





2. Whether the District denied Student a FAPE by failing to develop and implement an appropriate individualized education program (IEP) that included appropriate goals and accommodations;
3. Whether the District denied Student a FAPE by failing to develop and implement an appropriate behavior intervention plan (BIP); and
4. Whether the District denied Student a FAPE by failing to provide Parents with a meaningful opportunity to participate in the educational decisionmaking process.

Procedural FAPE

5. Whether the District failed to adhere to timelines required under the IDEA;
6. Whether the District failed to permit Parent to inspect and review education records relating to Student in accordance with the IDEA; and
7. Whether the District failed to comply with Parents' procedural rights.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Petitioner's Complaint and denies that Petitioner is entitled to any of the relief requested. Respondent also asserts the statute of limitations as an affirmative defense.

V. REQUESTED RELIEF

Petitioner requests the following items of relief:

- x Relief deemed appropriate by the Hearing Officer, including private placement in a summer program, private occupational and speech therapy, private counseling, ABA social skills and behavior therapy, and tutoring and/or 1:1 services for special education and academics outside the school day. Petitioner clarified that Petitioner is seeking reimbursement for future services; and



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34 CFR Part 99

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28. In January 2021, the campus principal met with Parents to address their concerns regarding Student's ability to fit in socially, to advocate for self, and to keep up academically. Neither Student's teachers nor Student's previous teachers had expressed a concern about Student's abilities in these areas. Instead, Student's behaviors and classroom abilities appeared to be consistent with those demonstrated by Student. Parents were also concerned that they had not been informed each time Student visited the nurse complaining of a stomach or headache. In response to Parents' concern, the principal instructed the school nurse to contact Parents any time Student came to see her.
29. Student was absent for days during the period of time in which the District was conducting the 2021 FIE. Based on the District's 2021 academic calendar, the 57th school day after Parent provided written consent for the evaluation fell on March 2021.²⁹
30. The multi-disciplinary team that conducted the FIE included an LSSP, an occupational therapist, the lead speech language pathologist (hereinafter referred to as "SLP"), and a

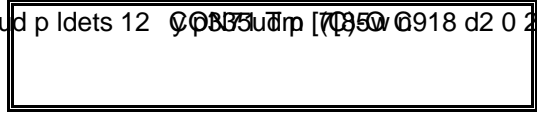
- tone/volume, and formal measures did not indicate weaknesses with social language. Student performed in the average range in that area. As for articulation, Student's production of f*** should have been more consistent (indicating a delay), and Student's production of t*** should have been emerging. As a result, Student's errors support concern for the presence of a communication disorder in articulation.³¹
32. The District conducted an OT evaluation using formal assessments, as well as observations, teacher and parent interviews, and a review of handwriting samples. Overall, Student demonstrated good legibility in writing samples, average visual integration skills, and typical sensory processing skills at school. However, Student demonstrated significantly different sensory processing skills at home. During observations in class, Student showed no auditory sensitivity and teachers reported that they had not observed Student display sensitivity to noise.³²
33. The District also evaluated Student's emotional and behavioral needs using teacher and Parent information, classroom observations, Student interview, and formal assessments. The results of this portion of the evaluation indicated that Student's emotions and behaviors differed in some areas depending on the setting. Student's behavior outside of school reported by Parents, was more problematic than Student's behavior in the classroom. Across both settings, however, Student had a tendency to be withdrawn and to have difficulty with peer socialization and social/emotional reciprocity as well as challenges with emotional control. The District evaluator relied on classroom observations and teacher information to determine that Student did not present with any significant or interfering problematic behaviors within the school setting and that a functional behavior assessment (FBA) was therefore not appropriate. Student was able to follow the Student Code of Conduct and adhere to classroom rules and expectations with the Student's accommodations.³³
34. The behavioral portion of the District's evaluation included the Behavior Assessment System for Children, Third Edition (BASC-3)—a rating scale that measures numerous aspects of behavior including positive (adaptive) and negative (clinical) characteristics observed in the home and school settings. Neither Student's teachers, Student's provider nor Student's*** provider reported any concerns on the Internalizing Behaviors Composite, which includes hyperactivity and aggression scales that measure inattentive, disruptive
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was variability in scores among Parents and teachers, with Parents often falling in the Very Elevated range (i.e., Social/Communication, DSM Peer Socialization,

45. The ARD committee also considered Parents' request for a ~~SD~~ student followed the Student Code of Conduct, regularly attended to instruction, came to class prepared, used appropriate language, worked well independently, performed consistently, worked quietly,
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VII. DISCUSSION

Petitioner contends that the District violated the IDEA by failing to (1) timely conduct an appropriate FIE and identify Students as a student with a disability eligible for special education services; (2) implement an appropriate IEP, including a BIP; (3) provide Parents a meaningful opportunity to participate in the educational decision-making process; (4) comply with Parents' procedural rights, and (5) adhere to required timelines.

A. Burden of P3 (e)-1*2 9 0 Td [.den of] (i)-2-8a5 (oc)-(a st)-1 (u)-4 (d)1 (e)-5 (oc)-002 TA2-8atdui

require a parent to request a hearing within one year of the date he or she should have known of the alleged action(s) forming the basis of the complaint 19 Tex. Admin. Code § 89.1151(c) if the limitations period begins to run when a party knows, or has reason to know, of an injury. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995).

There are two exceptions to this rule. The timeline does not apply if the parent was presented with information that would have allowed the parent to know of the injury at the time of the alleged action(s) forming the basis of the complaint. 19 Tex. Admin. Code § 89.1151(c)(1)(A) and (B).



2. Reason to Suspect the Need For Special Education Services

The question then becomes whether the District had reason to suspect a corresponding need for special education services as a result of Student's suspected disability. *Alvin Indep. Sch. Dist.*, 503 F.3d at 882. While "neither the IDEA nor federal regulations' define what it means to 'need' special education and related services," the Fifth Circuit has held that we must consider the unique facts and circumstances of each case, including parent input and teacher recommendations, as well as information about the student's physical condition, social background, and adaptive behavior. *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 216 (5th Cir. 2019) (citations omitted).

The weight of credible evidence in this case demonstrates that while the *** may have given rise to a reason for the District to suspect that Student had a disability, it did not give the District reason to suspect a corresponding need for special education services. As noted above, the record reflects that Student was performing well academically and that Student demonstrated behaviors consistent with other students of Student's age while Student was at school. Although Parents expressed concerns regarding outbursts, tantrums, and sensitivity to light and sound at home, there is no evidence that Student engaged in these behaviors at school. Student participated in the *** program (which was preconditioned on appropriate, nondisruptive classroom behavior) never received any discipline referrals, and all but one grading period over the course of school years indicated that Student was meeting grade-level behavior expectations. Neither Student's educational performance nor Student's behavior ever created a concern among Student's teachers, P(onc)-oig ((t-2)]TJiotin1 atu



Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 253 (5th Cir. 1997).

Even after the Supreme Court's 2017 decision in *Endrew F.*, the test to determine whether

FIE. The ARD committee, with the input and participation of Parents and advocate, developed four goals to address Student's identified needs. The first goal focused on Student's behavior, and required Student to communicate Student's frustration in a socially acceptable manner using coping strategies such as asking for a break, asking to see the counselor, or using visuals. The second goal focused on home training and sought to help Student generalize Student's ability to identify feelings of anxiety or frustration across the academic and home settings. The third goal focused on social skills and targeted Student's use of coping strategies to handle social interactions fluently -

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Student's teachers and campus administration frequently collaborated with ~~By~~ **Parental** and through virtual meetings and Parents and their advocate actively participated in the ARD committee process. The District responded to Parents' request for more frequent communication related to their child's school day and provided them with draft IEPs in advance of ARD committee

