

STUDENT/B/N/PARENT,

Petitioner,

V.

MANSFIELD INDEPENDENT SCHOOL DISTRICT,

Respondent.

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER

FOR THE STATE OF TEXAS

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FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

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I.  
STATEMENT OF THE CASE

On October 25, 2022, Student/b/n/Parent ("Petitioner" or "Student") filed a Complaint with the Texas Education Agency (TEA).



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III.  
RESOLUTION SESSION

The Parties convened the Resolution Session on November 9, 2022, but were unable to settle their issues.

IV.  
FINDINGS OF FACT

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8. Student performed academically well in the lion's share of Student's reports noted Student had achieved level 1. The lowest level achieved by Student (and this level occurred only a few times [1.002]).
9. In the area of, Student received an "each grading period under one"; one under; one under; and one under [J.1001]
10. The evidence failed to establish that anyone saw a need for Student's referral for special education evaluations. During Student's year Student achieved academic success with limited behavioral challenges [J.1].

School Year 2021-22: 2nd grade

11. On August 10, 2021, Student's Mother sent an email to Student's teacher informing her of some possible behaviors that Student was expressing. She also informed the District that Student begin counseling immediately [P.7.020].
12. Student started the 2nd grade with some behavioral issues. Student's teacher could correct such behaviors with redirection. Student's 2nd grade teacher described Student's behavior as "a typical grader" at the beginning of the fall semester 2021. Many 2nd graders require redirection many times some have difficulty following directions. During fall 2021, Student's teacher noted that during the fall 2021 semester, Student was able to be redirected follow directions [T1.2425]9-
13. During the spring semester, Student's behaviors got out of control. Student's behaviors escalated to 2nd grade, Student's teacher referred Student to the Multi-Tiered System of Support Committee ("MTSS") [24:2484, -R.26.112].

MTSS Committee: 2nd grade

14. Student's MTSS Committee convened on February 2, 2022. The reason for this first meeting was Student's behavior decline since returning to school following the Christmas break. Student's teacher noted that she had to redirect Student several times a day and Student's behaviors were disrupting the class. Her main concern is Student's struggling with following directions with her student teacher [20121]. The MTSS Committee assigned Student to Tier I and Student teacher proposed the following goal for Student: Student will need less redirecting and Student will follow directions when given to the class [26121]. This goal was later modified by the MTSS Committee because it was not clearly measurable. The new goal required Student (to) make

<sup>2</sup> The MTSS is a framework that helps educators provide academic and behavioral strategies for students with various needs. MTSS consists of three tiers of intervention that can be amplified or reduced.

appropriate choices 60% of the time, and (2) follows 50% of the first time they are given [J.20.123].

15. On March\*\*, 2022, Student's MTSS Committee reviewed Student's making appropriate choices 60% of the time and determined that Student had reached this goal "satisfactorily" [J.20.123].
16. Student's MTSS Committee met again on 2022. At this point Student was placed on the MTSS Tier #2. Having reached Student of making appropriate choices 60% of the time, the Committee proposed a new goal that required Student to follow directions the first time or lowering the number of times a Student needs to be redirected. Student had not achieved Student's goal of following directions 50% of the time when they are given initially
17. Student's teacher noted that Student's behavior continued to decline. Student's teacher had to redirect Student multiple times per day, which was disrupting the class. Student was also demonstrating extreme frustration at times, even during Student's favorite subject. Student was refusing to do assignments and would not listen when the teacher instructed. She noted that Student eventually would do Student's work correctly without help [J.20.122].
18. On April\*\*, 2022, and April, 2022, the MTSS Committee reviewed the status of Student's goal of following directions the first time 50% of the time. Student had not mastered this goal [J.20.123].

#### Section 504 Evaluation and Plan for grade

19. On March\*\*, 2022, the District recommended that Student have a Section 504 evaluation. Student's Parent signed consent for this evaluation [J.6].
20. Student's Section 504 evaluation was completed on 2022. The evaluation found that Student qualified for Section 504 services [J.6]. The Committee noted that Student's impairment was\*\*\* [J.7.017]. The Committee adopted accommodations: preferential seating near the teacher and implementation of a behavior tracker, which included daily communication to Student's Parent and use of\*\* [J.7.017]. The Committee noted that Student needed a behavior plan that did not require modifications of the District policies; and Student receive health plan services [J.7.018]. The Committee recommended implementation of the Section 504 Plan on April\*\*, 2022 [J.7.18]. The Committee found no problems with Student's performance and determined that Student's services could be delivered in Student's education classroom [J.7.018].
21. The Committee developed a Behavior Intervention Plan ("BIP") to address Student's declining behaviors. The BIP targeted such behaviors as compliance and physical aggression, such as\*\*\* [J.8]. Both Parents signed consent for Section 504 services [J.10].
22. Student's MTSS Committee met again on 2022. Student's teacher reported there were no academic concerns; however, Student's teacher reported that Student's behaviors continued to

escalate Since April, 2022, Student received office referrals for Student missed days of school; and Student spent days in In School Suspensions. The MTSS Committee determined that Student should continue through Section 504 [J.O.130].

23. In April 2022, Student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). Student began
24. On April, 2022, the District issued a Notice of Evaluation pursuant to a Parent's request for a FIE [J.11.02]. Student's Parents signed the consent for the FIE, 2022 [J.12.02]. On April, 2022, Student was
25. Between May, 2022, Student received a new diagnosis of Autism Spectrum Disorder, Level I (high functioning) [P.18.013]. The examiner recommended that District conduct an AU evaluation to determine whether Student needs special education accommodations in that area [P.081]

Student's FIE: Summer to Fall grade

26. Student's FIE 94.8 Tm (\*\*) completed by Student's



28. The FIE determined that Student met the criteria for the following disabilities: Emotional Disturba





36. The evidence failed to prove that prior to April 2022, the District had a reason to believe that Student had an IDEA disability and Student needed special education services to address the disability.
37. The evidence failed to prove that anyone requested an FIE prior to April 2022. The Parent's April 2022, request for an FIE triggered the District's obligation to evaluate Student.
38. The District complied with its Child Find obligations when it completed Petitioner's FIE on September 2022 [R.10 & 14].
39. The evidence failed to prove that Student's Mother was a meaningful participant in the decision-making process.
40. The evidence failed to prove that the District was required to provide Student's Parents with a copy of the District's Procedural Safeguards as of April 2022. The evidence proves that the Parents received Procedural Safeguards in 2022 [U.12.028].
41. Student's request for an IEE is moot. The District granted this request during the October 2022 A meeting.
42. The SEHO has no jurisdiction to order the District to apologize to Student.
43. The SEHO has no jurisdiction to order the District to ensure that no child endures what Student endured.
44. The evidence failed to prove that Student was entitled to a Manifestation Determination Review.
45. The evidence failed to prove that the District denied Student FAPE.

V.  
DISCUSSION

A. BURDEN OF PROOF

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael*, 580 F.3d 286, 292 n.40 (5th Cir. 2019). The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging that plan. It is well settled that a party challenging the district's eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied FAPE. *Schaffer v. West*, 526 U.S. 528 (2005); *Castro v. State of Texas*, 763 F.2d 832 (5th Cir. 1983), aff'd 468 U.S. 883 (1984); *R. v. Spring Branch Indep. Sch. Dist.*, 905 F.3d at 754, 762 (citing *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *Jano Indep. Sch., Dist.* 907 F.3d 1003, 1010-11 (5th Cir. 2010)).

B. CHILD FIND

A “child with a disability” is a defined term under the IDEA. A student must meet the criteria for one or more of the enumerated disability classifications, 34 C.F.R. § 300.8(a). A child with a disability may qualify for special education services under more than one classification. *E.M.v. Pajaro Valley Unified Sch. Dist.*, 758 F.3d 1162 (9th Cir. 2014), cert. denied, 2015 U.S. LEXIS 2042 (2015). Even if a student can meet the criteria for more than one of the disability classifications, a student must also demonstrate a need for special education and related services for eligibility purposes, 34 C.F.R. § 300.8 (a)(1). The determination of whether a student is “in need of special education” must be determined on an individual basis. *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

The Child Find obligation is triggered when the school district has reason to suspect the student has a disability. (ii) the student in need of special education services, 34 C.F.R. § 300.8(a)(1); 34 C.F.R. § 300.111(c)(1); *Goliad Ind. Sch. Dist., BELR 134* (SEA Tex. 2000). Not every student who struggles in school requires an evaluation for special education. *Alvin Ind. Sch. Dist. v. A.D. 503 F.3d 378* (5th Cir. 2007); 34 C.F.R. § 300.111 [TJ 99Td (§)TjTd 013 .111]TJ 99Td (§)TjTd dt.cas t.cas 0.0lhootooR. 3.55





to address Student's declining behaviors. The BIP targeted such behaviors as and Both Parents signed consent for Section 504 services.

The Committee recommended implementation of the Section 504 Plan to on April 2022. The Committee found no problems with Student's academic performance and determined that Student's services could be delivered in Student's general education classroom.

Student's MTSS Committee met again on 2022. Student's teacher reported there were no academic concerns; however, Student's teacher reported Student's behaviors continued to escalate. Since April, 2022, Student received office referrals for Student missed days of school; and Student spent days in ISS. The MTSS Committee determined that Student should be BIP through Section 504.

The FIE Spring 2022:

On April, 2022, the District issued a Notice of Evaluation pursuant to a Parent's request for a FIE. Student's Parents signed the consent for the FIE, April 2022.

Each public agency must conduct an FIE, in accordance with 304.3046 before the agency may provide special education and related services to a child with a disability. In its evaluation, the District should use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The District should use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student and not use any single measure as the sole criterion for determining a child's eligibility for special educational program.

The District's assessments and other evaluation materials used to assess a student must be selected and administered so as not to be discriminatory on a racial or cultural basis. The assessment must be administered in the student's language. The assessment must be used for the purposes for which the assessments or measures are valid and reliable; the assessments must be administered by trained and knowledgeable personnel; and the assessments must be administered in accordance with instructions provided by the producer of the assessments.

In this case, the District assessed Student areas of suspected disabilities. District's evaluations were sufficiently comprehensive to identify all of Student's needs. The District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs.





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an FBA and develop a BIP. 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f). A child with a disability v assigned to a DAEP must continue to receive education services to enable the child to continue to parti in the general education curriculum and to make progress ~~goals~~ 34 C.F.R. §300.530(d). The student must receive, where appropriate, an FBA and behavioral intervention services and modification are designed to address the behavior violation so that it does not recur.

The MDR is an important discipline procedure under the IDEA. It is an evaluation of a stude misconduct to determine whether that conduct is a manifestation of the student's disabilities. It mus performed within ten (10) school days of the change in placement that stemmed ~~eligib~~ an IDEA student's violation of a code of conduct. 34 C.F.R. §300.530(e).

Generally ~~and~~ district is not required to conduct an MDR when ~~district~~ is not eligible for special education and related services. ~~Access~~ student that is not eligible for special education is only entitled to an MDR if the district had knowledge that the child was a child with a disability before the behavior t precipitated the disciplinary action occurred. See 34 C.F.R. §300.534.

While the evidence established that the District had knowledge of Student's negative behavior this did not equate to knowledge of an IDEA eligibility and an understanding that Student was in need special education services. The trigger to perform an FIE occurred when ~~Parents~~ Student requested an FIE on April \*, 2022. This is the date that the District suspected a disability requiring special education intervention.

It was incumbent on Student to prove ~~Student~~ had a change in placement after \*\*, April 2022, and that such change in placement occurred over 10 school days. Student did not present probab evidence that the District did, in fact, change ~~Student's~~ placement for more than 10 school days. Accordingly, Student failed to prove entitlement to an MDR.

## B. Substantive Requirements

In 1997, the Fifth Circuit established ~~factor~~ to determine whether a school district's IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA: (1) Is the prog individualized on the basis of the student's assessment and performance?; (2) Is the program administe the LRE?; (3) Are the services provided in a coordinated and collaborative manner by the key stakehol and (4) Does the student demonstrate both positive academic and nonacademic b ~~Factors~~ *Cypress Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (97). These factors were ~~affirmed~~ by the Fifth Circuit as appropriate under, and consistent ~~with~~, *E.R. v. Spring Branch Indep. Sch* 908 F.3d 754, 765 (5 Cir. 2018) These four factors need not to be accorded any particular weight nor be applied in a particular way. Instead, they are merely indicators of an appropriate program and intended to guide the intense inquiry

The Michael F. analysis presupposes that an IEP has already been developed ~~and~~ implemented the time Student filed ~~Student's~~ complaint, October 25, 2022, there was no IEP that had been implemented On November \*\*, 2022, Student's Parents ~~agreed~~ implement the October \*\*, 2022, IEP, with some

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<sup>3</sup> A "change of placement" occurs when the district removes ~~eligible~~ ~~IDEA~~ Student from Student's current educational placement for more .6 (udent) 1.3.6 (m) a0/MCID 12 >> BD28(q)-5 (493od i) 1 (m)(a) 5.9 (t7;31 (m)(a) (ur)





Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of it is ORDERED that the relief requested by Student is DENIED and this case is ~~DISMISSED~~ WITH TO REFILING.

SIGNED this 12<sup>th</sup> day of January 202

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Deborah Heaton McElvaney  
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Finding and Decision made by the Hearing Officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the Due Process Hearing in any state court of competent jurisdiction or a District Court of the United States. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (j)(1)(B).

COPIES SENT TO:

VIA EMAIL: \*\*\*  
\*\*\*

Petitioner's Parent

VIA EMAIL: \*\*\*  
\*\*\*

Petitioner's Advocate

VIA EMAIL: [dean@leasorcrass.com](mailto:dean@leasorcrass.com)

Mr. Dean Micknal  
LEASOR CRASS, P.C.  
302 W. Broad Street  
Mansfield, TX 76063  
Respondent's Counsel