

STUDENT,	PARENT,	§	BEFORE A SPECIAL EDUCATION
	Petitioner,	§	
V.		§	HEARING OFFICER
	UNIVERSAL ACADEMY, ***	§	
	Respondent.	§	FOR THE STATE OF TEXAS

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**FINAL DECISION OF THE  
SPECIAL EDUCATION HEARING OFFICER IN NON-EXPEDITED CASE**

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**I.  
STATEMENT OF THE CASE**

On March 10, 2023, Student, Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Universal Academy, \*\*\* (“Respondent” or “\*” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On March 10, 2023, TEA assigned this matter to me as the impartial Special Education Hearing Officer (“SEHO”) and sent a copy of the Complaint and Notice of Filing to Respondent. Petitioner alleged child-find claims against Respondent during school year 2022-23: Respondent denied Petitioner a Free Appropriate Public Education (“FAPE”) in the following particulars:

1. Respondent failed to evaluate Petitioner, in a timely manner, in all areas of suspected need;
2. Respondent failed to find that Petitioner qualifies for special education and related services;
3. Respondent failed to develop an appropriate Individualized Education Program (“IEP”) to address Petitioner’s unique needs.

Petitioner asked the SEHO to enter an order finding the following:

1. Respondent denied Petitioner FAPE; Respondent failed to identify and evaluate Petitioner for special education and related services;
2. Petitioner is the prevailing party; and

3. Any relief that the SEHO deems appropriate or that is recommended by Petitioner's experts and evaluators, or otherwise revealed by the facts of this case, including, but not limited to: (a) a third-party evaluation of Petitioner in all areas of suspected need; (b) reimbursement for out-of-pocket educational expenses incurred by Petitioner's Parent; (c) District training; and (d) compensatory educational services.

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On October 31, 2023, the undersigned issued Order No. 4, which rescheduled the hearing and attendant deadlines as follows: January 17, 2024: Disclosures; January 24-25, 2024: Due Process Hearing; and February 10, 2024: Decision Deadline.

### III. DUE PROCESS HEARING

Both Parties made their Disclosures timely. On, or about, January 22, 2024, both Parties filed their written objections to the opposition's Disclosures. Rulings on these objections were made during the Hearing.

The SEHO convened a ZOOM Due Process Hearing on January 24-25, 2024. The Parties' Exhibits were admitted; the Parties called witnesses, who presented direct testimony and were cross-examined by the opposition.

During the Hearing, Petitioner was represented by (1) Ms. Andrea Koch, Petitioner's attorney; (2) Respondent was represented by Ms. Janet Bubert and Mr. Slater Elza, Respondent's attorneys. In attendance some, or all, of the time were (3) \*\*\*, Petitioner's Parent; (4) Dr. \*\*\*, Respondent's Superintendent; (5) Dr. \*\*\* and (6) Dr. \*\*\*, Petitioner's experts. At the conclusion of the Hearing, the Parties agreed to file and serve their Closing Arguments on, or before, February 27, 2024, and extended the Decision Deadline to March 11, 2024.

On January 29, 2024, the undersigned issued Order No. 5, which set the agreed post-hearing deadline for Closing Arguments. Page (i)-1 (212b)

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11.

Student's Parent testified that she had not been notified of the hearing. She testified that she had not received any notice of the hearing. She testified that she had not received any notice of the hearing. She testified that she had not received any notice of the hearing.











cycle showed all failing grades [J34]. This occurred because Student did not return many of Student's assignments while enrolled at \*\*\*.

50. On February \*\*\*, 2023, Student's Parent sent \*\*\* an email requesting an evaluation for special education [J33.111-115]. \*\*\* scheduled Student's Annual Review Section 504 Committee meeting for February \*\*\*, 2023 [R22.1].

#### February \*\*\*, 2023, Section 504 Committee Meeting

51. Student's Section 504 Committee reviewed Student's most recent Section 504 Plan from \*\*\* as well as the November \*\*\*, 2022, private psychological evaluation completed by \*\*. The Committee noted Student's absences during fall 2022 at \*\*\*, \*\*\*, excused and \*\*\* unexcused. \*\*\* determined that these massive absences, coupled with failing grades in the \*\*\* grading cycle and the fall semester at \*\*\* required Student to repeat the \*\*\* grade in school year 2023-24 [J37.127].
52. The November \*\*\*, 2022, private psychological evaluation concluded that Student's academic achievement was average to high average. The 504 Committee agreed to adopt the accommodations recommended in the evaluation; determined that Student was making progress in the general education curriculum; and concluded there was no suspicion of a need for specialized instruction at that time. Student's Parent agreed with these decisions during the February \*\*\*, 2023, meeting [J37.122-128; R22.6]. However, after the meeting, the Parent reasserted Parent's request for a special education evaluation [P32.365].
53. \*\*\* conducted and concluded Student's Full and Individual Initial Evaluation ("FIIE") on May \*\*\*, 2023 [P36]. Because of the timing, Student's initial ARD meeting was held on August \*\*\*, 2023. It reconvened on August \*\*\*, 2023, and was completed on October \*\*\*, 2023. As of October \*\*\*, Student meets the [(5)-4 (3)-4 (. )]TJEMC 4B 2.3r1



creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the 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 a FAPE. 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005); [redacted], 703 F.2d 832 (5th Cir. 1983), [redacted], 468 U.S. 883 (1984); [redacted], 909 F.3d 754, 762-63 (5th Cir. 2018) ([redacted]). [redacted], 118 F.3d at 252; [redacted], 607 F.3d 1003, 1010-11 (5th Cir. 2010).

## B. CHILD FIND

This case concerns one basic tenet of IDEA: child find. Student alleges that \*\*\* violated its child-find obligation when it failed to evaluate \*\*\* timely, [redacted] during fall 2022; failed to convene an ARDC timely; failed to identify Student's special education needs; and failed to develop an appropriate IEP.

A "child with a disability" is a defined term under the IDEA. The student must meet the criteria under 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. [redacted] 3.18 0 Td[(ma)-14 D0 (l)6 (T-20 (25D0 (l)6 (i)6 (al)5.9

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1. **\*\*\* Had No Basis to Suspect Student Had a Disability, as Defined by IDEA, Based on Academic Decline, Absenteeism, \*\*\*, Frequent Visits to the Nurse, or Behavioral Interactions with Students.**

No single circumstance triggers a school's child-find obligation. *\*\*\**, 55 F.4th 1268 (10th Cir. 2022) (the inquiry of whether a school should reasonably suspect a child has a disability under IDEA relies on several factors, of which hospitalization is but one). Further, courts have required evidence of otherwise unexplained academic decline before concluding that the school violated its child-find obligation. *\*\*\**, 900 F.3d at 677 (hospitalization, academic decline, and incidents of theft, taken together, were sufficient to cause the district to suspect disabilities created a need for special education services).

Upon enrollment at *\*\*\**, Student's Parent informed *\*\*\** that Student received accommodations under a Section 504 Plan related solely to *\*\*\** and an *\*\*\**. The Parent also informed the school nurse that Student had multiple health conditions. Notwithstanding the fact of Student's *\*\*\**, no information was provided at the time Student enrolled that these physical and mental health conditions required *\*\*\** or specific accommodations in the school setting.

*\*\*\** was aware that Student's medical conditions sometimes resulted in more absences than usual, and this was addressed in Student's 504 Plan. Beginning the second week of school, Student was absent for several days related to *\*\*\**. Upon Student's return, Student's Parent provided information from Student's physician about accommodations Student needed during the school day, which *\*\*\** implemented. Student's physician did not recommend Student's placement in special education. Despite missing numerous days during the first three weeks of school, Student made up Student's work and passed all Student's classes, but for *\*\*\**, at the end of the *\*\*\** grading cycle.

*\*\*\** became aware of an alleged conflict between Student and another *\*\*\** student in Student's *\*\*\** class after Student's Parent reported some bullying incidents. *\*\*\** immediately investigated but was unable to corroborate Student's allegations. Despite that fact, *\*\*\**, *\*\*\**



following a lengthy absence in August 2022. \*\*\* had no reason to think that with sufficient time and support, Student would not make up all requested schoolwork.

Between August \*\*\* and September \*\*, 2022, Student visited the nurse's office \*\*\* times: \*\*\* [J2.3-4]. Based on the information provided to \*\*\* at the time Student enrolled and provided records from Student's prior schools, it was expected that Student's health conditions and 504 accommodations would result in a higher-than-average number of nurse visits. Parent testified this was the reason Parent wanted Student to meet the nurse, prior to the first day of school, so that Student would be comfortable coming to the nurse's office when needed. The nurse's records reflect the Student generally returned to class within about ten minutes. These visits to the nurse's office did not negatively impacted Student's ability to make academic progress or result in Student's academic decline.

**2. \*\*\* Had No Basis to Suspect Student Had a Disability, as Defined by IDEA, Because Parent Failed to Provide \*\*\* with Vital Information to Support Special Education Eligibilities.**

As stated previously, if a district has reason to suspect a student has a disability and requires special education, then the school does not meet its child-find obligation by waiting for a parent to request for evaluation. 34 C.F.R. 300.11. However, when a parent chooses to withhold information about Parent's child, it interferes with the district's ability to consider fully a student's circumstances and potential need for special education. In such a case, the district has no reason to suspect a disability until the parent makes the request for evaluation. , 18 F.4th 788, 795 (5th Cir.).

Throughout Student's enrollment at \*\*\*, Student's Parent denied \*\*\* all consent to obtain information from the \*\*\* at \*\*. Student's Parent signed one of the two consents requested by \*\*: the authorization for \*\*\* to share school records with \*\*\* [R15.5]. The Parent never executed \*\*\* [R16.1-6]. \*\*\* had to rely on Student's Parent to provide information.

\*\*\* scheduled a Section 504 meeting for October \*\*, 2022, to discuss any concerns or changed circumstances Parent wanted to share. The Parent participated in this meeting, offered suggestions for Student's 504 Plan, and agreed to the Plan. There was no subsequent communication between the Parent and \*\*\* following the October \*\*, 2022, Section 504 meeting.

On November \*\*, 2022, and while at \*\*\*, Student's Parent obtained a private psychological evaluation from \*\*\* [J30]. The psychological evaluation stated that Student met the criteria for \*\*\*, and warranted a diagnosis of Attention Deficit, Hyperactivity Disorder (0









VII.  
CONCLUSIONS OF LAW

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