

STUDENT <i>B/N/F</i> PARENT, Petitioner,	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER
	§	
MINERAL WELLS ISD, Respondent.	§	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 July 1, 2022, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Mineral Wells ISD (“Respondent” or “School” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On July 5, 2022, TEA assigned this matter to Special Education Hearing Officer (“SEHO”) Steve Elliot at the State Office of Administrative Hearings (“SOAH”). On that day TEA sent a copy of the Complaint and Notice of Filing to the District.

Student asserted multiple issues in Student’s Complaint. Specifically, Student asserted that the District violated its child find duty in failing (1) to evaluate Student in all areas of suspected need; (2) to identify

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**B. PETITIONER'S REQUESTED RELIEF:**

Petitioner asks the SEHO to award the following:

1. Private placement at District expense. Alternatively,
2. An Order requiring Respondent to provide Student with an appropriate IEP in Student's LRE;
3. An Order providing Student with an independent education evaluation ("IEE");
4. An Order requiring Respondent to convene an Admission, Review, and Dismissal Committee ("AREuREuREu21 (di)1 q7 m(")5 (Ate)3 (5 (de)3 (e7 -1.148 Td()C 0.353 Tw 3 0 Td[(A)12 Tc 0.

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On July 26, 2022, the Parties convened the PHC. In attendance were the following: (1) Mr. Jordan McNight, Petitioner's Counsel; (2) Mr. Dean Micknal, Respondent's Counsel; (3) SEHO Elliot; and (4) the court reporter who make a transcript of the PHC. At that time, the Parties requested extensions of time for the Due Process Hearing and Decision Deadlines. On August 1, 2022, SEHO Elliot issued Order No. 2: Order Memorializing Initial Prehearing Conference and Granting Joint Motion for Continuance and Extension of



the Hearing Transcript and the preparation of their Closing Arguments. Finding good cause for such request, the undersigned granted the requested extensions of time.

On June 14, 2023, the undersigned issued Order No. 6: Order (1) Granting Parties' Motion for Continuance of the Decision Deadline and (2) Rescheduling Post Hearing Deadlines. By this Order, the Parties' Closing Arguments would be due on July 24, 2023, and the Final Decision would be due by August 11, 2023. The Parties requested a brief continuance of their Closing Arguments deadline, which was granted and the undersigned instructed the Parties to file their Closing Arguments by 5:00 p.m., July 28, 2023. Both Parties complied with this deadline. The Decision deadline remained August 11, 2023.

This Decision of the Special Education Hearing Officer is being delivered to the Parties on the Decision Deadline of August 11, 2023.

### III. RESOLUTION SESSION

The Parties participated in mediation rather than the Resolution Session. They did not settle their issues at mediation.

### IV. FINDINGS OF FACT <sup>4</sup>

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is a \*\*\*-year-old \*\*\*. Student and Student's family live within the District's jurisdictional boundaries.
  - A. SCHOOL YEAR 2019-20: \*\*\* ISD:
    3. Prior to February \*\*\*, 2020, Student attended \*\*\* ISD as a transfer student [J14.3]. \*\*\* ISD completed Student's FIEs in 2014 and 2017 [J14].
    4. \*\*\* ISD provided Student with special education and related services based upon Student's qualifying disability, Specific Learning Disability ("SLD") in the areas of oral expression, reading comprehension, math calculation, and math problem-solving. Student also qualified for, and received, indirect/consult speech therapy services during Student's \*\*\*-grade year [J14.2].
    5. On January \*\*\*, 2020, \*\*\* completed a Review of Existing Evaluation Data ("REED") [J14]. Student's \*\*\* ARDC recommended Student's dismissal from speech therapy ("ST") based upon Student's mastery of Student's speech and language goals [J14.2].

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<sup>4</sup> References to the Due Process Hearing Record are identified as follows: "T#.#.#" refers to the two-volume Court Reporter's Transcription of testimony made on June 13-14, 2023, and the specific volume, page, and line numbers contained therein; "J#.#" refers to the Joint Exhibits by number and page; "P#.#" refers to Petitioner's Exhibits by number and page; and "R#.#" refers to Respondent's Exhibits by number and page.

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is on task and understanding [J2.01].

- c. Student's \*\*\* teacher reported that while Student had not been back on campus for long, Student had been doing well in class. Student completed assignments Student missed while on quarantine. Student's \*\*\* teacher explained that when Student is in the classroom, Student does okay; when at home, Student does not perform as well. [J2.02]. Student needed reminders to stay on task and teacher encouragement to complete tasks [J2.01].
  - d. Student's teachers had little to say about Student's behavior. They generally reported that Student needed reminders to stay on task, prompting, and extra time to complete assignments. Student tended to be indifferent to completing Student's assignments and occasionally sat quietly but did no work. Student's biggest struggle was when Student switched to remote instruction at home. Teachers reported that Student did limited work while in quarantine and fell behind. As of the date of this ARDC meeting, Student had \*\*\* behavior incidents that resulted in \*\*\* placement [J2.01].
12. The November 2020 ARDC added Facilitated Support to Student's Schedule of Services in Student's plan; <sup>5</sup> the Committee reviewed and revised Student's accommodations; the Committee reviewed and approved the Remote Learning Supplement [J2.02]. The Committee established Student's Schedule of Services: placement in the general education population for all subjects except \*\*\*, where Student will receive instruction in the \*\*\* Room for forty-five (45) minutes per day, running from April \*\*\*, 2020, to January \*\*\*, 2021. [J2.07]. Additionally, Facilitated Support would be provided at the school for ten (10) minutes two (2) times per six weeks, running from March \*\*\*, 2020, to January \*\*\*, 2021 [J2.07]. The Committee reached consensus [J2.02].
13. On January \*\*\*, 2021, Student's Annual ARDC meeting occurred [J5]. Reports from Student's teachers were all quite similar. Student had a good attitude in the classroom; Student got along with
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16. The ARDC agreed that Student's behavior did not impede Student's learning or that of Student's peers. Accordingly, the January \*\*\*, 2021, ARDC did not think Student needed a Behavior Intervention Plan ("VIP") [J5.8].
17. The ARDC found that Student's SLD in Oral Expression, Listening Comprehension, Written Expression, Reading Comprehension, Mathematics Calculation, and Mathematics Problem Solving [J15.01] affected Student's involvement and progress in the general education curriculum in the areas of \*\*\*.
18. The January \*\*\*, 2021, ARDC reached consensus, including Student's Parents [J5.23].

**D. SCHOOL YEAR 2021-22: MINERAL WELLS ISD:**

19. On August \*\*\*, 2021, the District convened a Review ARD to revise Student's IEP to add an Accelerated Learning Plan due to Student's lack of success on the spring 2021 STAAR [J7]. Recently passed legislation mandated that students who were unsuccessful on STAAR, had to include in their IEPs an Accelerated Learning Plan [J7.4]. This ARDC adopted the Accelerated Learning Plan into Student's IEP [J7.07-8].
20. On January \*\*\*, 2022, Student's ARDC met for Student's annual ARDC meeting [J.8.01]. The special education services would run from January \*\*\*, 2022, to May \*\*\*, 2022 [J8.01]. The Committee reported that Student had \*\*\* behavioral offenses with a brief assignment to \*\*\* [J8.06].
21. At the time of this ARDC meeting, teachers reported Student's status in their classes. Student's \*\*\* teacher reported that Student read and comprehended on a \*\*\*-grade level. Student \*\*\*. At the time of this meeting, Student's \*\*\* grade was \*\*\*%) [J8.06].

Student's \*\*\* teacher reported that while Student could do some of the work, Student had noticeable problems in \*\*\*. Recently, Student had not been paying attention and was often \*\*\*, which had caused Student to struggle with the \*\*\* content.

Student was doing well in \*\*\*. Student exhibited a great attitude and was getting along with everyone; Student exhibited no behavior problems in class.

22. The ARDC found that Student follows the regular code of conduct. The ARDC determined that Student would receive forty-five (45) minutes per day for \*\*\*; Student would continue with Facilitated Support ten (10) minutes every three (3) weeks direct and consulting services [J8.08].
23. The January \*\*\*, 2022, ARDC reached consensus, including the Parents [J8.16; J10.01]. The Committee developed Student's IEP to run between January \*\*\*, 2022, to January \*\*\*, 2023 [J13.40].
24. On February \*\*\*, 2022, Student \*\*\*. \*\*\*, 6\*\*\*. Student stated that Student was \*\*\* [J12.20; J25; J31.01].
25. Student was \*\*\* [R5.01]. Subsequently, Student received \*\*\*; Student

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all the concerns about Student's February \*\*\*, 2022, behavior and not one concern of AU was expressed at that time or any other time until Dr. \*\*\* released Student's IEE.

**I. RESPONDENT'S ALLEGED FAILURE TO CONDUCT AN FBA:**

- 52. Petitioner's complaint that the February \*\*\*, 2022, MDR ADRC failed to perform a mandatory functional behavior assessment "(FBA)" is not viable. An FBA is required if the district, parent, and relevant members of the MDR ARDC determine that the student's conduct giving rise to a change in placement **was** a manifestation of the student's disability 34 C.F.R. §300.530 (f). Where the MDR ARDC determines that the student's conduct **was not** a manifestation of the student's disability, IDEA mandates an FBA, as appropriate, to assist in developing services targeted at ensuring the behavior does not recur.
- 53. Although the ARDC offered additional testing following Student's \*\*\*, the District offered to perform psychological evaluation but the Parents refused [J12.15].

**J. RESPONDENT'S ALLEGED FAILURE TO MAINTAIN A SAFE, NONHOSTILE EDUCATIONAL ENVIRONMENT:**

- 54. While there was some evidence of bullying (i) 1 (nR)1 (D) B (C)1 (I)-4852(\$)-16 BDC 0.0A13 (i) 1 Student's p



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qualify for special education services under more than one classification. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 758 F. 3d 1162(9<sup>th</sup> Cir. 2014), *cert. denied*, 2015 U.S. Lexis 204 (2015). Even if a student can meet the criteria of one or more 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).



which was a Review ARD to revise Student's IEP to add an Accelerated Learning Plan due to Student's lack of success on the spring 2021 STAAR [J7]. These were the IEPs developed during the one-year Statute of Limitations period, July 1, 2022-2023.

At the time of these ARDC meetings, teachers reported Student's status in their classes. All comments were favorable as to Student's behavior, involvement with Student's peers and teachers, with noted teacher concerns of inattention and failure to complete Student's work. Both ARDC meetings modified Student's goals and objectives; acknowledged that Student follows the regular code of conduct. Both ARDC meetings reached consensus, including the Parents.

The IEPs were individualized based on evaluation data and Present Levels of Academic Achievement and Functional Performance ("PLAAFP"). The IEPs were implemented in the Least Restrictive Environment ("LRE"). The ARDCs determined that Student would receive forty-five (45) minutes per day for \*\*\*; Student would continue with Facilitated Support ten (10) minutes every three (3) weeks direct and consulting services [J8.08]; Student would be in general education the rest of Student's school day.

Student made progress both academically and non-academically. Student passed all Student's courses in the \*\*\* grades [J17;18]. Student participated in \*\*\* and had a good relationship with Student's \*\*\*, Student's peers, and Student's teachers and \*\*\*.

Student's August

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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 (3)(A) and 1415(l).

COPIES SENT TO:

VIA EMAIL: [Jordanmcknightlaw@gmail.com](mailto:Jordanmcknightlaw@gmail.com)

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