

STUDENT/n/f PARENT,
Petitioners

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BEFORE A SPECIAL EDUCATION

v.

LEWISVILLE INDEPENDENT SCHOOL
DISTRICT
Respondent

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

This matter concerns a claim brought by Petitioner pursuant to the Individual with Disabilities Education Act [hereinafter IDEA] and its implementing state and federal regulations, for violations of the Act. In particular, the issue is whether the District violated the IDEA by failing to: comply with its Child Find obligations; develop an Individual Education Plan (IEP) for the provision of related services; hold an Manifestation Determination Review (MDR) under IDEA; and comply with procedural obligations under the IDEA and related laws.

The hearing officer finds that the Respondent District complied with all Child Find obligations, and

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teachers, and when Student returned to school, the Student received a referral to Ms.**, a counselor, and Mr. ** did check in with Student as well.¹³

11. During the time after Student's**, Ms. **, a student assistance counselor at the, met with the Student to provide** counseling. She first met the Student in January, 2021 and met with Student once a month. The evidence also showed that when Student met with Ms. **, the Student was doing fine emotionally, socially, behaviorally, and academically. She testified that she had no reason to suspect the Student

17. Although the Student struggled with²⁰, the evidence showed that Student was successful in all of Student's other classes²⁰. The Student did earn credit for the²¹ class during summer school.²¹
 18. Evidence showed that many of the issues regarding the Student's grades were related to not turning in assignments when due²².
 19. The Student's discipline report for²² had only that Student was tardy²³ times, until the time of the incident on²³, 2021.²³
 20. The Evidence clearly demonstrated that the District had no suspicion of any need for a referral for special education evaluation, and the Student did not exhibit any problems academically, socially or emotionally that would cause such a suspicion.²⁴
 21. While during the summer of 2021, the Student's mother contacted the²⁴ by email and informed them of the Student's²⁵, the correspondence was primarily in the context of why Student was not at practice. She also thanked them for the support they provided.²⁵
 22. Prior to the Student's²⁵ year, Mr.²⁶ talked with²⁶ about the Student, and was told that he²⁶ enjoyed having the Student (and Student's²⁶) as part of the²⁶.²⁶
 23. No evidence was presented of any other communication from the Student's mother about²⁷ or²⁷ prior to the incident on²⁷, 2021. Student's mother did express concern about the Student's failure to complete assignments during the Covid pandemic.²⁷
 24. The Student's fall semester 2021 grades²⁸ were all very good ranging from²⁸.²⁸ Additionally, Student's teacher at the time, Dr.²⁹, completed a questionnaire for the Student as part of a Level 2 Campus Team Assessment after the 2021 incident. She noted that Student had superior behavioral skills, above average social skills, stays on task.²⁹
 25. On October²⁹, 2021, Ms.³⁰, a counselor at the³⁰, sent Student's mother an email with some suggested resources for family and counseling.³⁰
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26. On ***, 2021,

Only certain students, however, are eligible for special education. In order to fall within the scope of the IDEA, or qualify for services, a student must have both a qualifying disability, and also by reason of that disability be in need of special education and related services. *Asin Indep. v. A.D. ex rel.* 503 F.3d 378, 382 (5th Cir. 2007)

In terms of the application of the approach, the Fifth Circuit went on to establish that a presumption exists “in favor of a school system’s educational plan, placing the burden of proof on the party challenging it.” *White ex Rel. White v. Ascension Parish Sch Bd.* 343 F.3d 373, 377 (5th Cir. 2003); *Teague* at 132.

1. Child Find

It is clear that school districts are required to evaluate all children where a suspected disability exists. Further, if a parent requests an evaluation, then the District is obligated to respond within fifteen school days as to their agreement to complete the evaluation or conversely a denial of the request. See *TEX ADMIN. CODE* §89.1011(b). Additionally, when conducting an evaluation, a school district must comply with the procedures set forth in 34 C.F.R. §§ 300.304-300.311. Once the evaluation is complete, the Admission, Review and Dismissal (ARD) committee has the responsibility to make determinations of eligibility, and if the student is found eligible, then design and implement educational as well as related services for the student. Even if a disability condition is identified, the second part of the eligibility determination requires the Petitioner to demonstrate a need for specially designed instruction, or educational services as a result of the disability. Consequently, a student who meets eligibility criteria but who does not show a need for special education services, has not met the definition of a student with a disability under the IDEA. See 34 C.F.R. §300.8.

This section provides further clarification saying that

“ ..if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

34 C.F.R. §300.8(2)(i).

Courts are clear that the Child Find obligation is triggered when the local educational agency has reason to suspect a disability and with reason to suspect that special education services may be needed to address that disability. *El Paso Indep. Sch. Dist. v. Richard R.* 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008). It is clear that the suspicion must be of both the disability and the need for special education services.

Once a Child Find violation has been triggered, that is a finding that the District suspects or has notice of a disability that needs special education, then the next consideration is that of timing. That is, the time between the suspected disability and the time the District satisfies its duty to evaluate is considered as part of the violation analysis. *Kisewitz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673 (5th Cir. 2018).

2. Entitlement to Manifestation Determination Review under IDEA

The IDEA provides that if students who qualify for special education and violate the code of conduct of the local education agency (LEA) or commit an act that would be disciplined, that they are entitled to a review in order to determine whether that conduct was a manifestation of that student's disability.

Finally, as the District did not have suspicion, Child Find was not triggered, and the timelines

In essence, no violations of IDEA were established and no evidence of impediment to the Student's right to FAPE was presented. The evidence clearly demonstrated that the District did not violate Child Find. The evidence also showed no deprivation of educational benefits. 34 C.F.R. §300.513(a)(2). In summary, the Petitioner did not meet Petitioner's burden of proving the school district violated student or parents' substantive or procedural rights under the IDEA.

VII. Conclusions of Law

1. The Lewisville Independent School District (LISD) is responsible for properly identifying, evaluating, and serving students under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and TExAS ADMIN. CODE §89.1011.
2. Petitioner failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast*,

Signed this 5th day of February 2022.
