

**SOAH DOCKET NO. 701-20-2975.IDEA
TEA DOCKET NO. 218-SE-0320**

STUDENT, B/N/F PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
WESLACO INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, by next friend Parent (Student or, collectively, Petitioner), brought this action against the Weslaco Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations.

The main issue in this case is whether the District violated its Child Find responsibilities by failing to evaluate and identify Student for special education and related services. The Hearing Officer concludes the District did not have reason to suspect Student may need special education and thus did not violate its Child Find obligation.

II. PROCEDURAL HISTORY

A. Legal Representation

Student was represented throughout this litigation by Student’s legal counsel, Jordan McKnight, assisted by non-attorneys Debra Liva and Bonnie Garza. The District was represented throughout this litigation by its legal counsel, Elvin Houston and Priscilla Delagarza with Walsh Gallegos Treviño Kyle & Robinson, P.C.

III. DUE PROCESS HEARING

The due process hearing was conducted on April 29-30, 2021, via the Zoom videoconference platform. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel, Jordan McKnight, who was assisted by non-attorney Debra Liva. Student's parents also attended the due process hearing.

Respondent continued to be represented by its legal counsel, Elvin Houston, who was assisted by his co-counsel, Priscilla Delagarza. In addition, ***, the Director of Special Education for the School District, attended the hearing as the party representative. Both parties filed timely written closing briefs. The Decision in this case is due June 21, 2021.

IV. ISSUES

A. Petitioner's Issues

Petitioner raised the following IDEA issues for decision in this case:

1. FREE, APPROPRIATE PUBLIC EDUCATION (FAPE): Whether the District failed to provide Student a FAPE, including:
 - a. Whether the District failed to establish an Individual Education Program (IEP); and
 - b. Whether the District failed to provide special education services (both related and supplementary services).
2. CHILD FIND: Whether the District failed to timely identify Student as a student with a disability in need of special education instruction and related services.
3. PARENTAL PARTICIPATION: Whether the District failed to allow Student's parent to meaningfully participate in the decision making process.

B. Respondent's Legal Position and Additional Issues

Respondent generally denied the factual allegations stated in Student's hearing request. The District contends it provided Student a FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

The District raised the following additional issues:

1. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to resolve claims arising under any laws another than the IDEA, and whether such claims should be dismissed.
2. STATUTE OF LIMITATIONS: Whether any of Student's IDEA claims that accrued prior to March 6, 2019 should be dismissed as outside the one-year statute of limitations rule as applied in Texas.

The Hearing Officer dismissed all allegations under statutes other than the IDEA in Order No. 3 issued on March 26, 2020.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner seeks the following items of requested relief:

1. A finding that the District denied Student a FAPE.
2. A finding that the District violated the Child Find provision of the IDEA.
3. Order the District to provide compensatory education and related services to address Student's areas of disability and/or needs to include, but not limited to, tutoring, social skills, speech, counseling, and occupational therapy (OT).
4. Order the District to conduct an Independent Educational Evaluation (IEE) in the areas of cognitive and achievement, and a complete psychological evaluation, to include autism, for all suspected or known disabilities; speech to include expressive/receptive/pragmatic

language; counseling; assistive technology; OT, to include sensory; and a functional behavior assessment (FBA) at District expense.

5. Order the District to convene an Admission, Review, and Dismissal (ARD) Committee meeting after the completion of an IEE to establish specific and measurable goals to address Student's unique needs.
 - 6.
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5. An ARD Committee met on March ***, 2015, to consider the FIE. The ARD Committee determined that Student did not qualify for special education as a student with autism or a speech impairment. The ARD Committee did not find that Student was in need of special education and related services. Eligibility as a student with an Other Health Impairment (OHI) due to Attention Deficit Hyperactivity Disorder (ADHD) was considered, but based on intelligence and academic testing, grades, and benchmark data, Student did not appear to need special education services on this basis. Student's parent was in agreement with the ARD Committee's decisions regarding eligibility.⁵
6. The ARD Committee provided Prior Written Notice and a Notice of Procedural Safeguards to Student's parent at the March 2015 ARD Committee meeting.⁶

2018-19 School Year

7. Student was in the *** grade during the 2018-19 school year. In December 2018, Student's parent had Student evaluated for an Autism Spectrum Disorder by a private psychologist after Student did not meet the standard for Reading on the State of Texas Assessments of Academic Readiness (STAAR) exam in *** grade. Dr. *** completed the evaluation on January ***, 2019. Formal sources of data included the Wechsler Abbreviated Scale of Intelligence-2nd Edition (WASI-II); Wechsler Nonverbal Scale of Ability (WNV); Adaptive Behavior Assessment System, 3rd Edition; Adaptive Behavior Assessment System, 3rd Edition; (ABAS 3); Youth Self-Report (YSR 11-18); Conners 3rd Edition-Self Report Short Form (Conners 3-SR(S)); The Child Behavior Checklist, Parent (CBCL 6-18); Conners 3rd Edition-Parent Short Form (Conners 3-P(S)); Child Depression Inventory-2nd Edition (CDI-2:P); Multidimensional Anxiety Scale for Children, 2nd Edition, Parent (MASC 2P); and the Autism Spectrum Rating Scales for ages 6-18, Parent (ASRS 6-18).⁷
8. Student's general intelligence as measured by the WASI-II and the WNV were in the low average range. The assessment of Student's adaptive functioning on the ABAS 3 was based only upon parent ratings, with the conceptual and practical domains in the low average range and the social domain in the borderline range. The CBCL and Conners 3-P(S) were used to obtain Student's parent ratings of Student's emotional and behavioral functioning. The scores were clinically significant for anxiety, thought problems, and problems in social relationships. Student's self-ratings on the YSR and Conners 3-SR(S), the scores fell within the normal range for emotional and behavioral functioning. On the ASRS, which was based on one-to-one testing, reported history from Student's parents, and observations of Student, the results indicated Student had symptoms confirming Student met the DSM-5 diagnostic criteria associated with characteristics of autism.⁸

⁵ RE 8.

⁶ RE 3; RE 9; TR Vol. I at 100-102.

⁷ Petitioner's Exhibit (PE) 1 at 0003-0008.

⁸ PE 1 at 0009.

9. In addition to the Autism Spectrum Disorder diagnosis, Student was diagnosed with ADHD-Inattentive type, ***, Unspecified Communication Disorder, and Educational

in social situations but will not approach a peer to socialize. Student's parent also expressed concern that Student ***.¹³

14. Student's February 2019 report card showed the following grades: ***. On *** grade STAAR testing, Student was approaching grade level in *** and met standard in ***. "Approach" state standards indicates Student is proficient and likely ready for the next grade but may need some academic intervention. "Meet" state standards indicates Student is more than likely ready for the next grade-level with some academic intervention. Academic intervention does not necessarily mean providing special education services.¹⁴
15. Student's teachers all gave Student an average to superior rating for academic performance and behavior in relation to other students of the same age.¹⁵

2019-20 School Year

16. Student is described by Student's parent as someone who struggles with communicating or interacting with peers when Student approaches them, but not when peers approach Student. According to Student's *** grade *** teacher, this description did not fit the student he had come to know the previous school year. Student would frequently stop for small talk between classes. Student was described as a really good student who volunteered answers, partnered with other students for group projects, and did not show reluctance to engage with other students. Student's demeanor and performance in class did not create a suspicion Student may need special education and related services.¹⁶
17. In January 2020, the District reached out to Student's parent to schedule Student's annual Section 504 meeting to review Student's service plan. On February ***, 2020, Student's parent informed the District she would not come to the meeting on advice of counsel. On February ***, 2020, a letter from the District indicated the District was willing to conduct a special education evaluation if the parent requested one and included a copy of the Procedural Safeguards. On March 6, 2020, Student's parent requested a due process hearing.¹⁷
18. On March ***, 2020, the District provided a proposed Notice of FIE to determine whether Student qualifies for special education. Areas of evaluation included Language, Physical Health, Emotional/Behavioral, Sociological, Intellectual/Adaptive Behavior, and

¹³ JE 12 at 0034; TR Vol. I at 78, 85, 91, 94.

¹⁴ JE 13 at 0038; JE 6 at 0011; TR Vol. I at 177; TR Vol. II at 225-226.

¹⁵ RE 15 at 0001-0004.

¹⁶ TR Vol. I at 122; TR Vol II at 243-245, 253, 264; RE 18 at 4.

¹⁷ TR Vol. I at 111-113; RE 19 at 0001-0003; Petitioner's Notice of Filing (March 6, 2020).

Clinical Assessments of Pragmatics (CAPs) and Brief Observations of Symptoms of
P

39. Student'7 (A)-4.51 (udec -0.027 Tj0.00Oor (ude22)-2 27 Tj.)f/3e22ude2.6gn23 (E)4o()Tj0 ;.004 Tw 027

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A) The District has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

The District is responsible for providing an eligible student with specially designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9)

, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁴⁴ , 546 U.S. 49, 62 (2005); ., 999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District violated its Child Find obligation and did not provide Student a FAPE.

D. Child Find

The IDEA's Child Find provisions guarantee access to special education for students with disabilities. 20 U.S.C. § 1400(d)(1)(A). A school district, like Respondent, has an affirmative duty 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 spe12 BDC4n.005 Tee, che9,edetsough n ttyreasidvy cngiig f Cie (r)3 gr(r)3 (m)-2 d a

educationally Student is doing great. Further, Student performed well in math, completing the course with *** during the 2019-20 school year.

In addition, none of Student's teachers noted or reported any concerns about sensory issues or socialization with peers. Student's *** grade *** teacher stated that the description of Student given by Student's parent did not fit the student that he had come to know during *** grade. Student actively engaged in class discussions by volunteering answers, never showed any reluctance in engaging with other students, and maintained a solid academic performance without any behavioral issues. Student's parent noted to the District that "educationally Student is doing great" and "is not having educational difficulties."

The Hearing Officer concludes the weight of the credible evidence does not support the conclusion the District had reason to suspect a disability concurrent reason to suspect Student may need specially designed instruction under the IDEA to address that disability. , 178 F. Supp. 3d at 467. Petitioner therefore did not meet Petitioner's burden on Petitioner's Child Find claim.

Because the Hearing Officer concludes that Petitioner did not meet the burden of proof on Petitioner's Child Find allegations, the reasonableness of the delay between notice and referral is not determinative. In addition, the evidence did not show that Student was eligible for special education services. A school district is not liable for a Child Find violation unless the student has a need for special education.

meets one or more of thirteen eligibility classifications, and by reason thereof, needs special education and related services. 34 C.F.R. §§ 300.8(a), 300.304-.311; 19 TEX. ADMIN. CODE § 89.1040(b). Assessments and other evaluations must assess the student in all areas of suspected disability. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).

An evaluation must also be sufficiently comprehensive to identify all of the child's special

complaint in the school year; in accordance with disciplinary procedures; and upon parental request. 34 C.F.R. § 300.504(a). Here, the evidence shows the District provided Notice of Procedural Safeguards at Student's initial ARD mee1 (t)--a/(20.001 Tw 9.33 0 w 169)Tj012-2 (.)5 s)(e)

