

**SOAH DOCKET NO. 701-23-05447.IDEA
TEA DOCKET NO. 088-SE-1122**

STUDENT, B/N/F PARENT AND PARENT



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2. Whether the School District failed to timely and appropriately identify Student for special education and related services.

B. Respondent's Legal Position and Additional Issues

Respondent did not file any response to Petitioner's complaint. Respondent's counsel indicated the School District provided the proper Prior Written Notice for the allegations in Petitioner's complaint.

III. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief: 1) 0 T(ool)1 0 T(ool)1 0 T(ool)1 tit

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5. Compensatory education and related services to address Student's areas of disabilities and/or needs to include, but not limited to private tutoring, speech therapy, occupational therapy, and other services as determined by the hearing officer. (ocxhc 0.00Mt17)-3 (de)-11.(ocxhc 0.00Pr Tc 0 Tw (28980 Tc 0 T-0.9P2e2erer)C

3. On April ***, 2019, an annual ARD Committee met with Dad in attendance. Student qualified for special education as a student with speech impairment. Student's IEP contained updated present levels of academic achievement and functional performance (PLAAFPs) based on teacher observation. Student did not like to *** so Student would refuse and go to the side of the room. Student would say no when Student did not want to do an activity. Student *** for sensory input and was fidgety at times. Student was scheduled to receive social skills training, speech therapy, PT, and OT. Dad requested an autism evaluation and the Committee agreed to an updated full and individual evaluation (FIE) in the areas of autism, PT, OT, speech, and cognition/achievement. The ARD Committee meeting ended in agreement. Dad signed that he received the notice of procedural safeguards and consent for the evaluation.³

2019 – 2020 School Year - ***

4. A multidisciplinary team conducted Student's FIE, dated October ***, 2019. Sources of data were the 2017 *** FIE, parent input, teacher input, classroom observations, and multiple assessments. An SLP assessed Student's language skills using the Comprehensive Assessment of Spoken Language, Second Edition (CASL-2) and the Goldman-Fristoe Test of Articulation 3 (GFTA-3). During the CASL-2, Student was easily distracted by the stimulus material and objects around the room. The SLP indicated Student's below average score in expressive language and inference and Student's deficient range score in *** should be interpreted with caution due to Student's distractibility and the fact that these sections were administered at the end of testing. Overall, Student exhibited age appropriate language skills. The GFTA-3 measures speech sounds in the area of articulation. Student scored in the below-average range on the GFTA-3, but when combined with teacher input and informal observation, Student did not appear to need speech therapy services targeting articulation.⁴
5. Student demonstrated average visual motor, fine motor, and visual motor coordination. Parents and teacher reported concerns with regulation, organization, social skills, and behavior/self-control; hil zo(h)in.(r)1 Tw 0.4.4 (-)5.4 (h)erills,

differs from what Student had in mind. Parent indicated Student may be privately evaluated for Attention Deficit Disorder (ADD) or ADHD.¹⁸

19. Student's teacher emailed Parent on September ***, 2021, letting Parent know he sent home a parent input form and the District's plan to begin the SST process. The teacher indicated if Parent had concerns about evaluation or diagnosis, he could seek that outside of school and if anything came of it, then the Section 504 process would begin.¹⁹

20. The SST is a group of teachers, District administration, and parents that meet every 6-8 weeks to discuss a student's goals and progress. The first meeting was held on November ***, 2021 and Student entered Tier 2: Skill Building. Student's teacher initiated the SST because of his concern with Student's lack of participation in activities.²⁰

21. Student's teacher completed a teacher input form on November ***, 2021, indicating he tried several classroom strategies to help Student meet Student's educational/behavioral goals such as choice in seating and activities.

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29. In *** grade Student received *** for the entire year for following instructions; working independently, completing work, and staying on task; participating appropriately in group activities; listening attentively without causing interruptions; attempting new and unfamiliar tasks; using technology appropriately, and speaking at appropriate times. Student received *** for the entire year in *** out of *** categories, one *** category, and *** categories.roryP \MCID 954gor920.138 Tww 0.219

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FIE determined the predominant feature impacting Student was ADHD and Student met criteria as a student with an Other Health Impairment (OHI)

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cognitive problem-solving. Additionally, Student's scores indicate Student has marked difficulties adjusting to changes flexibly.⁵¹

52.

~~The essential features of ASD are 1) 3176336.02101813e854ngias-21-(u)t 10 (T)2 psT de a 6T102.~~

55. As of the date of the due process hearing, Student has not received any special education services.⁵⁵

V. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C. § 1400(d). The district has a duty to provide FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

The district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry is whether the IEP proposed by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

⁵⁵ Tr. Vol. 2 p. 278.

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20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f); 19 Tex. Admin. Code § 89.1151(d). Parents bear the burden of establishing an exception to the limitations period. *G.I. v. Lewisville Indep. Sch. Dist.*, No. 4:12-cv-385, 2013 WL 4523581, *8 (E.D. Tex. Aug. 23, 2013).

Petitioner filed this case on November 14, 2022, and raised the withholding exception to the two-year limitations period. Petitioner argues that claims challenging the February

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of services requiring prior written notice. Second, Petitioner incorrectly states the District refused to initiate an evaluation in April 2019. Indeed, the evidence showed that Parent requested—and the District agreed to—an updated evaluation at that time, and that the District obtained parental consent

a disability.” *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018); *O.W.*, 961 F.3d at 790-91. A delay is reasonable when, throughout the period between notice and referral, a school district takes proactive steps to comply with its Child Find duty to identify, locate, and evaluate students with disabilities. Conversely, a time period is unreasonable when the school district fails to take proactive steps throughout the period or ceases to take such steps. *O.W.*, 961 F.3d at 793.

The evidence showed the District violated its Child Find obligation by failing to identify and evaluate Student sooner than May 2022. In this case, Student transferred to the District in February 2019 with an IEP from ***. The District provided special education services to Student as a student with speech impairment until November ***, 2019, when Student was dismissed from special education with Parents’ agreement after the October 2019 FIE found Student’s sensory processing, self-regulation, and attention issues could be effectively addressed in the classroom. During the 2020-21 school year, Student’s *** grade teacher reported Student had some issues with task refusal and sensory difficulties, but Student received *** on Student’s report card. At the beginning of Student’s *** grade year, Student’s teacher noted Student’s refusal to complete work. Teacher and Dad emailed to discuss strategies to help Student in class and dad mentioned obtaining a private SDD/ADHD evaluation for Student.

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*** grade teacher noticed it herself and was informed by Dad Student attended OT. Student's main issues seem to be Student's task refusal and Student's unwillingness to work with peers; however, the District

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experiences. *Id.* Respondent argues that Student need not be identified as a student with autism
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Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F., 118 F.3d 245, 253 (5th Cir.

1997) 7:00875 (b) (7) (C) (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100)

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a much more robust set of services to meet Student’s deficits with pragmatic language, lack of participation, inability to work with peers, inability to understand social communication and social norms, sensory issues, and lack of self-regulation. Based on Student’s deficits and the credible evidence, StcrcS0 T Tw 0.216 0 Td(O())TjEMC /P w 065 0 Td()Tj-0h2 Tw 1u/533 (e,)Tj0 Tc 090I3e851 (i

administrators who had the goal of working with Student to assess Student's needs and help Student achieve Student's goals. The fact the Parents disagreed with the eligibility determinations and the District's proposed IEP does not equate to a failure to collaborate. Parents were offered an opportunity to reconvene to further discuss areas of disagreement as to Student's eligibility and services. However, Parents declined to participate in further discussions concerning eligibility.

Parents' IEP addendum indicated they felt the proposed IEP did not address Student's needs and they declined to reconvene. The District interpreted Parents' IEP addendum as lack of parental consent to implement Student's IEP. While it is true Parents declined the reconvene, the District never reached out to Parents to discuss the issue further. However, Petitioner failed to demonstrate that the District excluded them in bad faith or refused to listen to them. After the November ***, 2022 ARD Committee meeting it appears communication from both sides ceased.

4. Academic and Non-Academic Benefits

Whether a Student received academicd9 0 0 12 2188 Tw 0.2307.38 Tm()TjEM0.205 0 Td[fait]-5 (h)]

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Petitioner argues Parents consented to the initial provision of special education services and the District's failure to implement the IEP has denied Student a FAPE. Parents' IEP addendum was confusing and failed to provide definitive consent for special education services. Because the District has been unable to implement the proposed IEP, Student's actual academic and non-academic benefit cannot be determined. However, the proposed IEP fails to include Tw 0.205 00 T

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4. The District failed to comply with its Child Find obligation.

and duration of the compensatory services Student requires to remedy the denial of FAPE in this case. Without this evidence, the Hearing Officer is unable to award compensatory services in those areas.

The District's proposed IEP offered 15 minutes per week of social skills training. While this Hearing Officer found the proposed IEP lacking because it is not individualized based on Student's performance and assessment, it is clear Student is in need of some type of social skills training based on Student's deficits in that area. At minimum, an IEP should have been in place starting in the spring of 2022. Petitioner is entitled to certain programmatic revisions as set forth below and is further entitled to compensatory awards in the form of social skills training and reimbursement for the privately obtained autism evaluation to compensate for the District's failure to appropriately serve Student's autism-related needs during the relevant time period. Petitioner is further entitled to independent evaluations at District expense in the areas of behavior, OT, and speech.

4. The District must deliver to Petitioner no later than 5:00 p.m. on June ***, 2023, a set of reasonable criteria for the selection of an independent BCBA or other qualified evaluator to conduct an FBA and make recommendations for behavioral interventions in the educational environment.
5. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on June ***, 2023. If Petitioner does not provide the name of evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by July ***, 2023.
6. Within 15 days of receipt of the written FBA report from the independent evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP and development of a BIP, if necessary. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate. Participation of the independent evaluator shall be at District expense.
7. The District must deliver to Petitioner no later than 5:00 p.m. on June ***, 2023, a set of reasonable criteria for the selection of an independent qualified evaluator to conduct an OT evaluation.
8. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on June ***, 2023. If Petitioner does not provide the name of evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by July ***, 2023.
9. Within 15 days of receipt of the written OT report from the evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate. Participation of the independent evaluator shall be at District expense.
10. The District must deliver to Petitioner no later than

11. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on June ***, 2023. If Petitioner does not provide the name of evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by July ***, 2023.
12. Within 15 days of receipt of the written speech report from the evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate. Participation of the independent evaluator shall be at District expense.
13. The District shall provide Student with 240 minutes of compensatory social skills training. These services may be provided by a District special education teacher to be allocated at the discretion of the District. These services must be provided within the 2023-24 school year. These services may be provided to Student during ESY in summer of 2023 if Parents consent to enrollment in ESY.
14. Petitioner is entitled to reimbursement from the District in the amount of \$*** for the cost of private autism evaluation from ***.
15. The District providing any special education services listed above to Student is contingent upon Parents' written consent for initial

Kasey M. White
Special Education Hearing
For the State of Texas

