

STUDENT, <i>B/N/F</i> PARENT,	§	BEFORE A SPECIAL EDUCATION
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
HOOKS INDEPENDENT SCHOOL	§	
DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

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

**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. Petitioner’s pivotal issue involves Respondent’s alleged failure to comply with its affirmative Child Find duty, thereby denying Petitioner a Free Appropriate Public Education (“FAPE”).

**A. PETITIONER’S ISSUES:**

Petitioner asserts that Respondent denied Student FAPE beginning on February <sup>\*\*\*</sup>, 2020, when Petitioner’s Parent withdrew Student from the District:

1. 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”);
3. Respondent failed to provide Petitioner special education services. <sup>1</sup>

<sup>1</sup> Based upon new allegations in summer 2022, and with Respondent’s approval, Petitioner added an additional issue related to the timeliness of completing Petitioner’s FIE. At the beginning of the Hearing, Petitioner withdrew any complaint regarding the District’s FIE.

## **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:

1. Reimbursement for Petitioner's past and future dyslexia therapies;
2. Reimbursement for daily math tutoring until Petitioner is on grade level in math;
3. Private one-on-one Occupational Therapy ("OT") services for thirty minutes per week to work on recommended goals made by Respondent's OT;
4. Use of an Assistive Technology ("AT") Device;
5. Allow Parent to borrow or check out a student computer in order to access the AT applications;
6. Provide Parent with all information about Proportionate Share available to Parents who homeschool their children;
7. Provide a copy Petitioner's complete educational file including the records listed by Parent as being missing or incomplete;
8. Training for Respondent's Staff regarding Child Find obligations, training on the differences among Section 504, IDEA, dyslexia, and related disorders; training is to be done by an outside agency and documentation of training materials/dates to be provided to the Parent;
9. 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; <sup>2</sup> and
2. Respondent asserted the one-year statute of limitations as an affirmative defense. <sup>3</sup>

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<sup>2</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. 109-SE-1221. The undersigned SEHO dismissed the first filing without prejudice to refiling based upon the one-year statute of limitations in effect at that time.

<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.

## II. PROCEDURAL HISTORY

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. On March 1, 2022, the undersigned issued Order No. 1, the 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 Hearing; and May 14, 2022 – Decision Deadline.

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 requested relief and agreed that Respondent would conduct an FIE of Petitioner in all areas of suspected disability. The Parties jointly requested a continuance of the hearing and decision deadlines to accommodate the completion of the FIE. Finding good cause for the requested continuances, the undersigned granted the requests and continued the Disclosure Deadline to June 20, 2022; the Due Process Hearing to June 28, 2022; and the Decision Deadline to July 13, 2022.

On May 13, 2022, Respondent’s counsel filed an unopposed Motion for Continuance based upon a conflict in a federal case. Finding good cause for this continuance request, the undersigned granted the continuance, and based upon the agreed rescheduling agenda, set out the following: the Disclosure Deadline: August 1, 2022; the Due Process Hearing: August 9, 2022; and the Decision Deadline: August 24, 2022.

On July 18, 2022, the Parties requested another continuance based upon their need to complete Petitioner’s FIE. Finding good cause, the undersigned granted the continuance and rescheduled the hearing for the following agreed dates: the Disclosure Deadline: September 28, 2022; the Due Process Hearing: October 6, 2022; and the Decision Deadline: October 21, 2022.

On September 26, 2022, Petitioner filed a Motion for Continuance based upon the 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.

On September 28, 2022, both Parties presented their availability for rescheduling the Due Process Hearing. On that date the undersigned rescheduled the agreed hearing and attendant deadlines as follows: the Disclosure Deadline: November 11, 2022; the Due Process Hearing: November 18, 2022; and the Decision Deadline: December 2, 2022.

Following the November 14, 2022, Due Process Hearing in \*\*\* case, on November 15, 2022, Petitioner filed a Motion for Continuance of the November 18, 2022, Due Process Hearing and December 2, 2022, Decision deadlines, asserting that Petitioner needed to hire counsel for the remainder of Petitioner’s due process proceeding. Petitioner based Petitioner’s continuance request on issues involved in Petitioner’s \*\*\* hearing. Specifically, Petitioner asserted that the behavior and testimony of certain witnesses in that

hearing made it difficult for Petitioner's \*\*\* non-attorney representative to prosecute/defend Petitioner's case; that the non-attorney representative was not prepared to respond to the perceived allowance of certain historical information; and that hiring a special education attorney would avail Petitioner of a fair proceeding.<sup>4</sup> Respondent objected to this filing. Over the Respondent's objection, the undersigned found good cause for granting the continuance. Respondent requested that at the very least, the Parties convene the hearing prior to the end of the fall semester.

On November 15, 2022, the undersigned requested the Parties' availability for the convening of the hearing. Following a status follow-up request by the undersigned, Petitioner confirmed that Petitioner was unable to hire counsel due to financial constraints and would proceed with the hearing using Petitioner's non-attorney representative. On November 30, 2022, the Parties agreed to the following schedule. the Disclosure Deadline: December 7, 2022; the Due Process Hearing: December 15, 2022; and the Decision Deadline: December 29, 2022.

Both Parties made their Disclosures timely.

The SEHO convened a ZOOM Due Process Hearing on December 15, 2022. The Parties' Exhibits were admitted; the Parties called a total of five witnesses, who presented direct testimony and were cross-examined.

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, December 26, 2022. Petitioner requested, and obtained, a brief extension of time to file Petitioner's Closing Argument. Both Parties filed their Closing Arguments timely.

The Decision in this case is rendered timely on December 29, 2022.

### III. RESOLUTION SESSION

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

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<sup>4</sup> The same non-attorney representative was approved to represent both Petitioner and Petitioner's \*\*\* in their respective due process proceedings.

**IV.  
FINDINGS OF FACT <sup>5</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 \*\*\*-year-old \*\*\* who resides within Respondent's jurisdictional boundaries [R#1.002]. Student attended \*\*\* from school year 2015-16 to February \*\*\*, 2020, when Student was withdrawn from the school by Student's Parent to be home schooled.
3. Student performed well in \*\*\* and appeared to have no struggles with the curriculum [T.1.179.17-18]. As Student grew older, Student struggled with academic performance and had difficulty keeping up with Student's class [T.I.179.19-24]. By the end of \*\*\* grade, Student was failing most of Student's subjects.
4. Student was originally diagnosed as a child with dyslexia in 2017. A Section 504 meeting convened in December 2018 and placed Student in Section 504 to receive educational assistance for dyslexia [P.11.1]. Student was enrolled in the \*\*\* program, which is a comprehensive intervention for students with dyslexia. The Section 504 Committee approved certain instructional accommodations, such as extra time for classroom and state assessments; math manipulatives; oral administration for class work and assessments; shortened assignments instead of extra time on daily work and homework [P.11.2].
5. On April \*\*\*, 2019, Student's Section 504 Committee met to add Student's diagnosis of \*\*\* to Student's 504 Plan.
6. On May \*\*\*, 2019, Petitioner's Parent requested an FIE under IDEA [T.1.184.4]. Student was evaluated and the testing was completed on June \*\*\*, 2019. [T.1.184.7-9]. Student's Admission, review, and dismissal committee ("ARDC") convened on June \*\*\*, 2019 [T.1.184.8-9]. The ARDC determined that Petitioner showed no academic need for special education and related services [R.1.010]. The Respondent suggested retaining Student in the \*\*\* grade but the Parent objected [T.I.179.25-180.4-11]. Student was promoted to \*\*\* grade.
7. 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.1.000002-000004]. This email challenged the District for its failure to protect Student from the devastating effects its lack of knowledge of operative dyslexia rules and regulations had on Student. Petitioner's email stated that "in due time [Student's] case would be heard and [the District] will pay for the financial and emotional damages" suffered due to Respondent's failures [P.1.000004].

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<sup>5</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 December 15, 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. 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 [T.1.50.18; P.I.1-4]
9. Respondent has an on-going affirmative duty to locate, evaluate, and 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.
10. 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 T.1.53].  
  
Respondent hosts an Annual Dyslexia Night in October of every year, and advertises this event on its website and on Facebook [T1.54-55].  
  
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.2, 3, 4].
11. 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; T.1.55-58]. This complies with the notice requirements for students who are home schooled.
12. Respondent's public awareness information was available on its website before Petitioner's Parent withdrew Student from school and remains so to the present [T1.57].
13. On February 28, 2022, Petitioner filed the subject Complaint with TEA alleging Child Find violations stemming from Petitioner's February \*\*\*, 2020, withdrawal from school.
14. Petitioner's February \*\*\*, 2020, withdrawal from school did not trigger Respondent's Child Find obligations to locate and evaluate Petitioner.
15. Petitioner's December \*\*\*, 2020, email did not trigger Respondent's Child-Find obligations to locate and evaluate Petitioner.
16. Petitioner's February 28, 2022, Complaint triggered Respondent's Child-Find obligations to evaluate Petitioner.
17. The Parties agreed to conduct an FIE in the April 6, 2022, Prehearing Conference. The Parties agreed to extend the hearing deadlines to allow for the completion of Student's FIE [T.1.226].
18. On May \*\*\*, 2022, Petitioner's Parent returned the signed consent for the FIE [R.11.13-14].

19. Respondent complied with its Child Find obligations when it completed Petitioner's FIE on September \*\*\*, 2022 [R.10 & 14].
20. Petitioner's ARDC meet on October \*\*\*, 2022, to review the FIE. The ARDC determined that at this time, Petitioner does not meet the qualifications as a student with a Specific Learning Disability [R.13.001]. Student qualified under the Other Health Impairment ("OHI") category based upon Student's \*\*\* [R.13.001]. Student's ARDC developed goals under OT, Reading, and Math, as well as Accommodations because of the challenges of Student's \*\*\* [R.8.032]. Variations in Student's \*\*\* cause challenges with staying on task and maintaining focus. 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.8.032].
21. 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).

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: (1) 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; (2) information articles such as Delayed or Denied Evaluations & Comp Services; (3) Resources on Special Education in Texas; (4) Parent's Guide

to the ARDC process; (5) Notice of Procedural Safeguards; (6) Special Education Handbook Statement; and (7) Hooks ISD Child Find Notice.<sup>6</sup>

Respondent established that these postings are, and have been, on the website during Student's home-schooling years.

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

Petitioner first 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 next 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.

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<sup>6</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.

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>7</sup>

On May \*\*\*, 2022, Petitioner returned signed consent for the FIE. 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 under the Label of Specific Learning Disability.**

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 to determine services, if any. In fact, the FIE was completed on September \*\*\*, 2022, and found that Student did not qualify as a student with a Specific Learning Disability [R.8.032]. 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.9.032].

Petitioner's ARDC did find that Student qualified under the OHI category for Student's on-going struggles with \*\*\*. The ARDC developed goals and accommodations in certain academic classes to aid Petitioner when Petitioner's\*\*\* and Student could not organize this work or complete tasks.

Petitioner's Parent did not agree with these findings. Petitioner requested, and was granted, an Independent Educational Evaluation ("IEE"), which currently is pending.

**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).

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<sup>7</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.

**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 29<sup>th</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:**

**VIA EMAIL: [dcorder@mac.com](mailto:dcorder@mac.com)**

Ms. Daphne Corder  
8504 Silver Ridge Drive  
Austin, TX 78759  
*Non-Attorney Representative*

**VIA EMAIL: \*\*\***

Ms. \*\*\*  
\*\*\*  
\*\*\*

**VIA EMAIL: [jmercy@texarkanalawyers.com](mailto:jmercy@texarkanalawyers.com)**

Mr. John R. Mercy  
MERCY CARTER, LLP  
1724 Galleria Oaks Drive  
Texarkana, TX 75503  
*Respondent's Counsel*