

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,

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

5. W

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

not yet attended an ARD Committee meeting to consider the FIE

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.*, 2010 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 susp[9dtSotudent ha

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 94950.

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* 999

IX. ORDERS

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

SIGNED June 14, 2019.

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).