

STUDENT, *B/N/F* PARENT,

Petitioner,

V.

HOOKS INDEPENDENT SCHOOL  
DISTRICT,

Respondent.

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER

FOR THE STATE OF TEXAS

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**FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER**

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**I.  
STATEMENT OF THE CASE**

On February 28, 2022, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Hooks Independent School District (“Respondent” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On February 28, 2022, 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. <sup>1</sup> Petitioner’s pivotal issue involves Respondent’s alleged failure to comply with its affirmative Child Find duty.

**A. PETITIONER’S ISSUES:**

Petitioner asserts that Respondent denied Petitioner a Free Appropriate Public Education (“FAPE”) beginning on February <sup>\*\*\*</sup>, 2020, when Petitioner’s Parent withdrew Student from the District:

1. At the time of Petitioner’s February <sup>\*\*\*</sup>, 2020, withdrawal from the District and subsequent establishment of home-schooling, Respondent had knowledge of Petitioner’s dyslexia diagnosis but never reached out to obtain consent from Petitioner’s Parent for a Full and Individual Evaluation (“FIE”);
2. Respondent failed to develop an appropriate Individualized Education Plan (“IEP”) for Petitioner;
3. Respondent failed to provide Petitioner special education services; and

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<sup>1</sup> This is the second Request for Due Process Hearing involving these Parties filed during school year 2021-2022. On December 17, 2021, Petitioner filed Petitioner’s first Complaint with TEA, styled *Student, b/n/f Parent, v. Hooks ISD*; Docket No. 108-SE-1221. The undersigned SEHO dismissed the first filing without prejudice to refiling based upon the one-year statute of limitations.

4. Respondent failed to complete Petitioner's FIE in a timely manner in summer 2022.<sup>2</sup>

## **B. PETITIONER'S REQUESTED RELIEF:**

Petitioner initially requested a thorough evaluation in all areas of suspected disabilities and compensatory services to address dyslexia. In Petitioner's Closing Argument, Petitioner added the following requested relief:

1. Reimbursement for Petitioner's past and future dyslexia therapies;
2. Training for Respondent's Staff regarding Child find obligations, training on the differences between Section 504 and IDEA and dyslexia and related disorders;
3. Education for Staff on all of OSEP's guidance within the past five years regarding dyslexia issues in Texas;
4. Production of Petitioner's complete educational file; and
5. Any other relief deemed appropriate by the Hearing Officer.

## **RESPONDENT'S ISSUES AND AFFIRMATIVE DEFENSE:**

1. Respondent asserted that Petitioner's issues replicate those pled in the former Complaint, which the undersigned SEHO dismissed; and
2. Respondent asserted the one-year statute of limitations as an affirmative defense.<sup>3</sup>

## **II. PROCEDURAL HISTORY**

Student filed Student's Complaint with TEA on February 28, 2022, alleging issues regarding Respondent's failure to comply with its affirmative Child Find duty and the provision of special education services. On March 1, 2022, the undersigned SEHO issued Order No. 1: Initial Scheduling Order, which set the applicable deadlines related to the Resolution Period and the Due Process Hearing: April 5, 2022 – Prehearing Conference ("PHC"); April 15, 2022 - Disclosure Deadline; April 25, 2022 – Due Process.

On April 6, 2022, the Parties convened the PHC. In attendance were the following: (1) Ms. \*\*\*, Petitioner's Parent; (2) Ms. Daphne Corder, Petitioner's Advocate; (3) Mr. John R. Mercy, Respondent's Counsel; (4) the undersigned Hearing Officer; and (5) the court reporter, who made a record of the telephone conference. The Parties clarified the issues and the requested relief; Petitioner's Parent agreed to provide written consent to allow Respondent to conduct an FIE in all areas of suspected disability; and the Parties jointly requested a

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<sup>2</sup> Based upon new allegations in summer 2022, and with Respondent's approval, Petitioner added this issue.

<sup>3</sup> At the time of Petitioner's filing, the one-year Statute of Limitations in Texas was in place. On September 1, 2022, Texas adopted a two-year Statute of Limitations, which does not apply to this case. See 19 TEX. ADM. CODE §89.1151(c). The SEHO determined that Petitioner's timeline for all issues accrued on February 28, 2021.

continuance of the Due Process Hearing and attendant deadlines to accommodate the time required to complete the FIE and allow an Admission, Review, and Dismissal Committee (“ARDC”) to convene and review the evaluations. Finding good cause for the requested continuances, the undersigned granted the requests and on April 18, 2022, the undersigned issued Order No. 2, which continued the Disclosure Deadline to June 22, 2022; the Due Process Hearing to June 30, 2022; and the Decision Deadline to July 15, 2022.

On May 13, 2022, Respondent’s counsel filed a request a for the continuance of the June 30, 2022, hearing and attendant deadlines on the grounds that a federal case presented an obstacle to counsel’s ability to proceed with the hearing as scheduled. Finding good cause, the undersigned granted the continuance and the Parties agreed to the following new scheduling order: the Disclosure Deadline: August 2, 2022; the Due Process Hearing: August 10, 2022; and the Decision Deadline: August 25, 2022.

On July 18, 2022, the Parties filed another request for continuance based upon their need to complete the FIE. Finding good cause, the undersigned granted the continuance and rescheduled the hearing and attendant deadlines for the following agreed dates: the Disclosure Deadline: September 27, 2022; the Due Process Hearing: October 5, 2022; and the Decision Deadline: October 20, 2022.

On September 26, 2022, Petitioner filed a Motion for Continuance based upon Petitioner’s need to review the recently completed FIE and the ARDC’s need to review same. Respondent objected to the request. Finding good cause for the continuance, the undersigned granted the continuance and rescheduled the hearing and attendant deadlines for the following agreed dates: the Disclosure Deadline: November 7, 2022; the Due Process Hearing: November 14, 2022; and the Decision Deadline: November 29, 2022.

### **The Due Process Hearing:**

Both Parties made their Disclosures timely. On, or about, November 10, 2022, both Parties filed their written objections to the opposition’s Disclosures; on November 13, 2022, the undersigned issued preliminary rulings on these objections.

The SEHO convened a ZOOM Due Process Hearing on November 14, 2022. The Parties’ Exhibits were admitted; the Parties called a total of four witnesses, who presented direct testimony and were cross-examined by the opposition.

During the Hearing, Petitioner was represented by (1) Ms. Daphne Corder, Petitioner’s non-attorney representative, and (2) Petitioner’s Mother. Respondent was represented by (1) Mr. John Mercy, Respondent’s Counsel, and (2) Ms. \*\*\*, Respondent’s Assistant Superintendent of Instruction. At the conclusion of the Hearing, the Parties agreed to file and serve their Closing Arguments on, or before, November 25, 2022. Petitioner requested, and obtained, a brief extension of time to file Petitioner’s Closing Argument. Both Parties filed their Closing Arguments.

### III. RESOLUTION SESSION

The Parties convened the Resolution Session on March 15, 2022, but were unable to settle the issues at that time.

### IV. FINDINGS OF FACT <sup>4</sup>

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 a \*\*\*-year-old \*\*\* who resides within Respondent's jurisdictional boundaries [T1.28.18-19]. Student attended \*\*\* School from school year 2017-18 to February \*\*\*, 2020, when Student was withdrawn from the school by Student's Parent to be home schooled [T1.30.6-7].
3. Prior to Student's withdrawal from school, Student received classroom supports for Student's academic struggles under the Response to Intervention Model [P5.415]. On May \*\*\*, 2019, Petitioner's Parent provided consent for Respondent to evaluate Student for dyslexia [P5.419]. On May \*\*\*, 2019, the District's Licensed Dyslexia Therapist completed a Characteristic Profile of Dyslexia [P5.417]. On May \*\*\*, 2019, Respondent notified Petitioner's Parent that based upon this evaluation, Petitioner met the criteria to participate in the "\*\*\*\*" during the 2019-20 school year [P5.418].
4. In January 2020, Petitioner's Section 504 Committee identified Student as dyslexic and found Student eligible for placement in Section 504 [P5.411]. Less than a month later, on February \*\*\*, 2020, Petitioner's Parent withdrew Student from school and began homeschooling Student. As of the date of the hearing, November 14, 2022, Student had not returned to the District.
5. On, or about, December \*\*\*, 2020, Petitioner's Parent sent an email to the District delineating some limited protocols for addressing a student's education in light of a dyslexia finding [P.1.00002-000004]. This email \*\*\*.
6. Petitioner's email contained no request for a personal or email response from the District. The District did not respond to the email in light of its content addressing possible legal action and excluding any response or request for evaluation or other remedies.
7. Respondent has an on-going affirmative duty to locate to identify all children with disabilities residing within their jurisdiction who are in need of special education and related services. This affirmative duty applies to students who are home schooled.

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<sup>4</sup> References to the Due Process Hearing Record are identified as follows: "T1.#.#" refers to the one-volume Court Reporter's Transcription of testimony made on November 14, 2022, and the specific page and line numbers contained therein; "P#.#" refers to Petitioner's Exhibits by number and page; and "R#.#" refers to Respondent's Exhibits by number and page.

8. Respondent conducted a public awareness campaign targeting students not enrolled in the District who may qualify for special education and related services. Respondent's public awareness campaign targeted Petitioner.

Respondent hosts an Annual Dyslexia Night in October of every year, and advertises this event on its website and on Facebook [T1.107]. Petitioner acknowledged approval of this event [T1.108].

Respondent posts Child Find information, provided by TEA and Region 8, on its website [R.2, 3, 4], at school campuses, and at the Administration Building [R.5].

9. Respondent's public awareness campaign defines Child Find, provides location and contact information, and identifies the District representatives who would be responsive to such contact [R.4]. This complies with the notice requirements for students who are home schooled.
10. Respondent's public awareness information was available on its website before Petitioner's Parent withdrew Student from school and remains so to the present [T1.110-111].
11. Petitioner's Parent never looked at the Child Find information posted on the District's website or Facebook page [T1.51.9-20].
12. On February 28, 2022, Petitioner filed the subject Complaint with TEA alleging Child Find violations stemming from Petitioner's February \*\*\*, 2020, withdrawal from school.
13. Petitioner's February \*\*\*, 2022, withdrawal from school did not trigger Respondent's Child Find obligations to locate and evaluate Petitioner.
14. Petitioner's December \*\*\*, 2020, email did not trigger Respondent's Child Find obligations to locate and evaluate Petitioner.
15. Petitioner's February 28, 2022, Complaint triggered Respondent's Child Find obligations to evaluate Petitioner.
16. The Parties agreed to conduct an FIE in the April \*\*\*, 2022, Prehearing Conference. The Parties agreed to extend the hearing deadlines to allow for the completion of Student's FIE.
17. Respondent complied with its Child Find obligations when it completed Petitioner's FIE on September \*\*\*, 2022 [R10].
18. Respondent timely completed Petitioner's FIE. Per the FIE, Student did not qualify for special education and related services.
19. Petitioner's ARDC meet on October \*\*\*, 2022, to review the FIE. The ARDC determined that at this time, Petitioner does not meet the qualifications of a student with a Specific Learning Disability. The FIE and ARDC determined that although Student had some characteristics of dyslexia, the assessor

could not rule out the exclusionary factors regarding Petitioner's lack of educational opportunity and exposure since Student's withdrawal [R.9.9].

20. Petitioner requested, and was granted, an Independent Educational Evaluation ("IEE"), which currently is pending.

## V. DISCUSSION

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. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017); *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982).

Notwithstanding this black-letter law, these basic tenets do not come into play until the subject student is found to be a "child with a disability," as defined under IDEA.

In determining whether a student is a "child with a disability," the first step is to evaluate the student, in accordance with the IDEA's implementing regulations. If this evaluation establishes that the student has one or more of the enumerated disability classifications found in 34 C.F.R. §300.8(a), then the second step is to determine whether the student demonstrates a need for special education services. In essence, a student meeting IDEA-eligibility criteria but who does not show a need for special education services, is not a "child with a disability" under the IDEA. *Student v. Corpus Christi ISD*, Dkt. No. 298-SE-0496 (Tex. Hrg Off. Lockwood 1996). See also *D. L. by & through J.L. v. Clear Creek Indep. Sch. Dist.*, 695 Fed. Appx. 733 (5th Cir. 2017), as revised (July 31, 2017) (affirming the district court decision upholding the decision of the hearing officer who found that the student was not a student with a disability because the student did not need special education services.).

### A. CHILD FIND

In complying with their FAPE responsibilities, it is incumbent that states and local school districts locate and identify students with disabilities who are in need of special education and related services. 34 C.F.R. §300.111(a)(7)(i). This is Child Find, an affirmative, on-going obligation owed to all students within their jurisdictions. States and local school districts must have policies and procedures in effect to ensure that all disabled children within their jurisdictions, who need special education and related services, are identified, located, and evaluated, regardless of the severity of the disability.

#### **1. Respondent's Child-Find Duty Applies to Petitioner as a Home Schooled Student.**

School districts do not escape their Child Find duty simply because students within their jurisdiction are home schooled or privately placed.

When the student is enrolled in the district, the Child Find activities are more readily conducted and accomplished. In that situation, the District may get direct referrals from parents or teachers. The District has current academic information at its fingertips, including academic and medical testing, classroom behavior, anecdotal information, grades, absences, tardiness, Right to Intervention (“RTI”) activities and results, *etc.* Based upon the results derived from this student information, the district may determine that it has no reason to suspect the student has a disability and no reason to suspect the student may need special education and related services. In that case, the district may deny the request for an evaluation. However, if the district believes the child may have a disability under IDEA, it must obtain the parents’ informed consent for the evaluation.

When the student is not enrolled in the district, the Child Find activities take on a different form. The district may conduct public awareness campaigns by partnering with community groups to target a wide audience, including parents and families, daycare and early childhood education providers, summer camps, medical providers, homeless shelters, religious institutions, and kindergarten roundup. Activities can include screening private school students, sharing information with nonprofit organizations that focus on families and children, and coordinating with State agencies that provide services to children and young adults.

Additionally, districts are required by TEA to post ample information on their websites to provide parents of children who are not enrolled in the district with sufficient information to aid them in obtaining services for their children. These include such information as Notice of Procedural Safeguards under IDEA and Section 504; updates in special education with current school contact information, updates on IDEA eligibility, procedures for requesting an evaluation; a list of resources for the families; and other types of information readily available to the family.

In this case, Respondent’s website posts a plethora of information concerning special education and Section 504: updates in Special Education, with the name and contact information of the District person who can help with special education referrals, information regarding IDEA, process of requesting an evaluation, and a link to TEA’s topic specific information for families; information articles such as Delayed or Denied Evaluations & Comp Services; Resources on Special Education in Texas; Parent’s Guide to the ARDC process; Notice of Procedural Safeguards; Special Education Handbook Statement; and Hooks ISD Child Find Notice.<sup>5</sup> Respondent established that these postings are, and have been, on the website during Student’s home-schooling years. Petitioner’s Parent never looked at the District’s website or Facebook page between the time of Petitioner’s withdrawal and the filing of the Complaint [T1.51.9-20].

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<sup>5</sup> The Child Find post defines “Child Find” and informs the readers that if there are any concerns that their child may have a disability, they are admonished to “contact your local school district or charter school for more information about the Child Find process.” On the face of this document is the phone number and name of the District contact person for either special education or Section 504 information.

## **2. Respondent's Child-Find Duty Was Triggered On February 28, 2022.**

Petitioner asserts that Respondent failed its Child Find obligations starting with Petitioner's February 2020 withdrawal from school. Per Petitioner, at the time of such withdrawal, the District knew of Petitioner's dyslexia diagnosis and the history of Student's struggles while enrolled in the District. As such, the District owed Petitioner Child Find obligations from the February 2020, withdrawal.

Further, Petitioner states that in the midst of Student's home-schooling, the Parent contacted the District on December \*\*\*, 2020, via email, explaining the educational problems Petitioner was having with home schooling. Petitioner avers that at the very least, this email triggered Respondent's Child Find obligation. Neither premise is grounded in legal standards.

The Child Find obligation is triggered when a school district has reason to suspect the a student has a disability, **coupled** with a reason to suspect special education services may be needed to address the disability. A two-part inquiry is required to resolve a Child Find claim. First, did the district have reason to suspect the student had a disability; and did the district have reason to suspect the student may need special education and related services as a result? *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp.3d 443, 467 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F.3d 303, 320 (5<sup>th</sup> Cir. 2017). Basically, the inquiry is not whether the student actually qualifies for special education, but instead, whether the student should be referred for a special education evaluation. *Id.* at 467.

In this case, Respondent's Child Find duty was triggered when, in addition to knowing of Student's dyslexia diagnosis, it also had reason to suspect Student may need special education and related services as a result of such diagnosis. This suspicion of the need for special education and related services was triggered on February 28, 2022, when Petitioner filed Petitioner's Complaint alleging Child Find violations. Petitioner presented no evidence in support of a finding that prior to this date, the District had a suspicion of Petitioner's need for special education and related services. Without such proof, the Child Find duty was not triggered until the Complaint set out the actual Child Find issues.

## **3. Respondent's Child Find Obligation Was Satisfied on September \*\*\*, 2022.**

Once Respondent's Child Find obligation was triggered, Respondent immediately started the FIE process. Prior to the April 6, 2022, Prehearing Conference, the Parties discussed conducting Petitioner's FIE. During the April 6, 2022, Prehearing Conference, the Parties agreed to extend the hearing deadlines to accommodate Petitioner's consent for the District to conduct an FIE.<sup>6</sup>

On May \*\*\*, 2022, Petitioner returned signed consent for the FIE [T1.96]. This triggered the timeline for completing the FIE.

## **4. Petitioner's October \*\*\*, 2022, ARDC Determined That Petitioner Does Not Qualify for Special Education and Related Services at This Time.**

The whole reason for the delay in the hearing was to obtain Petitioner's FIE and present such results to Petitioner's ARDC for review and determinate services, if any. In fact, the FIE was completed on

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<sup>6</sup> Petitioner states that the undersigned SEHO ordered the Parties to conduct the FIE. The undersigned did not enter such an order. The FIE was a joint agreement of the Parties.



September \*\*\*, 2022, and found that Student did not qualify as a student with a Specific Learning Disability [R.9.9]. The FIE determined that while Petitioner did not meet the dyslexia profile, Student did show some of the characteristics of dyslexia. The assessor noted that she could not rule out the exclusionary factor regarding Petitioner's lack of educational opportunity and exposure [R.9.9]. Petitioner requested, and was granted, an Independent Educational Evaluation ("IEE"), which currently is pending.

Whether Petitioner's FIE was appropriate is not an issue in this matter. However, the finding that Petitioner is not eligible for special education and related services does impact Petitioner's Child Find claim. There can be no Child Find *violation* unless the Petitioner has been evaluated and Petitioner's ARDC has determined Student qualifies for special education and related services. *Flour Bluff Indep. Sch. Dist.*, 59 IDELR (5<sup>th</sup> Cir. 2012). Indeed, IDEA does not penalize school districts for not timely evaluating students who do not need special education. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009).

## **B. TIMELINESS OF THE FIE**

Although Petitioner now alleges that there was no request for an Amended Complaint to address Petitioner's concerns regarding the timeliness of the FIE, and that this is not an issue in this case, the record establishes something different.

Petitioner notified the undersigned in summer 2022 that Respondent was delaying the FIE and was out of compliance with operative rules and regulations. Per Petitioner, this delay necessitated Petitioner's reluctant filing of a Motion for Continuance. At one point Petitioner inquired about filing a Motion for Summary Judgment to address such delay.

The undersigned informed that Parties that the inclusion of this FIE issue could be added either through Petitioner's filing an Amended Complaint or with Respondent's agreement to allow the inclusion of this limited issue. Respondent agreed to allow the new issue and on September 28, 2022, the undersigned issued Order No. 6, which extended the hearing and decision deadlines per Petitioner's Motion for Continuance and included the addition of the issue of the untimeliness of the FIE. Petitioner never objected to this inclusion. Accordingly, whether Respondent failed to conduct Student's FIE in a timely manner was tried and is addressed herein.

Petitioner provided Respondent with written consent for the FIE on May \*\*\*, 2022 [T1.96; R.12]. Pursuant to 19 TEX. ADM. CODE § 89.1011, if a district receives written consent for an FIE less than 35 school days before the last instructional day of the school year, the written report of the evaluation must be completed not later than the 45<sup>th</sup> school day following the date written consent was received (into the next school year). In this case, based upon the May \*\*\*, 2022, receipt of written consent, Petitioner's FIE was due on September \*\*\*, 2022 [R10; T1.96-99]. Respondent complied with this deadline by completing the FIE on September \*\*\*, 2022 [R10].

**VI.  
CONCLUSIONS OF LAW**

1. Respondent is a local education agency responsible for complying with IDEA. 20 USC § 1400 *et seq.*
2. Petitioner bears the burden of proof on all 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 bears the burden of proof at all times.
3. Petitioner failed to prove that Respondent violated its Child Find obligations. 34 C.F.R. § 300.111; 19 TEX. ADMIN. CODE § 89.1151 (c).
4. Petitioner failed to prove that Respondent's FIE was untimely. 19 Tex. Adm. Code §89.1011.

**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 1<sup>st</sup> day of December 2022.

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*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:**

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