

DOCKET NO. 156-SE-0317

**STUDENT, b/n/f PARENT,
Petitioner**

v.

**LANCASTER INDEPENDENT
SCHOOL DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Petitioner, STUDENT b/n/f PARENT

II. DUE PROCESS PREHEARING AND HEARING

Student was represented by attorneys Nash Gonzales and Lindsey Rames. The 0.337 0 uNAf 0.003

4. Whether the District failed to provide the parent with a 5-day written notice of ARD.
5. Whether the District failed to provide FAPE.
6. Whether the District failed to provide an appropriate IEP and BIP.
7. Whether the District failed to provide appropriate social skills and behavioral goals.
8. Whether the District denied Student access to ***.
9. Whether the District imposed punitive consequences for behaviors related to Student's disability.
10. Whether the District violated the Student's rights as a child not yet identified in their discipline.
11. Whether the District denied parent a meaningful opportunity to participate.
12. Whether the District adequately trained personnel to work with Student.
13. Whether the District had an appropriate program and IEP plan in place for the beginning of the 2016-2017 school year.

The requested relief includes compensatory services; an IEE at the District's expense, including an FBA, with an order that the finding be implemented by the ARDC; private counseling for Student and family; an appropriate placement in the LRE; an appropriate IEP and BIP; out of pocket expenses; ***, *** at the District's expense; private tutoring at the District's expense; and an order requiring training for District staff.

IV. TIMELINE FOR MAJOR EVENTS

***, 2015	District initiated 2015 FIE
***, 2015	Student did not qualify; Section 504 began
***, 2016	Psychological report found ADHD diagnosed
*** 2016	Student began ***
***, 2016	Student began ***.
*** 2016	Student's demonstrated repeated almost daily, behavior issues.
***, 2016	Section 504 meeting to address Student's deteriorating behavior

504.⁶

6. A Section 504 Plan was implemented on ***, 2015. The plan largely addressed Student

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- medical condition of ED was not supported. Instead, she found that ADHD was supported.⁴⁰
32. The FIE did not include ADHD as a medical condition to evaluate although ADHD was addressed in the determination.⁴¹
 33. Student has chronic ADHD and Student's heightened alertness to environmental stimuli limits Student's alertness to the educational environment.⁴²
 34. The *** ARDC adopted the FIE report and found Student was not eligible for special education services due to ED.⁴³
 35. The ARDC understood Student needed special education and pursued a diagnosis letter confirming ADHD from student's Physician. Once this letter was received, Student was found to qualify for special education services with OHI-ADHD.⁴⁴
 36. ***⁴⁵ did not include all of Student's behavior incidents. The incidents occurred ***.⁴⁶
 37. While Student passed all courses in ***, Student's behavioral issues were beginning to affect Student's academics and participation in school.⁴⁷

*** in 2016 or 2017⁶² and Student's behavior through *** 2017 was negatively affecting Student's education and that of other students in Student's classroom.

50. Student's behavior disrupted Student's academics and Student's learning environment as well as that of other students in Student's class.⁶³

51.

Finally, identification is addressed as it immediately follows Child Find. Questions of eligibility and identification as a student with a disability are resolved on the basis of whether an evaluation shows the student meets all of the criteria of one or more of the enumerated disability classifications and demonstrates a need for special education.⁷³

The hearing officer concludes that the District did not violate the Child Find or Identification provisions of the IDEA. From Student's *** year within the SOL, ***, 2016, there is little evidence suggesting the District had reason to suspect that Student had a disability needing special education and related services. Turning to Student's *** year, beginning in *** 2016, the question concerns whether the District timely acted when it referred Student for an evaluation on ***, 2016. In addition, Petitioner urges that the District failed to evaluate Student within a reasonable time after having notice of Student's behavior indicating a disability.

During *** and ***, a private psychologist conducted an evaluation and diagnosed Student with OHI-ADHD. The psychologist recommended that consideration be given to requesting an ARDC meeting to develop an IEP and provide Student with consistent accommodations for Student's ADHD.⁷⁴ This diagnosis was completed in *** 2016 and was provided to the District.

Student's acting out began *** 2016. On ***, ***, and ***, Student's outbursts were included in the District's *** incident reports.⁷⁵ Student's teachers testified that behavioral issues started even during the *****.⁷⁶ By ***, 2016, Student ***. ***.⁷⁷

The District responded by calling Section 504 team meetings on ***, 2016 and ***, 2016, in attempts to address these behaviors.⁷⁸ By ***, 2016, Student's teacher requested ***.⁷⁹

⁷³ 34 C.F.R. §300.8 (a) (c) (1)-(13).

⁷⁴ P-7 at 126-127.

⁷⁵ P-5 at 106-109.

⁷⁶ Many incidents were not recorded in ***.

⁷⁷ P-5 at 105.

⁷⁸ Tr. at 319-320, 332.

At this point, Student's behavior was new and different than that previously identified by the District in the 2015 FIE, and the District had reason to request a special education evaluation. As noted by the Principal, ADHD is not usually associated with ***. Throughout *** and ***, the District and Parent attempted to address Student's behavior with Section 504 accommodations, but without success. Parent was concerned and on ***, 2016, she enrolled Student ***. During this time, it appears Student was not attending class.

While the District had reason to suspect a disability affecting Student's education at least by ***, 2016, it was not unreasonable for the District to wait until after the private *** therapy sessions and to affect the referral on ***, 2016. Student returned to school on ***, 2016, and immediately another outburst occurred ***. The District then referred Student to a special education evaluation for emotional disturbance on ***, 2016. The month delay did not affect Student's education. Giving these particular factors, the District's timing in making the referral to a special education evaluation was reasonable.

Petitioner further urged that there was additional delay in *** 2017. However, by this time a special education evaluation was being performed. The evaluation was performed within the state mandated time frame. Accordingly, this allegation is unsupported.⁸⁰ Thus, Petitioner failed to meet its burden of proving that the District failed in Child Find or Identification of Child. No IEP was in place nor required to be in place at the beginning of the 2016-2017 school year. The District timely evaluated Student of a suspected disability for special education and related services. Moreover, the evidence establishes that the District, even without an IEP in place, took actions to address Student's behaviors. The District's one to two month delay in referral was not unreasonable.

Finally, Petitioner urged that the District's 2017 evaluation was unsupported in its

⁷⁹ P-5 at 104.

⁸⁰ Also in ***, the District's Special Education Director added ***

determination that Student did not qualify as a child with emotional disturbance. This is a difficult analysis to perform ***, given the statutory elements for emotional disturbance. The LSSP who performed the evaluation (Evaluator) testified that she did not review any documents from the ***. Moreover, the Evaluator was unaware that Student ***.⁸¹ Student's *** was not contacted nor were any *** reports from *** requested. Relying on *** and parent and teacher input, the Evaluator testified that Student's behavior issues were basically disobedience and off task, with some emotional outburst. This is not an accurate description of the bbbbbb4(1)-1(10.2t)-1.9(6(s)

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Petitioner Issue 3: Whether the District unilaterally changed student's placement. [It is alleged that a 5-day notice of the ***

written statement of annual goals and objectives and how they will be measured. Instead, a child's IEP also includes a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the school guidance 1/4(t)e6Tw 0.41 0 Td [(a)4(nd7ol)-2c6raff 4(m)-2(e)4(a)4(s)--2(c)4

1. Individualized Program.

First, the school district's proposed program is not individualized on the basis of assessment and performance. The FIE was limited in scope (ED only) and in the data relied upon as discussed above relating to the issue of identification. Given these limitations, the Evaluator made inaccurate conclusions as to Student's behavior challenges. The ARDC at *** relied upon the FIE to develop Student's IEP.⁹² Without an appropriate evaluation, the IEP was not prepared in consideration of Student's unique needs.

Moreover, the *** 2017 ARDC was held at *** even though Student never attended ***. Student's *** teacher from *** did not attend the ARDC meeting that adopted the proposed 2017 IEP. Without her input, the *** 2017 ARDC was not properly staffed to determine whether Student was capable of achieving Student's IEP goals in the general education classroom with additional supports and services, rather than removal from general education for special education as was determined.

To remedy these shortcomings, an FBA is necessary to identify the function or purpose behind Student's behavior, looking at a wide-range of Student's unique and complex social, affective, and environmental behaviors. The FBA must be performed by a Board Certified Behavior Analyst (BCBA) in order to address Student's unique and specific behaviors that go far beyond that expected of a Student with ADH2(D)2(H2R)-9(n)-3(g)

BCBA.

Turning to another issue raised by Petitioner, the 2017 IEP was not required to have present levels of academic achievement as Student was not failing academically. With no immediate academic issues, there was no reason to prepare academic Present Levels of Academic Achievement and Functional Performance. Rather, the PLAAFP focused on Student's functional performance (behavior).

2. Least Restrictive Environment

The District's proposed program was not proven to be implemented in the least restrictive environment, but additional information must be considered before making this determination. This information includes an FBA and input from Student's *** Teacher and Principal regarding Student's behavior once provided the *** was provided as support.

The 2017 IEP proposes removing Student from the general education setting with supplementary aids and services noting that Student had a previously unsuccessful placement in a general education campus.⁹⁴ However, the need for removal from general education setting was not established, particularly given the successful general education experienced by Student from *** to *** 2017.

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Student's needs as quickly as possible. In this regard, it is unclear whether Parent and Parent's Special Advocate had an understanding over the requested placement at ***.⁹⁶

4. Demonstrated Positive Academic and Non-academic Benefits

Presently, Student is maintaining acceptable academic performance. *** is understandably of concern to Parent as Student did not pass the *** TEKS. With ADHD, Student's education performance is at risk as Student progresses into higher grades and must2 Tc 0.20-2(o

circumstances.¹⁰⁰

C. Alleged procedural violations

Petitioner Issue 4: Whether the District failed to provide the parent with a 5-day written notice of ARD.

Petitioner Issue 11: Whether the District denied parent a meaningful opportunity to participate in the ***, 2017 ARDC meeting.

The evidence showed that the District provided a copy of the requisite procedural safeguards and the 5-day written notice of ARDC meetings, except when waived by Parent at Parent's sole discretion. Parent was not denied a meaningful opportunity to participate in the 2017 ARDC meeting. In fact, Parent participated by phone and then went to the school to sign the ARDC document. Parent and the District desired to quickly find Student eligible for special education.

D. Discipline Issues

Petitioner Issue 9: Whether the District imposed punitive consequences for behaviors related to Student's disability.

Petitioner Issue 10: Whether the District violated the Student's rights as a child not yet identified in their discipline.

These issues were not supported by evidence during the hearing. Moreover, as stated and without evidence to further define the situations alleged, the issues are not properly before the hearing officer as they relate to matters concerning discipline and not in relation to a manifestation determination. Accordingly, no further discussion will be made.

E. Other Issues Raised in the Complaint

Petitioner Issue 12: Whether the District adequately trained personnel to work with

¹⁰⁰ Andrew F. v. Douglas Cnty. Sch. Dist., supra.

4. An FBA prepared by a BCBA is necessary to address Student's unique behavioral needs. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
5. The District failed to reasonably/timely respond to Petitioner's request for an IEE as requested in Petitioner's First Amended Complaint and Request for Due Process Hearing. 34 C.F.R. § 300.502(b).
6. Petitioner did not meet Petitioner's burden to prove that the District failed to collaborate with Parent or to provide the parent with a meaningful opportunity to participate. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
7. The District timely evaluated Student for special education and related se(r)- Ptio-5(a)6(ile)

shall implement the recommendations of the FBA and prepare a BIP and IEP accordingly.

All other requests for relief not specifically stated in these Orders are hereby **DENIED**.

SIGNED July 7, 2017.

~~For the State of Texas~~

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause 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. 19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).