

STUDENT *b/n/f*
PARENT,

Petitioner,

V.

AUSTIN INDEPENDENT
SCHOOL DISTRICT,

Respondent.

§ BEFORE A SPECIAL EDUCATION
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§
§ HEARING OFFICER
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§ FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

Petitioner, Student *b/n/f* Parent (“Petitioner” or “Student”) requested a Due Process Hearing pursuant to the Individuals With Disabilities In Education Act (“IDEIA”), 20 U.S.C. §1400 *et. seq.* Student alleges that this is a “child find” case in which Respondent, Austin Independent School District (“Respondent” or “AISD” or “the District”) denied Student a free, appropriate public education (“FAPE”) when it 1) failed to evaluate Student timely; 2) failed to identify Student as a child in need of special education and related services; and 3) failed to provide Student with an appropriate individual education plan (“IEP”). Student seeks the following relief: 1) compensatory education and related services to address all areas of Student’s disabilities; and 2) reimbursement of all out-of-pocket expenses.¹

**II.
PROCEDURAL HISTORY**

On July 24, 2008, the Texas Education Agency (“TEA”) received the Request for Due Process Hearing filed by Student. On July 28, 2008, TEA assigned the case Docket No. 273-SE-0708 and assigned the matter to the undersigned Hearing Officer. On July 29, 2008, the undersigned sent the Initial Scheduling Order to the parties, stating that the pre-hearing telephone conference would convene on August 18, 2008, that the Due Process Hearing would take place on September 8, 2008, and that the Decision would issue by October 7, 2008.

On August 7, 2008, Respondent filed its Response and 15-Day Insufficiency of Complaint Notice. Included in this document was a statement by AISD that it had been prevented from conducting a full, individual evaluation (“FIE”) of Student because

¹ An attorney does not represent Petitioner at this time. The Hearing Officer has no authority to award attorneys’ fees for attorneys’ representation or “representation” fees for non-attorneys.

Student's mother failed to provide written consent but that AISD remained ready to conduct the evaluation. The undersigned sustained the insufficiency challenge, abated the case, and ordered Student to re-plead by August 22, 2008, or risk dismissal. Student filed the Amended Complaint on August 15, 2008, and the abatement was lifted. On August 19, 2008, the undersigned Hearing officer sent an Amended Scheduling Order re-calculating the resolution and hearing deadlines. The undersigned scheduled the pre-hearing telephone conference for September 3, 2008, the Due Process Hearing for September 22, 2008, and the Decision Deadline for October 29, 2008.

On August 25, 2008, AISD filed and served its Response to Petitioner's First Amended Complaint and Second Objection to the Sufficiency of Complaint. The Second Objection was overruled and the parties proceeded to convene the pre-hearing telephone conference on September 3, 2008. In attendance were the following: 1) Ms. Debra Liva, Student's advocate; 2) Ms. Cynthia Buechler, AISD's counsel; 3) the undersigned Hearing Officer; and 4) the court reporter who made a record of the telephone conference. The parties discussed the issues and for the third time, re-scheduled the Due Process Hearing to October 21, 2008. The parties also discussed AISD's request that it be allowed to evaluate Student.

On September 8, 2008, the undersigned requested that the parties provide alternative dates for the Due Process Hearing in light of a scheduling conflict. The Hearing Officer suggested days immediately following the October 21, 2008, setting. The parties complied and the hearing was re-scheduled for a fourth time to November 17, 2008. On October 2, 2008, the undersigned issued the Second Order Scheduling Due Process Hearing, which set forth the issues and relief requested, re-scheduled the hearing for November 17, 2008, re-scheduled the Disclosure Deadline to 5:00 p.m., November 10, 2008, and extended the Decision deadline to December 23, 2008.²

Also on September 8, 2008, AISD filed its Motion to Dismiss, or in the Alternative, Motion to Compel Assessment, seeking an order from the undersigned overriding Student's denial of consent for an FIE.³ On October 8, 2008, the undersigned requested that Student file a response to the motion by October 17, 2008. Student's advocate requested a copy of the motion, asserting that she never received a copy in September 2008. AISD provided a copy to Student; Student requested an extension of time to file the Response, which was granted. On October 27, 2008, Student timely filed the Response to Respondent's Motion to Compel Assessment.

On November 5, 2008, the undersigned issued the Order Granting Respondent's Motion to Compel and Abating Due Process Hearing for the second time. The parties were given sixty (60) days to complete the FIE and convene an ARD Committee meeting.

² At this time, Student was seeking an independent educational evaluation ("IEE"). This request was ultimately dropped in light of the District's agreement to pay for Student's IEE.

³ The undersigned did not see a copy of the Motion to Dismiss at the time it was filed, probably as a result of Hurricane Ike and the closing of the Hearing Officer's office for ten (10) days.

On December 17, 2008, AISD notified the Hearing Officer that the FIE had been completed and that the ARD Committee had scheduled the post-evaluation meeting for December 17, 2008. However, per Student's request, the ARD Committee meeting was continued to January 9, 2009.

On January 9, 2009, the undersigned sent the parties a letter requesting 1) the status of the FIE and ARD Committee meeting and 2) their availability for a pre-hearing telephone conference to discuss the status of the case and whether the parties had resolved their issues. The earliest availability for all involved was January 15, 2009.

On January 15, 2009, the parties convened a second pre-hearing telephone conference. In attendance were 1) Ms. Liva, Student's advocate; 2) Ms. Buechler, AISD's counsel; 3) the undersigned Hearing Officer; and 4) the court reporter who made a record of the telephone conference. Just prior to the telephone conference AISD faxed a Motion to Dismiss With Prejudice to the Hearing Officer and advocate stating that the parties had gone to ARD Committee on Friday, January 9, 2009, and had agreed upon Student's placement under Section 504. AISD stated that Student's mother agreed with the committee's finding that Student did not need special education services and that she could receive an appropriate education under Section 504. Student's advocate objected to the dismissal, alleging certain issues remain live for adjudication, especially in the "child find" area. AISD alleged that because Student did not qualify for special education services, the undersigned lacked jurisdiction to hear any issue related to Section 504 services. The undersigned instructed the parties to provide dates for a telephone conference to include their party representatives so that a better understanding could be garnered related to what Student's mother desired and understood. The undersigned instructed the parties to provide availability immediately.

Having received no information from the parties regarding their availability for the telephone conference, on January 16, 2009, the undersigned issued the fifth amended Order Re-Scheduling Due Process Hearing, which ordered a telephone conference on January 20, 2009, the Due Process Hearing on February 3, 2009, and a Decision Deadline of March 11, 2009.

Neither party was available for the telephone conference as scheduled and it took several days to set the conference. AISD's office notified the Hearing Officer's legal assistant immediately that the District was not available for the Hearing on February 3, 2009. AISD was instructed to file a written Motion for Continuance stating the basis for such request. On January 27, 2009, AISD filed its written Motion for Continuance, which was granted pursuant to a good-cause finding. The undersigned notified the parties of the continuance and the telephone conference, which was scheduled for January 30, 2009.

On January 30, 2009, the parties convened for a third pre-hearing telephone conference. In attendance were the following: 1) Ms. Liva, Student's advocate; 2) Ms. **, Student's mother; 3) Ms. Buechler, AISD's counsel; 4) Ms. **, Ms. **, and Ms. **, representing AISD; 5) the undersigned Hearing Officer; and 6) the court reporter, who

made a record of the conference. The parties discussed the status of the case, Student's objection to the ARD Committee's finding that Student does not qualify for special education services, and the remaining "child find" issues. At the conclusion of the telephone conference, the undersigned denied Respondent's Motion to Dismiss and requested that the parties obtain availability information for convening the Due Process Hearing.

Upon receipt of the parties' availability for the Due Process Hearing, on February 3, 2009, the undersigned issued the Sixth Amended Order Scheduling Due Process Hearing, which scheduled the hearing for March 12, 2009, the Disclosure Deadline for 5:00 p.m., March 5, 2009, and extended the Decision Deadline to April 16, 2009.

On March 4, 2009, Student's advocate requested an extension of the Disclosure Deadline to 9:00 a.m., March 6, 2009, due to a loss in the family. AISD agreed with this request. Apparently the parties agreed that Student's advocate would deliver Student's Disclosures to AISD's counsel at, or before, 9:00 a.m. on March 6, 2009, and at that time would pick up AISD's Disclosures. AISD sent its Disclosures to the undersigned Hearing Officer via federal express, which Disclosures were received by the undersigned on March 5, 2009. Although Student's advocate was to pick up AISD's Disclosures when she dropped off Student's Disclosures, AISD faxed its Disclosures to Student's advocate after 5:00 p.m. on March 5, 2009. Student's advocate failed to meet the 9:00 a.m. amended Disclosure Deadline. Student's advocate faxed her list of witnesses and exhibits after 10:00 a.m. on March 6, 2009, and delivered the Disclosures to AISD's counsel later that afternoon.

On March 6, 2009, AISD filed its objection to Student's late-served Disclosures and informed Student's advocate and the Hearing Officer of its decision to object to the introduction of any evidence by Student that was not timely disclosed. The undersigned instructed the parties to be prepared to discuss this issue prior to the taking of testimony on March 12, 2009.

The Due Process Hearing convened on March 12, 2009, and concluded late in the afternoon. The hearing was open to the public at the request of Student. Student called one (1) witness; AISD called eleven (11) witnesses. Both parties conducted extensive cross-examination of the witnesses. AISD introduced nineteen (19) exhibits, all of which were admitted. Student introduced fourteen (14) exhibits, none of which was admitted due to the advocate's failure to make Disclosures timely.⁴ Student's advocate made a record

⁴ 34 C.F.R. §300.512a(3) provides that a party has the absolute right to prevent the introduction of exhibits that are not disclosed timely. See also Tex. Adm. Code §89.1180(h). The Hearing Officer has no latitude or discretion to deny the objection, under state or federal statutes, rules, or regulations, when this right is activated. In this case, the parties agreed to change the Disclosure Deadline from 5:00 p.m., March 5, 2009, to 9:00 a.m., March 6, 2009. Any Disclosures made prior to, and including, 9:00 a.m. on March 6, 2009, were timely. Any Disclosures made after 9:00 a.m. on March 6, 2009, were late. Notwithstanding the objection by AISD to Student's late Disclosures, and the preclusion from evidence of such late-served Disclosures by order of the Hearing Officer, Student's mother provided testimony and the advocate was allowed full use of AISD's exhibits on direct and cross-examination of AISD's witnesses.

of her disagreement with the ruling and the undersigned allowed Student's fourteen (14) exhibits to be presented and preserved in the record of this case as an Offer of Proof.

At the conclusion of the hearing, the parties and Hearing Officer agreed to a post-hearing briefing schedule: the parties' closing arguments would be filed and served by April 14, 2009; the Decision Deadline was extended to April 21, 2009. Student's advocate requested a continuance of the schedule, which was granted, and the parties filed their closing arguments on April 16, 2009. The Decision is issued this 21st day of April 2009.

III. FINDINGS OF FACT

1. Student is a ** year-old ** grader who resides with her mother within the jurisdictional limits of AISD. AISD is a political subdivision of the State of Texas and a duly incorporated independent school district.
2. Student was recently assessed in fall 2008 by both the District and an independent assessor. Student does not meet the educational qualifications as a student in need of special education and related services. Student does qualify for Section 504 services.⁵
3. Student's mother requested that she be evaluated for special education in spring 2007, when Student was in the ** grade. At that time Student's family had suffered the loss of Student's father after a terminal illness. Student's mother was concerned with Student's behaviors, such as inattention, as well as her struggles with math, reading, writing, and spelling. Student's mother believed that Student had dyslexia and that if left unaddressed, Student would not be successful in high school or college. To begin the process, AISD's nurse conducted hearing and vision tests. Student did not pass the hearing test and was referred for a second hearing test. Again, she did not pass. Accordingly, the District requested that Student's mother take Student to an audiologist to ascertain the basis of her hearing loss. Failing the hearing test stalled additional assessments until the hearing issue could be rectified or explained.

School Year 2007-2008: Student's ** Grade Year:

4. In September 2007, Student's doctor informed AISD that Student had passed her hearing test. Also in September 2007 Student's mother requested for the second time that Student be evaluated for special education services. Upon receipt of Student's hearing information from her doctor, Student was referred to the District's IMPACT Team, which is a group of teachers, administrators, counselors,

⁵ Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, is a federal anti-discrimination law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.

and support staff that evaluate referrals of students for assessment from parents or staff based upon disciplinary, health, welfare, and educational issues. This Team reviewed Student's testing under the Texas Assessment of Knowledge and Skills ("TAKS") beginning in elementary school.⁶ Student passed ** grade reading and writing TAKS, but failed the math section (spring 2005); Student passed ** grade reading, math, and science TAKS (spring 2006); Student passed ** grade reading TAKS with "commended performance" but failed the math section (spring 2007). The Team also reviewed Student's grades, which were all passing, and spoke with her teachers. Based upon this information, the Team did not see an educational need for special education testing.

5. In fall 2007, Student's mother requested mediation from TEA related to the District's failure to assess Student. In response, the principal of Student's school spoke with Student's mother on November 27, 2007, and set up a meeting with Student's mother and the testing administrator for November 30, 2007, to discuss the assessments and to obtain written consent for the special education evaluation. Student's mother agreed to this meeting, but ultimately cancelled it on the advice of her advocate. Student's mother did not provide written consent for the requested evaluations. She referred AISD to her advocate and the attorney who was representing her at the time.
6. On December 4, 2007, the testing administrator contacted Student's mother by telephone to discuss the evaluation. On that day he sent Student's mother a copy of the Notice of Individual Evaluation, a Consent for Individual Evaluation, a procedural rights booklet, and an ARD Committee guide.
7. On December 12, 2007, AISD sent to Student's counsel an offer a) to perform an FIE, upon written consent from Student's mother, and b) to develop an appropriate education program if special education services were warranted. AISD informed Student's counsel that if the parent disagreed with the FIE, the District would pay for an IEE with an approved provider.
8. Meanwhile, when Student's mother failed to respond with written consent to the December 4, 2007, transmittal of forms regarding the requested evaluation, on December 13, 2007, the testing administrator contacted Ms. **. who agreed to come to his office and meet with him that day. Student's mother left the meeting without providing written consent for the evaluation. Student's mother referred the evaluator to her advocate.
9. On December 19, 2007, AISD informed Student's counsel of additional services that it was ready to provide. Those offers were given again on January 22, 2008,

⁶ The TAKS is the state-mandated assessment used to ensure school accountability for student achievement. It sets forth state-mandated levels for passing.

to Student's counsel along with new copies of the Notice of Individual Evaluation and Consent for Individual Evaluation.

10. Student's mother never provided written consent for the requested special education evaluation. AISD did not perform an FIE.
11. Student performed very well academically during her ** grade year. She passed all of her classes. She passed the TAKS in both writing and reading but failed the math TAKS. Student continued to struggle with certain math concepts, although she passed both of the math courses she was taking, as with all of her subjects, each six (6) weeks.⁷ She manifested no severe emotional or behavioral problems although she had problems with focus and maintaining attention, particularly in classrooms that were not structured.
12. In July 2008, Student's mother requested a Due Process Hearing and asserted that AISD had failed in its "child find" obligations to assess Student timely and to provide her an appropriate education.

School Year 2008-2009: Student's ** Grade Year:

13. On September 3, 2008, AISD again contacted Ms. **. to try and resolve the special education assessment issue. The Director of Special Education sent Ms. **. another Consent for Individual Evaluation and requested that she sign and return it for immediate implementation of the assessment process. AISD also reiterated its prior offers of December 2007 and January 2008, which were originally transmitted to Student's counsel. AISD likewise offered tutoring and regularly scheduled counseling sessions, which required Ms. **. 's consent. Student's mother again failed to provide the written consent for the FIE.
14. At the September 16, 2008, Resolution Session, AISD again provided Student's mother with a Consent for Individual Evaluation and a copy of the procedural safeguards. Student's mother continued to decline to provide written consent for the evaluation, asserting that AISD had waived its right to perform an FIE because it had been over a year since Ms. **. initially requested special education assessment.
15. AISD had the right to conduct its own FIE. On November 5, 2008, the undersigned abated the proceeding and ordered Student's mother to provide written consent for the FIE and to fully cooperate with the assessments. The parties were given sixty (60) days to complete the assessments and convene an ARD Committee meeting. Student's mother provided the written consent and the assessment was completed on December 4, 2008. Student's ARD Committee attempted to meet prior to the Christmas holidays, but based upon the request of

⁷ Because Student failed the math TAKS in the ** grade, Student took a second math course in the ** grade to prepare her for ** grade TAKS.

Student's mother, the ARD Committee did not meet until after the Christmas holidays.

16. Student's ARD Committee convened on January 9, 2009, to review the FIE completed on December 4, 2008. The Committee discussed the evaluator's findings: Student demonstrates strengths in reading and long-term memory, which can mitigate her weaknesses in short-term memory and listening comprehension; she does not exhibit characteristics of dyslexia; Student's achievement scores are adequate, but borderline, in math and reading; her cognitive processing scores are deficient in short-term memory, crystallized (verbal) intelligence, and visual processing; Student is borderline in processing speed and auditory processing but adequate in fluid reasoning and long-term retrieval; Student's classroom behavior is more disruptive when she is in an unstructured setting; she wants to do well in school but socializing and the desire to call attention to herself can disrupt; she exhibits characteristics of a learning disability in listening comprehension and written expression; however, Student does not exhibit an educational need for special education and related services. The evaluator recommended placement in Section 504 with multiple accommodations.
17. Student's mother was in attendance at the January 9, 2009, ARD Committee meeting. Her advocate arrived late for the meeting. The Committee reached consensus that Student does not qualify for special education and related services but does qualify for Section 504 services. Student's mother signed the ARD Committee Report noting her agreement with the Committee's determination. Student's advocate noted that she did not, however, concur with the ARD Committee members, all of whom agreed with the evaluator's findings and suggestions.
18. Student's ARD Committee recessed and Student's Section 504 Committee convene. This Section 504 Committee developed accommodations for Student in all subjects and all Committee members, including Student's mother, agreed with the Section 504 plan. It was implemented immediately.
19. As of the date of the Due Process Hearing, Student was performing very well both academically and non-academically. She is a popular cheerleader whose teachers describe as vibrant, average to a little above average academically, and very social. Student clearly wishes to achieve in school, which is evidenced in her taking advanced placement language arts. Her teachers testified that she has made progress since the implementation of the Section 504 program.
20. The evidence established that Student has a pattern of strengths and weaknesses characteristic of a learning disability in the areas of written expression and listening comprehension.

21. The evidence is insufficient to establish that Student's learning disability adversely affects her educational performance.
22. The evidence is insufficient to establish that Student needs special education or related services.
23. The evidence is insufficient to establish that AISD failed to assess Student timely. The evidence established that Student's mother prevented AISD from performing the requested FIE by continuously failing to provide AISD with written consent.
24. The evidence established that but for Ms. **. 's request for special education assessment, AISD had no reason to refer Student for such assessment.

IV. DISCUSSION

This is a "child-find" case. Student claims that the District should have assessed her for special education services when first requested in spring 2006. AISD counters that notwithstanding its belief that Student never manifested a need for special education referral, Student's mother prevented the assessment when she continuously failed to provide written consent despite multiple requests starting in September 2007.

The IDEIA mandates that school districts, which receive federal funding, must provide FAPE to its disabled students. 20 U.S.C. §1412(a)(1)(A) & 1414(d). This is accomplished by a) the district's compliance with the procedural requirements of IDEIA and b) its preparation and implementation of a program that is "reasonably calculated" to provide the disabled student with educational benefits. *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175, 206-207 (1982).

A disabled child is one whose disabilities fall under one or more of the eligibility categories and who, by reason thereof, needs special education and related services. 20 U.S.C. §1401(3)(A); 34 C.F.R. 300 §300.8(a). To be eligible for special education and related services, a student must establish that a) the disability has an adverse affect on educational performance, which b) requires specially designed instruction in the classroom, in a hospital, in the home and other settings.

A. Student Is Not A Disabled Student As Defined In IDEIA.

Student bases her claim for special education services upon her repeated failing of math TAKS (grades four, six, and seven), her poor writing and spelling skills, and attention problems. In this case, the evidence established that Student struggles with some math concepts and as of the date of the Due Process Hearing, Student has failed every math TAKS but for the ** grade. The December 4, 2008, FIE demonstrated a pattern of strengths and weakness that are characteristic of a learning disability in the areas of written expression and listening comprehension. The key question is, however,

does this learning disability adversely affect Student's education to the point of requiring specially designed instruction?

Student's concerns about the math TAKS are not insignificant when evaluating her eligibility for special education services.⁸ However, it is not to be used as the sole determiner of eligibility. See *Mesquite ISD*, TEA Docket No. 171-SE-0406 (July 2006).

The evidence established that Student is a popular cheerleader who has maintained good grades in the general education setting, with one course in advanced placement, and she has maintained regular attendance. Student is not a discipline problem, although she can have focusing and attention issues when she is not in a structured environment; Student is respected by her peers, the school administration, and her teachers. She clearly balances a very busy extracurricular schedule with academic performances in the average to slightly above average levels. Except for problems with math, Student has passed every TAKS assessment since the ** grade. This is not the record of a student with weaknesses/disabilities who, by reason of those weaknesses/disabilities, needs special education and related services.

B. AISD Did Not Commit Procedural Violations.

Student also alleges that AISD failed to timely assess her for special education services. Of first note is the fact that AISD did not recognize Student as a child in need of special education services at any of the times Ms. **. requested assessments. The initial assessment request in spring 2006 was stalled by Student's failing the hearing test administered two (2) times by the school nurse in February and March 2007. It was not until September 2007 that Student's doctor provided information related to her hearing. Once the District received this information, it activated the IMPACT Team to review Student's file history, observe her, and interview providers.

Even though the IMPACT Team saw no reason to refer Student for evaluation, it did so at Ms. **.s request in fall 2007. On at least six (6) separate occasions, AISD personnel contacted Ms. **. or her attorney or advocate requesting the execution of the Consent for Initial Evaluation. Every time Student's mother declined this initial, mandatory procedural step in the evaluation process.⁹ It took an order from the undersigned to garner Ms. **.s consent for the evaluation that finally occurred in December 2008. Per this FIE, Student does not qualify for special education and related services, an answer that could have been provided to Student's mother more than a year ago and an answer that would have assuaged her fears that Student had educational needs that could only be addressed in the special education setting. Any harm in the District's failure to seek an

⁸ Ultimately, unless Student passes TAKS, she will not graduate from school. However, as an eighth grader, Student clearly has time to hone her math skills.

⁹ Student's mother testified at the hearing that she did not receive correspondence from AISD in December 2007 and January 2008 related to the District's agreement to conduct the FIE and to fund an IEE. These letters were sent to Student's counsel who was representing her at that time.

override of the lack of parental consent in a timely manner was harmless in light of the fact that she does not qualify for special education and related services. *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003); 34 C.F.R. §300.300(a).

**V.
CONCLUSIONS OF LAW**

1. Student is not eligible for special education and related services because her disability does not have an adverse affect on educational performance. 20 U.S.C. §1401(3)(A); 34 C.F.R. §300.8(a).
2. AISD did not commit a procedural violation of IDEIA when it failed to evaluate Student for special education and related services upon Ms. **.s request in spring 2006 and fall 2007. Student's mother prevented a timely assessment when she failed to provide written consent. Any harm in the District's failure to identify and evaluate Student for special education services in a timely manner was harmless in light of the fact that she does not qualify for special education and related services. ; §300.300(a); *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003).

**VI.
ORDER**

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Petitioner is DENIED. All other relief not specifically stated herein is DENIED.

Finding that the public welfare requires the immediate effect of this Decision, the Special Education Hearing Officer makes it effective immediately.

SIGNED this 21st day of April 2009.

Deborah Heaton McElvaney
Special Education Hearing Officer

COPIES SENT TO:

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DOCKET NO. 273-SE-0708

STUDENT *b/n/f*
PARENT,

Petitioner,

V.

AUSTIN INDEPENDENT
SCHOOL DISTRICT,

Respondent.

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SYNOPSIS

ISSUE 1: Whether AISD failed to timely evaluate Student in all areas of concern.

HELD: ***For AISD.*** Although AISD did not see a need for Student's evaluation, upon the request of the parent AISD tried to obtain written parental consent for over a year. The parent's failure to provide such requested consent caused the delay in the evaluation. Further, there was no harm in this delay because Student did not qualify for special education and related services.

CIT.: 34 U.S.C. §300.300(a)

ISSUE 2: Whether Student qualifies for special education and related services.

HELD: ***For AISD.*** Student is learning disabled in the areas of written expression and listening comprehension. However, Student does not qualify for special education and related services because she manifests no educational need for such services. Student is a cheerleader and well liked by her peers and teachers. She is passing all of her courses, which includes AP language arts.

CIT.: 20 U.S.C. §1401(3)(A); 34 C.F.R. §300.8(a)