63, at 1.

7. Student had difficulty staying on task and received several behavior referrals during the 2016-17 school year.¹⁰ Student only had one incident involving aggression that year, but had anywhere from zero to three behavioral incidents per month involving disruptive, disrespectful, or non-compliant behavior.¹¹
8. On January ***, 2017, Student's psychologist submitted a letter to the District requesting an evaluation for Section 504 services. The psychologist's letter noted that Student had been diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) earlier that month and "would benefit from the development of a [Section] 504 Plan to assist with Student's educational activities."¹²
9. The District completed an evaluation for Section 504 services on March ***, 2017, finding Student eligible for services under Section 504 as a student with ADHD and ***. The District implemented several accommodations to address academic issues resulting from Student's disabilities, including preferential seating, reminders to stay on task, and small group administration.¹³

The 2017-18 School Year

10. Student's parents chose to withdraw Student from the District before the 2017-18 school year began due to Student's academic and behavioral challenges during the 2016-17 school year.¹⁴ Student attended the *** for the entire 2017-18 school year from Student's own home.¹⁵
11. There are no educational records from the 2017-18 school year. Student's mother input Student's work and Student's grades into an online program, but maintained no records.¹⁶ Student's grades were "mostly in the ***" and Student did not pass the STAAR exam in any of the tested areas during *** grade.¹⁷
12. Student exhibited challenging behavior at home during the 2017-18 school year. In one incident, Student ***. ***,¹⁸ ***,¹⁹

¹⁰ TR 551.

¹¹ P85, at 4.

¹² P16, at 10.

¹³ TR 291; P16, at 3.

¹⁴ TR 551.

¹⁵ TR 551.

¹⁶ TR 601.

¹⁷ TR 291; TR 588.

¹⁸ TR 591; TR 607.

¹⁹ TR 591.

13. ***.²⁰ ***, Student was diagnosed with ***, Autism, ***, and ***.²¹

The 2018-19 School Year

14. Student re-enrolled in the District in August 2018. Student's mother did not provide the District educational records from the previous school year.²² She also did not provide records of Student's *** from the 2017-18 school year.²³ The District was unable to obtain records from the ***, despite making efforts to do so.²⁴
15. On September ***, 2018, the District held a Section 504 meeting to reestablish Student's Section 504 services. Before the meeting, Student's mother informed the District about Student's diagnoses of ***, Autism, ***, and ***.²⁵ As a result of the new information, the District updated Student's Section 504 plan to indicate Student was a student with Autism Spectrum Disorder, ***, and ***.²⁶ The District implemented the accommodations of preferential seating, reminders to stay on task, small group administration, and a cooling off period of a maximum of five minutes as needed.²⁷
16. During the first *** weeks, Student performed grade-level work and passed each of Student's classes. Student earned a *** in ***, a *** in ***, an *** in ***, and three grades in which Student's average was above 90.²⁸ Student did not receive a disciplinary referral until an ***, 2018 incident in which Student ***.²⁹

Restraint Incident on *, 2018**

17. On ***, 2018, two assistant principals performed a restraint on Student after Student's behavior escalated to physical aggression.³⁰ It was the first time the District had ever performed a restraint on Student.³¹

²⁰ TR 552.

²¹ P86, at 2.

²² TR 886-87.

²³ TR 591.

²⁴ TR 886-87.

²⁵ TR 555.

²⁶ P20, at 1; TR 292.

²⁷ P 20, at 4.

²⁸ R25, at 1.

²⁹ P11, at 1; TR 421.

³⁰ TR 90-1.

³¹ TR 591-92

18. One of the assistant principals ***. As a result, ***.³²
19. On November ***, 2018, the District held a Section 504 meeting in response to the restraint incident during which it developed a behavior intervention plan for Student. The behavior intervention plan targeted three behaviors: task completion, self-injurious or nervous/anxious behaviors, and confrontational behavior. The Section 504 team decided to keep all Student's other accommodations in place.³³

Full Individual Evaluation (FIE)

20. On November ***, 2018, two days after the restraint, Student's parents requested an FIE to determine Student's eligibility for special education and related services.³⁴ On November ***, 2018, 13 school days after the request, the District agreed to conduct an FIE.³⁵ The District also requested Student's parents' consent to the FIE.
21. On December ***, 2018, the 15th school day following the request for evaluation, the District sent a "notice of action" to Student's parents indicating it had not yet obtained their consent. The District's efforts to obtain consent included an offer to send someone to Student's home.³⁶ Student's parents eventually came to school for the resolution session and provided consent to evaluate on December ***, 2019.³⁷
22. The District's evaluator began testing and observing Student following Winter Break on January ***, 2019.³⁸ The evaluator also conducted a parent interview on January ***, 2019.³⁹ Student withdrew from the District to attend private school at *** on January ***, 2019, before the District had completed the FIE. The District completed its FIE on April ***, 2019.⁴⁰
23. The District's FIE determined Student met eligibility criteria for special education and related services. The FIE found Student met the criteria for a Specific Learning Disability in Reading Comprehension. Additionally, the FIE determined Student would likely meet criteria as a student with Other Health Impairment (OHI) for ADHD upon a physician's completion of the appropriate paperwork.⁴¹ As of the due process hearing, the parties had

³² TR 110.

³³ P21, at 5-6.

³⁴ P33.

³⁵ P37, at 1; P46.

³⁶ TR 564.

³⁷ P43, at 10.

³⁸ TR 689-90.

³⁹ TR 697.

⁴⁰ TR 698-99.

⁴¹ R18, at 28.

not yet attended an ARD Committee meeting to consider the FIE and develop an IEP for Student.⁴²

Student's withdrawal from the District

24. On January ***, 2019, Student ***. ***. ***.⁴³ Student's parents withdrew Student from the District immediately following the *** incident. They enrolled Student at *** on February ***, 2019.⁴⁴

VII. DISCUSSION

A. Statute of Limitations

In Texas, a parent must request a due process hearing within one year of the date the parent knew or should have known about the alleged action that serves as the basis for the complaint. 19 Tex. Admin. Code § 89.1151(c). The one-year statute of limitations rule does not apply if the parent was prevented from filing a due process complaint due to:

- Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or
- The school district's withholding of information from the parent that it was required to provide under the IDEA. 19 Tex. Admin. Code § 89.1151(d); 34 C.F.R. § 300.511.

Petitioner alleged issues and requested relief for violations of the IDEA dating back to the 2012-13 school year. Order No. 8 concluded neither of the two exceptions to the statute of limitations rule under the IDEA applied in this case, because the District did not withhold information it was required to provide and did not make any specific misrepresentations to Student's parents. Therefore, Student's parents had one year from the date by which they knew or should have known about the alleged action that serves as the basis for the Complaint to file a hearing request. 19. Tex. Admin. Code 89.1151(c).

⁴² TR 706.

⁴³ P60, at 3; P59; TR 569.

⁴⁴ TR 578-79.

The Complaint was filed on December 4, 2018. An Amended Complaint was filed on February 22, 2019. Texas courts have consistently ruled that claims arising prior to one year before the date of filing of a request for a due process hearing are time-barred. *Marc V. v. North East Indep. Sch. Dist.*, 455 F.Supp.2d 577, 591 (W.D. Tex. 2006) (noting that “the statute of limitations precludes recovery for any procedural violations occurring prior to one year from the date that Plaintiffs filed their request for a due process hearing.”); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918, 944 (W.D. Tex. 2008); *T.C. v. Lewisville Indep. Sch. Dist.*, 2016 WL 705930, *9 (E.D. Tex. 2016).

The date one year prior to the filing of the Complaint was December 4, 2017. This decision will therefore consider violations of the IDEA that may have occurred between December 4, 2017, and February 22, 2019, the date on which Petitioner filed the Amended Complaint. Any violations of the IDEA that may have occurred outside of those dates will not be considered in this case.

B. Child Find Duty

1. A school district’s Child Find Duty

Petitioner alleges the District has violated its Child Find duty under the IDEA. Congress enacted the IDEA's Child Find provisions to guarantee access to special education for students with disabilities. 20 U.S.C. § 1412(a)(3). To that end, the IDEA's Child Find duty imposes on each local educational agency an affirmative obligation to have policies and procedures in place to locate and timely evaluate children with suspected disabilities in its jurisdiction, including “[c]hildren who are suspected of being a child with a disability....and in need of special education, even though they are advancing from grade to grade[.]” 34 C.F.R. §§ 300.111(a), (c)(1).

The Child Find duty is triggered when the local educational agency has reason to suspect a child has a disability coupled with reason to suspect the child needs special education services. *Krawietz by Parker v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018); *Richard R.*, 567 F.Supp.2d at 949-50; *Colvin ex rel. Colvin v. Lowndes Cty., Miss. Sch. Dist.*, 114 F.Supp.2d 504, 510 (N.D. Miss. 1999). When these suspicions arise, the local educational agency “must

evaluate the student within a reasonable time after school officials have notice of behavior likely to indicate a disability.” *Krawietz*, 900 F.3d at 676.

2. The District’s Child Find duty in this case

In this case, the evidence showed the District did not have reason to suspect Student had a disability requiring special education and related services prior to Student’s parents’ request for an FIE. Once the District received the request for an FIE, the District evaluated Student within a reasonable time. *See Richard R.*, 567 F.Supp.2d at 949-50.

During the 2017-18 school year, Student attended school at Student’s home. When Student re-enrolled in the District in August 2018, the District did not have access to any records from that school year. While the District was aware Student had not passed the STAAR exams during the 2017-18 school year, the District also knew Student had passed all STAAR exams and classes during the two previous school years in which Student was a student in the District. Until the ***, 2018 restraint incident, Student had been passing Student’s classes. Student had proceeded through nearly two months of the school year without a single behavioral referral until Student failed to comply with a teacher directive *** on ***, 2018.

Following the restraint, the District complied with Student’s mother’s request to conduct an FIE within a reasonable time. Under Texas regulations, once a parent requests an initial evaluation, a school district has 15 school days to provide the parent an opportunity to consent to an evaluation or to provide prior written notice of a refusal to evaluate. 19 Tex. Admin. Code § 89.1011(b). The District agreed to perform the evaluation and attempted to obtain consent on the 13th school day following the request. This was a reasonable time for the District to respond to Student’s parents’ request for an FIE. *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303, 320 (5th Cir. 2017) (finding that even a three-month delay in obtaining consent was “reasonable”).

3. The District did not violate its Child Find duty

In summary, the District did not have a reason to suspect Student had a need for special education and related services during the 2018-19 school year until Student's parents requested an evaluation on November ***, 2018. Schools do not need to "rush to judgment" and immediately evaluate a child who demonstrates average or below-average performance. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 252 (3rd Cir. 2012). Once Student's parents requested the evaluation, the District attempted to obtain consent within 15 school days of the request. Any delay in proceeding immediately with the FIE was attributable to Student's parents' hesitation to sign the consent documents. Thus, Petitioner did not demonstrate the District violated its Child Find duty under the IDEA. *Richard R.*, 567 F.Supp.2d at 949-50.

Having determined that the District did not violate its Child Find duty, the Hearing Officer will not examine any of Petitioner's additional issues. Relief can only be provided from the date on which Respondent was obligated to provide Student a FAPE. *Woody*, 865 F.3d at 320-21. The District completed the FIE on April ***, 2019. As of the hearing date, the parties had not yet convened an ARD Committee meeting to consider the FIE and implement an IEP calculated to provide Student a FAPE. Therefore, Respondent did not have an obligation to provide Student a FAPE at any time prior to the hearing.


VIII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993).
2. Petitioner's claims are limited solely to those that arose after December 4, 2017, the date one year prior to the date on which the Complaint was filed. 20 U.S.C. 1415(f)(3)(C); 19 Tex. Admin. Code § 89.1151(c); *Richard R.*, 567 F.Supp.2d at 944.
3. Petitioner did not meet Petitioner's burden of proving the District violated its Child Find duty. *Krawietz*, 900 F.3d. at 706; *Richard R.*, 567 F.Supp.2d at 949-50.
4. Petitioner did not meet the burden of proving entitlement to any of Petitioner's requested relief. *Schaffer*, 546 U.S. at 62; *Woody*, 865 F.3d at 320-21.

IX. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

SIGNED June 14, 2019.



Ian Spechler
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO PARTIES

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