

█ B/n/f █ & █  
Petitioner

v.

HAYS CONSOLIDATED INDEPENDENT  
SCHOOL DISTRICT  
Respondent

§ BEFORE A SPECIAL EDUCATION

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HEARING OFFICER FOR THE

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

**PROCEDURAL HISTORY**

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

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

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

4. On January 23, 2019, Respondent filed its *Counterclaim to Compel authorization*

*Full Individualized Instructional Evaluation*. This hearing on Respondent's motion for

*Summary Judgment* was held on February 1, 2019.

parents refusal to provide consent for Student's enrollment in the

the order that the parent(s) shall make Student available for

purposes of allowing Respondent to conduct an individualized

5. On March 26, 2019, Respondent filed its *Motion to Dismiss* Respondent's

*One Year Statute of Limitations*. Petitioner did not file a response to

Respondent's motion until the Hearing Office held a hearing on April 10, 2019.

5. On April 9, 2019, Respondent filed its *Motion for a Revised Order* regarding *Consent*

*for Observations*. Respondent filed this motion because parents refused to allow

Respondent to observe Student in the current classroom setting. This motion was denied

that Petitioner was not in compliance with the order of April 10, 2019, because Petitioner had not

allowed Respondent to observe Student in the current classroom setting. Respondent's

was granted on April 23, 2019.

6. Respondent's *Motion for a Revised Order* (RFO) regarding *Consent* was complete

June 11, 2019.

7. On June 14, 2019, Respondent filed the pending *Amended motion for Summary*

*Judgment, or Alternatively, Renewed Motion to Dismiss*.

## SUMMARY JUDGMENT STANDARD OF REVIEW

The Texas Rules of Civil Procedure govern the process except to the extent they are modified or otherwise limited by the provisions of the relevant federal and state special education regulations. Respondent's *Amended Motion for Summary Judgment, or, Alternatively, Remedy Motion to Dismiss* is denied because the evidence does not establish that Plaintiff is entitled to summary judgment under the Texas Rules of Civil Procedure.

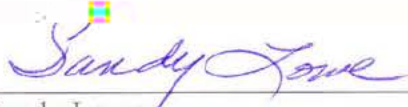
The standard to be applied in summary judgment proceedings is set forth in Rule 166a(c) of the Texas Rules of Civil Procedure. The standard is whether there is a genuine issue of material fact and that judgment should be granted for movant if the summary judgment evidence shows that there is no genuine issue of material fact against the moving party and in favor of the non-movant. *See* *City of Dallas v. Kline*, 148 S.W. 3d 374 (Tex. 2004), and every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *See* *Worley v. Worley*, 200 S.W. 2d 546, 548-49 (Tex. 1985).

After full consideration of the evidence, the Court finds that there is no genuine issue of material fact and that Defendant is entitled to judgment as a matter of law.

The summary judgment record reflects that Respondent violated § 19.052, Texas Education Code, which prohibits a school district from identifying and evaluating a student as having a disability based on a single test score or a single test score through November 27, 2010, which is the period of Petitioner's claims, because the evidence shows that Respondent violated § 19.052, Texas Education Code, during the period.

THEREFORE, IT IS HEREBY ORDERED THAT SUMMARY JUDGMENT is rendered in favor of Respondent.

ORDERED on August 14, 2019

  
Sandy Lowe  
Special Education Hearing Officer  
For the State of Texas