DOCKET NO. 167-SE-0222

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

FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

I.
STATEMENT OF THE CASE

On February 28, 2022, Student, *b/n/f* Parent, ("Petitioner" or "Student") filed a Complaint with the Texas Education Agency ("TEA") against Hooks Independent School District ("Respondent" or "District"), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On February 28, 2022, TEA assigned this matter to me as the impartial Special Education Hearing Officer ("SEHO")

4. Respondent failed to complete Petitioner's FIE in a timely manner in summer 2022.[2]

B. PETITIONER'S REQUESTED RELIEF:

Petitioner initially requested a thorough evaluation in all areas of suspected disabilities and compensatory services to address dyslexia. In Petitioner's Closing Argument, Petitioner added the following requested relief:

1. Reimbursement for Petitioner's past and future dyslexia therapies;

2. Training for Respondent's Staff regarding Child find obligations, training on the differences between Section 504 and IDEA and dyslexia and related disorders;

3. Education for Staff on all of OSEP's guidance within the past five years regarding dyslexia issues in Texas;

4. Production of Petitioner's complete educational file; and

5. Any other relief deemed appropriate by the Hearing Officer.

RESPONDENT'S ISSUES AND AFFIRMATIVE DEFENSE:

1. Respondent asserted that Petitioner's issues replicate those pled in the former Complaint, which the undersigned SEHO dismissed; and

2. Respondent asserted the one-year statute of limitations as an affirmative defense. [3]

II.
PROCEDURAL HISTORY

Student filed Student's Complaint with TEA on February 28, 2022, alleging issues regarding Respondent's failure to comply with its affirmative Child Find duty and the provision of special education services. On March 1, 2022, the undersigned SEHO issued Order No. 1: Initial Scheduling Order, which set the applicable deadlines related to the Resolution Period and the Due Process Hearing: April 5, 2022 – Prehearing Conference ("PHC"); April 15, 2022 - Disclosure Deadline; April 25, 2022 – Due Process.

On April 6, 2022, the Parties convened the PHC. In attendance were the following: (1) Ms. ***, Petitioner's Parent; (2) Ms. Daphne Corder, Petitioner's Advocate; (3) Mr. John R. Mercy, Respondent's Counsel; (4) the undersigned Hearing Officer; and (5) the court reporter, who made a record of the telephone conference. The Parties clarified the issues and the requested relief; Petitioner's Parent agreed to provide written consent to allow Respondent to conduct an FIE in all areas of suspected disability; and the Parties jointly requested a

[2] Based upon new allegations in summer 2022, and with Respondent's approval, Petitioner added this issue.

[3] At the time of Petitioner's filing, the one-year Statute of Limitations in Texas was in place. On September 1, 2022, Texas adopted a two-year Statute of Limitations, which does not apply to this case. See 19 TEX. ADM. CODE §89.1151(c). The SEHO determined that Petitioner's timeline for all issues accrued on February 28, 2021.

continuance of the Due Process Hearing and attendant deadlines to accommodate the time required to complete the FIE and allow an Admission, Review, and Dismissal Committee ("ARDC") to convene and review the evaluations. Finding good cause for the requested continuances, the undersigned granted the requests and on April 18, 2022, the undersigned issued Order No. 2, which continued the Disclosure Deadline to June 22, 2022; the Due Process Hearing to June 30, 2022; and the Decision Deadline to July 15, 2022.

On May 13, 2022, Respondent's counsel filed a request a for the continuance of the June 30, 2022, hearing and attendant deadlines on the grounds that a federal case presented an obstacle to counsel's ability to proceed with the hearing as scheduled. Finding good cause, the undersigned granted the continuance and the Parties agreed to the following new scheduling order: the Disclosure Deadline: August 2, 2022; the Due Process Hearing: August 10, 2022; and the Decision Deadline: August 25, 2022.

III.
RESOLUTION SESSION

The Parties convened the Resolution Session on March 15, 2022, but were unable to settle the issues at that time.

IV.
FINDINGS OF FACT [4]

1. Respondent is a political subdivision of the State of Texas and a duly incorporated Independent

8. Respondent conducted a public awareness campaign targeting students not enrolled in the District who may qualify for special education and related services. Respondent's public awareness campaign targeted Petitioner.

   Respondent hosts an Annual Dyslexia Night in October of every year, and advertises this event on its website and on Facebook [T1.107]. Petitioner acknowledged approval of this event [T1.108].

   Respondent posts Child Find information, provided by TEA and Region 8, on its website [R.2, 3, 4], at school campuses, and at the Administration Building [R.5].

9. Respondent's public awareness campaign defines Child Find, provides location and contact information, and identifies the District representatives who would be responsive to such contact [R.4]. This complies with the notice requirements for students who are home schooled.

10.

could not rule out the exclusionary factors regarding Petitioner's lack of educational opportunity and exposure since Student's withdrawal [R.9.9].

20. Petitioner requested, and was granted, an Independent Educational Evaluation ("IEE"), which currently is pending.

V.
DISCUSSION

IDEA defines FAPE as special education and related services that (1) are provided at public expense, (2) meet the standards of the state education agency, (3) include an appropriate preschool, elementary school, or secondary school education in the state involved, and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R.§§300.320-324.

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017); *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982).

Notwithstanding this black-letter law, these basic tenets do not come into play until the subject student is found to be a "child with a disability," as defined under IDEA.

In determining whether a student is a "child with a disability," the first step is to evaluate the student, in accordance with the IDEA's implementing regulations. If this evaluation establishes that the student has one or more of the enumerated disability classifications found in 34 C.F.R. §300.8(a), then the second step is to determine whether the student demonstrates a need for special education services. In essence, a student meeting IDEA-eligibility criteria but who does not show a need for special education services, is not a "child with a disability" under the IDEA. *Student v. Corpus Christi ISD*, Dkt. No. 298-SE-0496 (Tex. Hrg Off. Lockwood 1996). *See also D. L. by & through J.L. v. Clear Creek Indep. Sch. Dist*., 695 Fed. Appx. 733 (5th Cir. 2017), as revised (July 31, 2017) (affirming the district court decision upholding the decision of the hearing officer who found that the student was not a student with a disability because the student did not need special education services.).

A.
CHILD FIND

In complying with their FAPE responsibilities, it is incumbent that states and local school districts

School districts do not escape their Child Find duty simply because students within their jurisdiction are home schooled or privately placed.

When the student is enrolled in the district, the Child Find activities are more readily conducted and

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2. Respondent's Child-Find Duty Was Triggered On February 28, 2022.

Petitioner asserts that Respondent failed its Child Find obligations starting with Petitioner's February 2020 withdrawal from school. Per Petitioner, at the time of such withdrawal, the District knew of Petitioner's dyslexia diagnosis and the history of Student's struggles while enrolled in the District. As such, the District owed Petitioner Child Find obligations from the February 2020, withdrawal.

Further, Petitioner states that in the midst of Student's home-schooling, the Parent contacted the District on December ***, 2020, via email, explaining the educational problems Petitioner was having with home schooling. Petitioner avers that at the very least, this email triggered Respondent's Child Find obligation. Neither premise is grounded in legal standards.

The Child Find obligation is triggered when a school district has reason to suspect the a student has a disability, coupled with a reason to suspect special education services may be needed to address the disability. A two-part inquiry is required to resolve a Child Find claim. First, did the district have reason to suspect the student had a disability; and did the district have reason to suspect the student may need special education and related services as a result? *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp.3d 443, 467 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F.3d 303, 320 (5th Cir. 2017). Basically, the inquiry is not whether the student actually qualifies for special education, but instead, whether the student should be referred for a special education evaluation. *Id.* at 467.

In this case, Respondent's Child Find duty was triggered when, in addition to knowing of Student's dyslexia diagnosis, it also had reason to suspect Student may need special education and related services as a result of such diagnosis. This suspicion of the need for special education and related services was triggered on February 28, 2022, when Petitioner filed Petitioner's Complaint alleging Child Find violations. Petitioner presented no evidence in support of a finding that prior to this date, the District had a suspicion of Petitioner's need for special education and related services. Without such proof, the Child Find duty was not triggered until the Complaint set out the actual Child Find issues.

3. Respondent's Child Find Obligation Was Satisfied on September ***, 2022.

Once Respondent's Child Find obligation was triggered, Respondent immediately started the FIE process. Prior to the April 6, 2022, Prehearing Conference, the Parties discussed conducting Petitioner's FIE. During the April 6, 2022, Prehearing Conference, the Parties agreed to extend the hearing deadlines to accommodate Petitioner's consent for the District to conduct an FIE.[6]

On May ***, 2022, Petitioner returned signed consent for the FIE [T1.96]. This triggered the timeline for completing the FIE.

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September ***, 2022, and found that Student did not qualify as a student with a Specific Learning Disability [R.9.9]. The FIE determined that while Petitioner did not meet the dyslexia profile, Student did show some of the characteristics of dyslexia. The assessor noted that she could not rule out the exclusionary factor regarding Petitioner's lack of educational opportunity and exposure [R.9.9]. Petitioner requested, and was granted, an Independent Educational Evaluation ("IEE"), which currently is pending.

Whether Petitioner's FIE was appropriate is not an issue in this matter. However, the finding that Petitioner is not eligible for special education and related services does impact Petitioner's Child Find claim. There can be no Child Find *violation* unless the Petitioner has been evaluated and Petitioner's ARDC has determined Student qualifies for special education and related services. *Flour Bluff Indep. Sch. Dist*., 59 IDELR (5th Cir. 2012). Indeed, IDEA does not penalize school districts for not timely evaluating students who do not need special education. *Forest Grove Sch. Dist. v. T.A.,* 557 U.S. 230, 245 (2009).

B.
TIMELINESS OF THE FIE

Although Petitioner now alleges that there was no request for an Amended Complaint to address Petitioner's concerns regarding the timeliness of the FIE, and that this is not an issue in this case, the record establishes something different.

Petitioner notified the undersigned in summer 2022 that Respondent was delaying the FIE and was out of compliance with operative rules and regulations. Per Petitioner, this delay necessitated Petitioner's reluctant filing of a Motion for Continuance. At one point Petitioner inquired about filing a Motion for Summary Judgment to address such delay.

The undersigned informed that Parties that the inclusion of this FIE issue could be added either through Petitioner's filing an Amended Complaint or with Respondent's agreement to allow the inclusion of this limited issue. Respondent agreed to allow the new issue and on September 28, 2022, the undersigned issued Order No. 6, which extended the hearing and decision deadlines per Petitioner's Motion for Continuance and included the addition of the issue of the untimeliness of the FIE. Petitioner never objected to this inclusion. Accordingly, whether Respondent failed to conduct Student's FIE in a timely manner was tried and is addressed herein.

Petitioner provided Respondent with written consent for the FIE on May ***, 2022 [T1.96; R.12]. Pursuant to 19 TEX. ADM. CODE § 89.1011, if a district receives written consent for an FIE less than 35 school days before the last instructional day of the school year, the written report of the evaluation must be completed not later than the 45th school day following the date written consent was received (into the next school year). In this case, based upon the May ***, 2022, receipt of written consent, Petitioner's FIE was due on September ***, 2022 [R10; T1.96-99]. Respondent complied with this deadline by completing the FIE on September ***, 2022 [R10].

VI.
CONCLUSIONS OF LAW

1. Respondent is a local education agency responsible for complying with IDEA. 20 USC § 1400 *et. seq*.

2. Petitioner bears the burden of proof on all issues raised under IDEA at the due process level. *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005). IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.

3. Petitioner failed to prove that Respondent violated its Child Find obligations. 34 C.F.R. § 300.111; 19 TEX. ADMIN. CODE § 89.1151 (c).

4. Petitioner failed to prove that Respondent's FIE was untimely. 19 Tex. Adm. Code §89.1011.

VII.
ORDER

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Student is DENIED. v1C P MStyleSpanID 11[(s)2 0.004 Tc 1.068 7