

DOCKET NO. 257-SE-0821

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	HEARING OFFICER
	§	
v.	§	FOR THE
	§	
IDEA PUBLIC	§	
SCHOOLS	§	STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner, \*\*\* (“Student”), by next friend, \*\*\* (“Parent”), filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The complaint was received by the Texas Education Agency August 24, 2021. The Respondent in the complaint is IDEA Public Schools (“IDEA \*\*\*”). The parties convened for a due process hearing December 1 and 2, 2021. Jordan McKnight, attorney, represented Petitioner. Petitioner’s next friend was present throughout the hearing. Parent’s advocate, Debra Liva, was present. Christopher Schulz and Alyssa

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Requested Relief

Following dismissal of requests for relief that fall outside the hearing officer's jurisdiction, the following requests remain: Petitioner requests

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11. When the QMHP provides services at Student's school, she does not sign in. A receptionist walks her to an office to work with Student- pgs.94-95
12. At IDEA, the process for evaluations are a) parent brings a request to the §504 person and b) the school requests an assessment if the student is having difficulties, academically or socially pgs. 185 T
13. Respondent's Child Find efforts include: a) child find referral information on Respondent's website b) child find information posted within the schools c) administrators and staff are informed of the services available for students who are struggling d) child find signs posted in health aid offices and e) information regarding contact information for parents included in the student handbook- T pgs. 321322
14. When a verbal request for evaluation is brought to the school, campus staff is trained to ask a parent to put the request in writing with a date stamp. The school then knows when the 5-day response should be made. Upon receipt of the request, either the response to intervention ("RTI") person, the §504 person, or a designee on the campus begins to look at the student's academic records that may be present- pgs. 322- 324
15. In \*\*\* and \*\*\* grade, Student's grades were in the 80's and 90's, 2

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40. At the Resolution Session held September 8, 2021, Respondent offered to conduct a special education evaluation. Parent did not give consent. Parent and advocate left the session. pg. 328

Statute of Limitations

Unless an exception is shown, in Texas, a parent or public education agency must request a hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the request.

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whether the student actually qualifies for special education, but instead whether the student should be referred for a special education evaluation. While the achievement of passing marks and the advancement from grade to grade is important in determining educational need it is but one factor in the analysis. The decision of whether a student who is advancing from grade to grade is in need of special education must be determined on an individual basis.

#### IDEA \*\*\*'s Child Find Procedures

Respondent's procedures in complying with its child find duties include publicizing the information in health offices and on its website, along with including it in the student handbook. Respondent trains its employees about child find requirements. Staff is trained to respond to oral requests for evaluations by telling the requesting party to put the request in writing.

#### Child Find Trigger: Reason to Suspect that Student has a Disability and Needs Special Education

Parent believes that having a disability is the only requirement for eligibility for special education services. While having a disability is the first requirement, the second, and equally important, requirement is a need for special education services. At the time of the hearing, Petitioner had not been evaluated for special education services.

The evidence is undisputed that at age Student was clinically diagnosed with ADHD, autism, and mood disorder. Parent testified that when Student enrolled in grade at IDEA \*\*\*, she told the person at the front desk about Student's disabilities. She also testified that she spoke to the person she believed was a §504 staff member and the school offered her §504. There is no evidence that she provided the evaluation

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Throughout Student's years at IDEA\*\*\*, Student's report card grades have been average or above average. Parent agreed that Student's grades were good in \*\*\* and \*\*\* grades and that Student made passing grades in \*\*\* grade, and continued to do so in the current school year. Student's \*\*\* teacher testified that Petitioner is a high performing student who can use the \*\*\* vocabulary in the fast-paced class.

Student's educational record displays no consistent pattern of struggles or failure that would have put IDEA \*\*\* on notice as to a need for an evaluation of Student. The Annual Progress Report shows a steady trend upward throughout Student's years at IDEA until \*\*\* grade. Both Reading and Math were on a \*\*\* grade level at the beginning of the year. At the end of that year, both grade levels had dropped. Student's Math level on the \*\*\* had dropped two years. At the beginning of \*\*\* grade, Student's Reading level had rebounded to \*\*\*.

The change in grade levels on the \*\*\* Progress Report occurred in the latter half of \*\*\* grade. Parent reported that toward the end of that school year, Student was tired of online learning. The decline was unlike the overall upward trend in Student's progress.

On other Math assessments, Student's \*\*\* grade Math teacher credibly testified that different assessments were taken at multiple points throughout the \*\*\* grade year. The teacher noted that on two TEKS assessments, Student scored low. On the majority of the assessments, Student scored either "Meets" or "Masters."

Student's Math teacher checked Student for background knowledge at the beginning of \*\*\* grade. She testified that academically, Student is on average with the other \*\*\* graders. Student has been making A's although the teacher recalled a \*\*\* on one assignment. Student remained home after Student's one day of COVID isolation and did not turn in some assignments while doing online study. When Student returned to class, Student's performance improved. With Student's teacher's help, Student was able to catch up on pending assignments. The \*\*\* grade teacher explained that academically, Student's performance is ranked either "meets" or "masters," indicating that Student is on \*\*\* grade level in Math. Student's teacher testified that Student works with Student's partners and communicates well.

Once Student returned to class learning in the current school year (\*\*\* grade), the evidence shows that Student exhibited positive academic performance. Student exhibited the ability to comprehend and answer questions in complete sentences, has friends in school, and has very good peer relationships. Student mastered an initial test given by Student's Reading teacher. Student's current \*\*\* teacher, who is also special education certified, explained that earlier in the school year, Student was not in class for a very long time. Once Student returned to class, Student's attendance had been consistent. The teacher observed that Student's performance is "like Student was never gone."

In \*\*\* class, the teacher observed other students wanting to talk 0 Tc 098 ( t)1445 <</79eg tnts wantiob

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The QMHP's notes indicate that to make friends, Student explained that he waited until \*\*\* and played games with the other children. Student reported to the QMHP that Student helped Student's classmates with math, reading, and writing.

6) Bullying

The U. S. Department of Education has stated that bullying may trigger a school's child find obligation to a student who has not previously been identified as a child with a disability under the IDEA. In the instant action, Parent generally testified that Student \*She testified that the bullying occurred after school, but provided no facts about a particular incident such as where it occurred or who was involved. Parent testified that she asked for an investigation into bullying, but provided no further information except that she didn't hear back from Respondent. Neither did Parent follow up on her request. Petitioner failed to provide sufficient evidence to show that the alleged bullying impacted Student to such a degree that it triggered IDEA's child find obligation.

The credible evidence supports a finding that Student made adequate academic progress, had no behavior or disciplinary difficulties, and interacted appropriately with teachers and students. Petitioner failed to prove that Student was in need of special education services. Respondent timely responded to Parent's request. At the time of the procedural hearing, Parent had not given consent for Student to be evaluated.

Response Time to Request for Evaluation

At the beginning of the current school year, Parent asked the school's principal for help with Student. The principal agreed, and IDEA promptly began the process for both §504 and special education services. Respondent timely responded to Parent's request. At the time of the procedural hearing, Parent had not given consent for Student to be evaluated.

For a district to be liable for a denial of FAPE, the student must be a child with a disability.

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