

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT,
bnf PARENT,
 Petitioner,**

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v.

DOCKET NO. 163-SE-0215

**GALVESTON INDEPENDENT
SCHOOL DISTRICT,
 Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, STUDENT bnf PARENT (“Petitioner” or “the Student”) brings this action against the Respondent Galveston Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq. (IDEA) and its implementing state and federal regulations.

Party Representatives

Petitioner was represented by Petitioner’s legal counsel Dorene Philpot of The Philpot Law Office, P.C. Respondent was represented by its legal counsel Amy Tucker with the law firm of Rogers, Morris & Grover, L.L.P.

Resolution Session and Mediation

The parties convened a Resolution Session on February 16, 2015 but it was not successful in reaching a settlement. The parties also attempted mediation on April 20, 2015 but it was not successful either.

Due Process Hearing

This case was continued once in order to allow the parties an opportunity to attempt informal settlement and mediation before proceeding with further litigation. The decision due date was extended three times at the school district’s request; first, to accommodate new hearing dates and mediation and twice more to provide the parties with an opportunity to submit written closing briefs with access to the hearing transcript and time for the hearing officer to review and consider the briefs in preparing the Decision.

The due process hearing was conducted on April 29-30 and May 1, 2015. Petitioner continued to be represented by Petitioner’s attorney Dorene Philpot, assisted at the hearing by her co-counsel Deborah Heaton McElvaney of the DHM Law Firm. Student’s mother, ***, and ***, ***, also attended the hearing. Respondent continued to be represented by its attorney Amy Tucker. In addition Dr. ***, Director of Special Education for the school district, attended the hearing as the school district’s party representative. The hearing was recorded and transcribed by a certified court reporter. The parties requested an opportunity to submit written closing arguments. Both parties timely filed their respective written closing arguments on or before June 19, 2015. The decision of the hearing officer was extended to July 10, 2015 at school district request.

Petitioner’s Issues

Student submitted a broad issue for resolution in this case: i.e., whether the school district failed to provide Student with a free, appropriate public education (FAPE) beginning in April 2009 up through the present within the meaning

of the IDEA. Sub-issues to support Student's FAPE claim include:

1. Whether the school district failed to comply with its "Child Find" obligations under the IDEA by failing to timely evaluate Student and to identify Student as a student with a disability eligible for special education services and by failing to maintain and then dismiss Student from special education without explanation or prior written notice;
2. Whether the school district failed to devise appropriate Individualized Educational Plans (IEPs) for Student during the relevant time period;
3. Whether the school district failed to comply with procedural rights of both Student and Student's parents – for example: by failing to give an explanation for Student's exit from special education, failing to conduct an exit evaluation first, failing to give Notice of Procedural Safeguards beginning in ***, failing to respond properly to parental requests for Student's educational records, and failing to provide prior written notice at all appropriate junctures; and,
4. Whether the school district violated Student and/or parental rights under other causes of exhaustion (brought for purposes of exhaustion) including, for example, claims arising under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family Educational Rights & Privacy Act, and the other laws and statutory references noted on pages 12-13 of Student's Complaint.

Petitioner's Requested Relief

Petitioner requests the following items of relief:

1. The school district identify Student as a student with a disability eligible for special education services under the IDEA and specifically as a student with an emotional disability, a learning disability, and, other health impairment;
2. The school district provide Student with a residential placement at school district expense, or in the alternative, reimburse Student's parents for the cost of a private placement;
3. The school district reimburse Student's parents for the costs of private services, the cost of mileage for private placement and private services, and reimbursement for the cost of the independent evaluation by Dr. ***;
4. Order the school district to comply with all procedural and substantive requirements of the IDEA;
5. Any other relief the hearing officer deems appropriate.

Student also puts the school district on notice that Student intends to seek attorney's fees, expert witness fees, and other litigation costs but acknowledges the hearing officer does not have the authority to award these forms of relief.

Respondent's Legal Position and Issues

The school district confirmed the following additional issues for resolution in this case:

1. Whether Student's claims under the IDEA are ripe for consideration or whether they should be dismissed; the school district contends Student withdrew on *** returning to the school district in *** – Student was not referred for a special education evaluation upon Student's return;

2. Whether Student's claims are limited by the one year statute of limitations rule applied in Texas;
3. Whether Student's claims arising under any law other than the IDEA should be dismissed as outside the hearing officer's jurisdiction; and,
4. Whether Student is entitled to the independent evaluation conducted by Dr. *** at school district expense.

Respondent requests dismissal of all of Petitioner's claims.

Findings of Fact

1. Student has a long history of behavioral issues beginning ***. Student had screaming fits from *** years of age when frustrated or angry and screamed until Student ***; Student *** when sent to Student's room; Student ***. (Petitioner's Exhibit 6, pp. 302-303)(referred to hereafter as "P. Ex. ___-___"). Student had trouble interacting appropriately with peers from an early age. (P. Ex. 1-2).
2. Student's ***. ***. Student's parents ***. *** Student lived with Student's *** Student's *** who have been actively involved in Student's care. (P. Ex. 1-2)(P. Ex. 6-301, 6-302)(P. Ex. 8-175).
3. Student has a lengthy history of psychiatric diagnoses and treatment since age ***. Student was dismissed from *** different *** programs for repeated physical aggression towards peers. Student continued aggressive behavior towards peers in *** school. (P. Ex. 8-175). Over the years Student displayed very odd behaviors including ***. (P. Ex. 6-166, 6-173).
4. Student attended ***. While in *** Student was evaluated for ADHD and prescribed *** to address difficulty acquiring basic skills. (P. Ex. 1-5). Student was an angry child who had difficulty expressing ***self. Student tended to be argumentative and noncompliant. Student had very few friends and was generally unable to respond to social overtures. However, Student displayed a talent for ***. By age *** Student's mood was more stable under a medication regime ***. (P. Ex. 1-2)(P. Ex. 8-175).
5. Student attended *** grade in the school district beginning in the *** school year. Student continued to exhibit difficulty interacting appropriately with peers. Student repeated *** grade due to difficulties in reading and behavior. In *** grade Student continued to struggle with phonics and exhibited anger issues. Student's psychiatrist recommended Student be tested for dyslexia. (P. Ex. 1-5).
6. In August *** Student was reportedly touching other students and talking when Student should be quiet. By September *** Student was having difficulty staying organized and following teacher directions. Student began copying answers from classmates. Student required frequent reinforcement along with praise and support for the development of coping skills. At that point Student was referred for a special education evaluation. (P. Ex. 1-5).
7. The school district conducted a Full Individual Evaluation (FIE) in September *** and determined Student was eligible for special education services as a student with a learning disability. (Joint Exhibit 1, p. 1)(referred to hereafter as "J. Ex. ___-___")(Respondent's Exhibit 18, p. 23)(referred to hereafter as "R. Ex. ___-___"). The FIE included a speech/language assessment and a psychological. Student did not qualify for speech/language services but met criteria as a student with a pervasive developmental disorder (PDD) and Asperger's. (J. Ex. 1-1)(R. Ex. 18-3, 18-12).
8. An Admission, Review & Dismissal Committee (ARD) met on *** and identified Student as eligible for special education services as a student with autism and a learning disability. (J. Ex. 1- 1) (P. Ex. 1-5) (R. Ex. 18). A set of accommodations and a behavior management plan were components of Student's IEP. (P. Ex. 1-5, 1-6).

9. A Notice of Procedural Safeguards and explanation of parental rights was provided to Student's mother at the *** ARD and at subsequent annual ARD meetings in October ***, October ***, October ***, March ***, May ***, and June ***. (R. Ex. 11-15, 11-16)(R. Ex. 12-28, 12-47)(R. Ex. 13-42, 13-47, 13-48)(R. Ex. 14-57, 14-60, 14-63, 14-64)(R. Ex. 15-34, 15-36, 15-38, 15-39, 15-42)(R. Ex. 16-50, 16-54, 16-55)(R. Ex. 17-43, 17-45, 17-49)(R. Ex. 18-73, 18-75)(Transcript Vol. II, pp. 485-486)(referred to hereafter as "Tr. Vol. __ p. __"). Student's mother *** participated in every ARD during this time period. (R. Ex. 11 to R. Ex. 18). Student's *** often communicated with the school district when Student's mother – *** – was working. (Tr. Vol. II, pp. 419-420).
10. The November *** ARD designed an IEP to address problems with reading and peer interactions. A behavior intervention plan (BIP) was developed to target behaviors such as: taking things without permission, decreasing self-injurious behaviors, and increasing time on task. Student was scheduled to receive 30 minutes of resource language arts four days/week – the remainder of instruction provided in the regular education classroom. A set of accommodations was also included in the IEP. (P. Ex. 1-5).
11. Student's eligibility for special education services continued in *** grade year during the *** school year and in *** grade during the *** school year. (J. Ex. 1, p. 1)(R. Ex. 17). Student began exhibiting ***. At the time Student was ***. (P. Ex. 8-175)(Tr. Vol. II. p. 444).
12. A central auditory processing evaluation was conducted at age ***. The auditory processing evaluation suggested it may be difficult for Student to process information when presented too rapidly. Electrophysiological testing showed normal development of the central auditory nervous system but other findings suggested a delayed and incomplete neuro-maturation at the midbrain and auditory cortex. (P. Ex. 1-4, 1-5).
13. In *** grade, a review of existing educational data (REED) was conducted at an ARD meeting on ***. An updated FIE, including a psychological, was completed on ***. The psychological concluded Student no longer met the eligibility criteria as a student with autism but continued to meet eligibility criteria for special education as a student with a learning disability in basic reading, reading comprehension, written expression, math calculation and math reasoning. (J. Ex. 1-1)(R. Ex. 14-2)(R. Ex. 15).
14. The psychological also concluded Student now met criteria as a student with an emotional disability based on: (i) Student's inability to build or maintain satisfactory interpersonal relationships with peers and teachers and (ii) inappropriate types of behaviors or feelings under normal circumstances. (J. Ex. 1-1)(R. Ex. 14-16).
15. An ARD met on ***, reviewed the assessment data, and determined Student no longer met eligibility for special education as a student with autism, added eligibility as a student with an emotional disturbance, and confirmed continued eligibility as a student with a learning disability. (J. Ex. 1, p. 1)(R. Ex. 14, pp 13-14).
16. On *** Student engaged ***. That same month Student ***. (J. Ex. 1-1)(P. Ex. 6-303)(R. Ex. 13-42)(R. Ex. 21-93). A manifestation determination ARD (MDR) was conducted on ***. (R. Ex. 12)(R. Ex. 13-42). Student's family notified the school district they were beginning to search for a residential placement due to ***. (R. Ex. 21-93)(R. Ex. 13-42).
17. A disciplinary placement was recommended by the ARD with Student's return to the regular campus contingent upon mastering certain criteria established at the disciplinary placement. The ARD determined Student would benefit from the disciplinary placement because it provided more individual and small group instruction for areas of identified weakness and to improve Student's social skills. (R. Ex. 13-42).
18. Another ARD met at the end of *** grade on ***. Attorneys for both parties were in attendance. (J. Ex. 1-2) (P. Ex. 39)(R. Ex. 12-1, 12-27 to 12-28). Another ARD was conducted on ***. (J. Ex. 1-2)(R. Ex. 11-1).

Student was referred to *** for an evaluation in the *** by both parent and the school district. (P. Ex. 1-3). The *** evaluation included a home visit interview, psychological testing, a review of school records, and medical assessments. (P. Ex. 1-3, 1-9).

19. *** issued a cytogenetics report on ***. (P. Ex. 8-778). Genetic testing revealed the presence of ***. (P. Ex. 1-3) (Tr. Vol. I, pp. 191-192). *** been associated with a variety of cognitive and behavioral problems. Both brain architecture and function may be affected. (P. Ex. 1-3).
20. Individuals with *** most commonly exhibit processing deficits that affect speech, language and reading development. Many individuals with *** also have difficulty with visual working memory, attention, and concentration, and -- for individuals with more severe manifestations of the *** -- deficits with mental flexibility and inhibition. Those deficits tend to be associated with thought problems, aggression, and rule breaking behavior. (P. Ex. 12)(Tr. Vol. I, p. 192). *** was identified as Student's primary diagnosis – i.e., a mental disorder due to a general medical condition. (P. Ex. 6-250, 6-253)(P. Ex. 8-154 to 8-155).
21. Student exhibits the manifestations of ***. (Tr. Vol. I, pp. 192-193). Student's *** contributes significantly to Student's behavioral presentations – the *** is the root of Student's difficulties. (Tr. Vol. I, p. 193). The patterns of behaviors in a person with *** may be similar to those observed in persons with autism but there are differences in the underlying processing deficits. (P. Ex. 1-3). Student also has a history of *** also associated with ***. (P. Ex. 8-26, 8-733)(Tr. Vol. II, pp. 445-446).
22. *** prepared a psychological report on ***. (J. Ex. 1-2). (P. Ex. 23)(P. Ex. 6-301). The report referenced Student's ***. Student continued to engage in maladaptive behaviors such as ***. Student did not appear to understand the significance of Student's behavior. (P. Ex. 6-303). Student was diagnosed with ADHD and depressive disorder. A behavior plan was put in place for the following school year to address *** and lack of boundaries respecting the personal space of others. (P. Ex. 1-6).
23. After Student *** the family withdrew Student from the school district on ***. (J. Ex. 1-1) (P. Ex. 8-175) (R. Ex. 9) (Tr. Vol II, p. 434). Student continued to receive counseling services on a regular basis for approximately one year from a school district counselor. (J. Ex. 1-2) (R. Ex. 21- 77) (Tr. Vol. II, pp. 424-425). Student began ***. (J. Ex. 1-2). Student's *** was primarily responsible for Student's instruction. (P. Ex. 1-7) (Tr. Vol. II, p. 406).
24. An occupational therapy assessment was conducted by *** and a report issued on ***. (J. Ex. 1-2)(P. Ex. 1-4)(P. Ex. 24). Student presented with flat affect but was cooperative during the assessment. Gross motor skills were within normal limits. Student reported it was difficult to concentrate when sitting for a long time in class and Student tended to be distracted by noise in the learning environment. (P. Ex. 1-4).
25. At age *** Student spent approximately ***. Student was *** during this time. (J. Ex. 1- 2)(R. Ex. 21-64, 12-68). ***. (P. Ex. 8-175)(R. Ex. 21-64, 12-66).
26. Upon Student's *** Student's behavior and relationships with family members improved. Student was feeling positive about Student's life. There were less angry outbursts and Student did not engage in stealing, running away, ***, or physical aggression. Despite *** Student began volunteering at ***-- an emotionally rewarding experience for Student. ***. Student speaks of becoming ***. (P. Ex. 6-218, 6-266, 6-267)(R. Ex. 21-54, 21-57, 21-60, 21-61, 21-63)(Tr. Vol. III, p. 842).
27. On *** Student's *** attended the school district's private school consultation meeting. (R. Ex. 20)(Tr. Vol. II, p. 422)(Tr. Vol. III, pp. 859-860). Student's *** met the Special Education Director at the meeting. Special education referral information was provided to all attendees at the meeting. Student's *** was provided with information on how to initiate a request for a special education referral and evaluation. The family did not seek an evaluation at that time. (R. Ex. 20-2)(Tr. Vol. II, pp. 487-489, 661)(Tr. Vol. III, pp. 860-861).

28. With the exception of angry aggressive behavior during *** Student seemed to be doing fairly well at home, helping around the house, ***, making progress in Student's *** program, and *** (R. Ex. 21-40, 21-43, 21-44, 21-47). At age *** in December *** the family learned Student ***. ***. (P. Ex. 8-295)(Tr. Vol. II, pp. 455-456). ***. (R. Ex. 21-38)(Tr. Vol. III, p. 906).
29. By February *** Student began to exhibit defiant behavior towards Student's mother and procrastinated in completing lessons in Student's *** program. (R. Ex. 21-33, 21-34). At that point the family decided Student needed more socialization and selected the school district's *** as a suitable educational placement. (Tr. Vol. II, p. 526). ***. (Tr. Vol. II, p. 740). *** differs from the school district's *** school campus. Instruction is provided in a much smaller setting -- which is beneficial to Student. (Tr. Vol. II, pp. 603, 691).
30. The total student population at ***-- at the ***. (Tr. Vol. II, p. 691). The smaller setting allows teachers to provide students more one-on-one attention with the flexibility to pull students for tutoring or individualized instruction. The teachers at *** are closer to the administration so it is easier to get schedules changed. Teachers at *** are responsible for a much smaller number of students than at ***. (Tr. Vol. II, pp. 604-606).
31. Student submitted an application to ***. (P. Ex. 16). Prior to enrollment at *** Student was receiving individual counseling and medication management services from ***. Student received services from *** from ***. (P. Ex. 1-9)(P. Ex. 6-267 to 6-297). Student continued *** at this time and under close family supervision. Student was being punished for ***. Student's ***. These steps were taken in response to Student's on-going acting out ***. (P. Ex. 8-126).
32. The *** application indicated Student previously received special education and dyslexia services from the school district. (J. Ex. 1- 2)(R. Ex. 7). Student ultimately enrolled at *** in August *** for the *** school year. (J. Ex. 1-2) (R. Ex. 7, p. 2)(Tr. Vol. III, p. 806). Again, upon enrollment, the family informed the school district Student received special education services from the school district in the past and was never dismissed from special education. (Tr. Vol. II, p. 489)(Tr. Vol III, pp. 809 877). However, the school district's database did not identify Student as a special education student. (Tr. Vol. III, p. 812).
33. The school district informed the family there were no records of Student's special education status or participation in any special education program. (Tr. Vol. II, p. 430). Student's records cannot be located at the school district's off-site storage facility ***. Student's records were either mistakenly destroyed or lost. (Tr. Vol. I, pp. 73-74)(Tr. Vol. II, p. 430)(Tr. Vol III, pp. 886-888). School district staff concluded Student was dismissed from special education after reviewing the records on hand. (R. Ex. 27-4)(Tr. Vol. III, pp. 875-876). However, there were no records available to establish an exit ARD from special education to support this conclusion. (Tr. Vol. III, pp. 876-877).
34. In September, ***. With parental agreement Student was suspended for *** days and placed in the school district's disciplinary alternative educational placement (DAEP) from ***. (J. Ex. 1-1)(P. Ex. 1-7)(P. Ex. 6-97)(P. Ex. 9-28)(P. Ex. 13-16 to 13-19)(R. Ex. 8).
35. Student was then referred for services under 504 in November ***. A 504 Committee met on ***. (J. Ex. 1-2)(R. Ex. 2). The 504 Committee relied on a select set of prior evaluations to confirm student's eligibility under 504. (R. Ex. 2-32, 2-33, 2-36, 2-54, 2-56). The 504 Committee reviewed the *** psychological, audiological, and OT evaluation. (R. Ex. 2-7, 2-32 to 2-55). A written statement from Student's treating psychiatrist confirmed diagnoses of ***, PTSD, ADHD and depressive disorders. (R. Ex.2-32). Teachers expressed some concerns about Student to the 504 Committee. (P. Ex. 30-22 to 3-23)(P. Ex. 32-26, 32-37- to 32-37). At the time of the 504 referral Student was failing ***. (P. Ex. 30-10).
36. The 504 Committee determined Student was eligible for accommodations under 504 on the basis of PTSD, ADHD, and obsessive compulsive disorder (OCD). (J. Ex. 1-3) (P. Ex. 29-1)(R. Ex. 2-3) (Tr. Vol. II, p. 430).

Student's mother consented to 504 services on ***. (J. Ex. 1-3). The 504 plan was provided to school district staff in mid-December ***. (R. Ex. 30-1). Although Student's teachers were aware of the plan they were unaware of the nature or extent of Student's disabilities and received no training in that regard. (Tr. Vol. II, pp. 629, 646, 694, 747). The set of 504 accommodations included: additional time to complete assignments, reminders to stay on task, "chunking" material, a quiet place to work, and, small group testing. (R. Ex. 2-3). No behavior plan was designed or implemented as a result of the 504 meeting. (J. Ex. 1-3).

37. Student received counseling services from *** in the *** grades while attending ***. (P. Ex. 6-11 to 6-125). *** is located at ***. (J. Ex. 1- 2)(P. Ex. 26). However, *** is not a school district program – instead, *** to facilitate services to *** students. *** operates independently from the school district. (Tr. Vol. I, p. 87). Student's mother and *** were under the mistaken impression that the school district knew Student was receiving counseling and medical services from ***. (Tr. Vol. II, p. 418).
38. By the end of the *** fall semester Student completed five classes and earned the following grades: *** (R. Ex. 4-4). By the end of the *** spring semester Student completed seven classes and earned the following grades: ***. (R. Ex. 4-3)(Tr. Vol. II, p. 648).
39. By the end of *** Student ***. (R. Ex. 4-1, 4-2)(Tr. Vol. II, p. 345). ***. (R. Ex. 4-2). Student was academically successful Student's ***. (R. Ex. 4-3)(Tr. Vol. III, p. 853).
40. In *** grade in November *** conducted a psychosocial evaluation at parental request over concerns about Student's lack of focus and attention span. Dr. *** conducted the assessment. (J. Ex. 1- 2)(P. Ex. 6)(P. Ex. 26)(P. Ex. 6-258). Dr. *** confirmed Student's ADHD and recommended "pharmacological intervention with a behavioral modification approach for both school and home environment." He also recommended supportive psychotherapy to "help school performance." (P. Ex. 6-261, 6-262). Dr. *** assessed Student's reading and math skills as well below grade level. (P. Ex. 26).
41. Student also met with Dr. *** a psychiatrist at the *** following Dr. ***'s assessment. Student's mother and *** continued to express concerns over *** and subsequent disciplinary placement in the fall of ***. (P. Ex. 6-80). They reported Student's long history of difficult behaviors, including bizarre, oppositional, angry, and antisocial behaviors. Problems with ***, failure to empathize with others, and stealing were also reported. (P. Ex. 6-80, 6-81).
42. Dr. *** diagnosed Student with Oppositional Defiant Disorder; ***; Mood Disorder NOS; Attention Deficit/Hyperactivity Disorder - Impulsive Type; Posttraumatic Stress Disorder; Learning Disorders NOS; Mathematics Disorders; Disorder of Written Expression; Child or Adolescent Antisocial Behavior; and *** (***) (P. Ex. 6-82).
43. Student was prescribed a number of medications. Student also began working with ***. Student continued to receive individual counseling from the *** to address organization and *** and participated in a weekly ***'s group to address self-esteem issues. A program to help Student's mother and *** set expectations and develop the use of consistent and meaningful consequences and rewards for Student's behavior was also recommended. (P. Ex. 6-12)(P. Ex. 6-82).
44. Dr. *** also referred Student to *** for services. (P. Ex. 7-11). The reason for the referral were continued family concerns about Student's ***. (P. Ex. 7-19 to 7-38). An initial action plan was designed with the following goals: continue to establish appropriate boundaries with peers and eliminate inappropriate ***. (P. Ex. 7-38). *** began providing family and individual counseling on *** and continued to provide those services while this litigation was pending. (P. Ex. 7- 39 to 7-114)(Tr. Vol. II, pp. 437-438).
45. On *** Dr. *** recommended long term residential treatment – in her opinion Student was not progressing

to independence and the family was in difficulty despite medication and a series of therapists and therapies. (P. Ex. 6-168), 6-166, 6-173, 6-191, 6-200). An application for residential treatment was submitted to *** - the family's medical insurance provider on ***. (P. Ex. 6-165)(P. Ex. 8-84).

46. At the time of the *** application Student was living with Student's mother *** and receiving extensive support from Student's ***. Student had no social life due to the constant, 24-hour supervision by Student's family. Despite these efforts the family felt unable to provide Student with the emotional support and physical supervision Student needed to stay safe. (P. Ex. 6-167, 6-173)(Tr. Vol. II, p. 456).
47. Although Student's relationship with Student's mother and *** is "very good" there is also conflict over setting boundaries, rules, safety issues, and Student's ***. Student's *** provides only limited support and has a poor understanding of Student's functional level. (P. Ex. 6-167, 6-173). The insurance company denied the application for residential treatment because Student had not attempted suicide or expressed suicidal ideation. (P. Ex. 8-85, 8-105, 8-126, 8-133) (Tr. Vol. II, pp. 428, 449-450).
48. Another 504 Plan meeting was conducted on ***. (J. Ex. 1-3)(R. Ex. 1). Extended time and small group testing accommodations were added to the 504 plan. (R. Ex. 1-2, 1-3). Other accommodations included: extended time and small group for testing, preferential seating, extended time for completing assignments, reminders to stay on task, presentation of information in small chunks, and small group setting for instruction. (P. Ex. 1-7)(Tr. Vol. II, pp. 643, 683). On *** Student was promoted to *** grade with an overall GPA of *** (J. Ex. 1-3)(R. Ex. 3-1). Student's *** completed the re-enrollment form for *** the next day. (R. Ex. 7-3).
49. In July *** Student was seen for *** appointment. Student's *** reported Student recently *** individuals Student does not know well. At the time Student was taking several psychiatric medications and getting weekly therapy from ***. (P. Ex. 8-83).
50. Student began *** grade at *** in August ***. Much of Student's instruction was provided via a self-paced computer-based program. Student's classroom is an "accelerated instructional model" where Student is expected to work independently through lessons at Student's own pace with assistance from teaching staff as needed. Student attended an English class after Student had difficulty *** on the computer program and responded well to the 504 accommodations in English class. (P. Ex. 1-11) (Tr. Vol. II, pp. 660, 678, 722, 740).
51. Student requires a good deal of one-on-one attention from the teachers and works slowly. (Tr. Vol. II, pp. 598-599, 600, 641, 643-645, 681)(Tr. Vol. II, pp. 784, 879). Student has difficulty retaining information and needs re-teaching. (Tr. Vol. II, pp. 620-621, 641-642, 700, 722). Student needs frequent reminders to stay on task and can become easily distracted in class. (Tr. Vol. III, p. 785). Student is more successful with direct instruction than working independently in the self-directed computer lab. (Tr. Vol. III, pp. 741, 792).
52. By *** grade it was clear Student was not responding well to the level of autonomy and self-direction required for success in the *** program. Student's productivity dropped. (P. Ex. 1-18)(Tr. Vol. II, pp. 745-747). Student lacked initiative and appeared apathetic. (Tr. Vol. III, pp. 785-786). Student was struggling. (Tr. Vol. III, p. 853). In *** grade Student needed more adult supervision and direct instruction to meet Student's needs. (P. Ex. 1-18). Student did not spend enough time working on Student's lessons. (P. Ex. 45).
53. ***. (J. Ex. 1-3)(P. Ex. 6-21)(P. Ex. 6-129)(R. Ex. 23-8).
54. The family *** Student in response to these behaviors ***. (J. Ex. 1-3)(P. Ex. 6-24, 6-129)(P. Ex. 12-44)(R. Ex. 23-7, 23-8)(Tr. Vol. II, p. 472). Student was diagnosed with a mood disorder, ADHD, trauma: ***. (P. Ex. 6-129). Student's medications were changed ***. After *** Student reported feeling drowsy and had

difficulty doing schoolwork. (R. Ex. 24-4, 24-29, 24-30)(Tr. Vol. II, pp. 698-699). A meeting with Dr. ***, the family, and a counselor was hosted by the *** principal although the principal did not take an active part in the discussions. (J. Ex. 1- 3)(R. Ex. 23-8)(Tr. Vol. II., pp. 310, 312). Information about Student's *** were shared with the school. (P. Ex. 28-1).

55. Student's teachers view Student as above average in following both oral and written directions, working cooperatively with others, and superior with regard to interacting with staff and in cooperation and compliance with teacher requests. (R. Ex. 1-9 to 1-12). Student is very respectful, listens when spoken to, and responds politely. (Tr. Vol. I. pp. 295-296)(Tr. Vol. II, pp. 596-597, 599-600, 643, 684, 724)(Tr. Vol. II, p. 785). Student was ***. Student is not viewed by school staff as a disciplinary problem. (Tr. Vol. I, p. 343)(Tr. Vol. II, pp. 596, 641, 681, 719).
56. However, Student needs adult supervision to assist Student in keeping on task and moving forward. Student is not capable of working on Student's own and needs frequent one on one teacher attention to make academic progress. (Tr. Vol. II, pp. 724, 732). Student requires a significant amount of one on one instruction and support from teachers. (P. Ex. 32-35)(Tr. Vol. II, pp. 724-725, 738-739, 741).
57. Despite frequent reminders to log in and begin work Student continued to demonstrate poor attention and concentration, excessively low/high activity level, difficulty following directions, and difficulty staying on task. (P. Ex. 10)(P. Ex. 32-35). The school district's program at *** during the past school year has not been particularly successful academically for Student. (Tr. Vol. I, p. 145).
58. By the end of the *** grade in January *** Student earned only *** class and a language arts class. Students are expected to earn ***. (J. Ex. 1- 3)(R. Ex. 3-1, 3-3)(Tr. Vol. II, pp. 609, 727-728). Student was working at an extremely slow pace. (Tr. Vol. II, p. 686). Student's English teacher was very concerned about Student's lack of progress. (Tr. Vol. III, pp. 786-787).
59. Student's performance on state-mandated assessments has routinely been below the established expectations for Student's grade placement in English, reading and writing. Student did pass *** in the fall ***. However, on the *** Student fell in the *** percentile *** percentile for math, and at the *** percentile for writing. (P. Ex. 1-7).
60. The school district requested a conference with the family and also a 504 meeting to review Student's progress. (P. Ex. 33-1)(R. Ex. 3-1). The family rejected the offer to meet in a conference or to attend the 504 meeting and notified the school district they were now represented by legal counsel and planned to file a request for a due process hearing. (Tr. Vol. II., p. 342). A notice of a 504 meeting was issued on *** setting the meeting for ***. (J. Ex. 1-3)(P. Ex. 33-1). Student filed the request for due process hearing on February 9, 2015. (Petitioner's Request for Hearing).
61. When Student ***. ***." (P. Ex. 2). *** Student eloped from school ***. Student returned to school ***. (J. Ex. 1-3)(P. Ex. 8-385)(P. Ex. 18-36 to 18-37)(R. Ex. 21-4)(Tr. Vol. I, p. 303)(Tr. Vol. II, pp. 303-305).
62. As an outcome of the Resolution Session in this case Student's mother consented to a Full Individual Evaluation (FIE) and signed the requisite forms on ***. (P. Ex. 17-53). The school district completed the FIE in April ***. (R. Ex. 27). The school district's evaluation did not include a *** assessment or a formal AT evaluation. The school district's evaluation did not assess Student's OT/sensory needs, or needs in the following: in-home training, parent training, ***, or speech/pragmatic language. (R. Ex. 27)(Tr. Vol. III, pp. 869, 869, 917). At the time of the due process hearing the school district was in the process of completing a ***. (Tr. Vol. III, pp. 866-867).
63. The school district's evaluation concluded Student met eligibility criteria for special education services as a

student with an emotional disturbance based on Student's intermittent demonstrations of maladaptive behaviors that affected Student's ability to consistently access the educational setting. Student expressed feelings of worthlessness and having little or no control over Student's environment or ability to make good rather than "bad" decisions. (R. Ex. 27-31)(Tr. Vol. III, p. 903).

64. The FIE characterized Student with very poor self esteem and a limited belief that Student has the power to demonstrate enough appropriate behavior to be seen as anything other than "bad." (R. Ex. 27-34)(Tr. Vol. III, p. 903). The school district also concluded Student met eligibility criteria as a student with a learning disability in the areas of basic reading, math calculation, and written expression. (R. Ex. 27-33). The FIE identified processing speed as very slow and in the extremely low range. (Tr. Vol. III, p. 846).
65. The FIE included a list of recommendations capable of being implemented in the regular classroom with supplemental special education support. (R. Ex. 27-33 to 27-35)(Tr. Vol. III, pp. 852, 907-908). Student needs pull out and/or individualized instructional assistance. (Tr. Vol. III, p. 852). Student also needs counseling, social skills training, involvement in age appropriate social activities, and *** development. (R. Ex. 27-32, 27-35)(Tr. Vol. III, p. 904).
66. Student's ***. (Tr. Vol. III, pp. 916-917). Student has unresolved anger issues towards Student's ***. (Tr. Vol. III, p. 906). Student does not have any real friends although Student tries hard to establish friendships *** that are inappropriate and ineffective. (Tr. Vol. II, pp. 454-455). The function of this behavior is associated with Student's desire to escape feelings of loneliness and social isolation. (R. Ex. 27-32).
67. While this litigation was pending Student's family secured an independent educational evaluation (IEE) from Dr. ***, a neuropsychologist and school psychologist. Dr. *** prepared a report of the IEE on ***. (P. Ex. 1)(Tr. Vol. I, p. 189). The purpose of the IEE was to determine Student's cognitive, academic, and behavioral status and to generate recommendations for Student's educational program. (Tr. Vol. I, p. 189)(P. Ex. 1-1). The school district did not agree to fund the IEE. (Tr. Vol. III, p. 841). Student's medical providers, therapist, and Dr. *** all recommend a residential placement. (P. Ex. 1-18)(P. Ex. 6-34, 6-35)(P. Ex. 6-200)(P. Ex. 7-102).
68. The parties have different views about Student's ability to live independently. The school district sees Student with better developed adaptive skills, better ability for self-care, socialization, and self-advocacy skills than Student's family does. (Tr. Vol. III, pp. 901-902, 911). Student feels Student is a disappointment to Student's family. (Tr. Vol. III, pp. 912-913). Teachers report no significant behavioral or school performance deficits while Student's mother reports profound dysfunction and maladaptive behavior. (R. Ex. 27-27).
69. *** (***) is a residential and treatment center and day school serving children with behavior problems. It is located in ***. (P. Ex. 3-8, 3-38). *** (P. Ex. 4-1, 4-3)(Tr. Vol. I, p. 359). Student's family completed the admission process for *** and Student has been accepted for placement there. (P. Ex. 3-2, 3-44 to 3-87)(Tr. Vol. I, pp. 369-370).
70. *** maintains a school campus in addition to its residential component. Students transition back home once they make sufficient progress under the *** treatment program. (P. Ex. 3-9). The length of stay at *** varies depending on the specific needs of the student. *** offers short-term intensive treatment that can last a couple of months or longer-term that can last for a year or two. (P. Ex. 3-9). *** offers students opportunities to work with ***. (P. 3-3, 3-4, 3-5, 3-14, 3-15).
71. The residentially-based services include intensive, highly structured 24-hour supervision, behavioral therapy, educational, ***, social and recreational training, parent training, related services (such as psychiatric, psychological and speech therapy services) and, transition services to ensure a successful transition from residential placement back to the home and community -- including parent and in-home training, classroom

support, and teacher training. (P. Ex. 3-33). *** has counselors with experience providing counseling services to students ***. (Tr. Vol. I., p. 384).

72. The environment at *** is highly structured. The behavioral programming is preventative and proactive in nature. The goal at *** is to create interventions and environments that prevent problem behaviors from occurring rather than reliance on reactive punishment-based models. (P. Ex. 3-20). Higher functioning students are taught to take responsibility for their behaviors and ultimately in control of their own destiny instead of blaming others or operating from a helpless, hopeless, victim-mentality. (P. Ex. 3-20). Many students at *** come with a past history of failure in school leading to a belief that misbehaving is the only thing they can do well. (P. Ex. 3-36).

Discussion

Statute of Limitations Issue

A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a free, appropriate public education (FAPE) to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. *20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2)*.

The two year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. In that case the state timelines apply. *20 U.S.C. §1415 (f) (3) (C); 34 C.F.R. § 300.507 (a) (2)*. Texas has an explicit statute of limitations rule. In Texas a parent must file a request for a due process hearing within one year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request. *19 Tex. Admin. Code § 89.1151 (c)*. Petitioner filed Petitioner's request for a due process hearing on February 9, 2015. Petitioner alleged claims arising as far back as April 2009.

Exceptions to the One Year Statute of Limitations Rule

The one year statute of limitations rule will not apply in Texas if the parent was prevented from requesting a due process hearing due to either:

- Specific misrepresentations by the school district that it had resolved the problem that forms the basis of the due process hearing request; or
- The school district withheld information from the parent that it was required to provide under IDEA. *20 U.S.C. § 1415 (f) (3) (D); 34 C.F.R. § 300.511 (f) (1) (2)*

Accrual of Petitioner's Claims

Petitioner's cause of action accrued when Student's parent knew or had reason to know of the injury that forms the basis of the hearing request. *See, Doe v. Westerville City Sch. Dist., 50 IDELR, 132, pp 5-6 (D.C. Ohio 2008) (holding cause of action for failure to provide FAPE when student first diagnosed with a learning disability)*.

In making the determination as to whether the exceptions should apply in this case, I must calculate the limitations period as one year from the date Student's parent knew or should have known of the complained of actions of the school districts and *not* one year from the date Student's parent learned from their attorney that school district actions were wrong. *Bell v. Bd. of Educ. Albuquerque Pub. Sch., 50 IDELER 285, pp 8-9, 15-15 (D.C. N.M. 2008)(holding IDEA claims that student was misidentified as MR rather than LD and thus denied FAPE were limited to two year SOL period)*.

Misrepresentation Exception

Neither the IDEA nor its related regulations clarify the scope of what constitutes a “misrepresentation” under the first exception. The United States Department of Education left it to hearing officers to decide on a case by case basis the factors that establish whether a parent knew or should have known about the action that is the basis of the hearing request. *71 Fed. Reg. 46540, 46706 (Aug. 14, 2006)*. Case law provides some guidance in making that determination.

The alleged misrepresentation must be intentional or flagrant. Petitioner must establish not that the school district’s provision of FAPE was objectively inappropriate but instead that the school district subjectively determined Student was not receiving FAPE and intentionally and knowingly misrepresented that fact to Student’s family. *D.K. v. Abington Sch. Dist., 2012 U.S. App. LEXIS 21060 (3d Cir. 2012)(student could not show misrepresentations caused failure to request a hearing or file a complaint on time – teachers did not intentionally or knowingly mislead parents about extent of academic and behavioral issues or efficacy of solutions and programs attempted)*. See, also, *Evan H. v. Unionville-Chadds Ford Sch. Dist., 2008 U.S. Dist. LEXIS 91442, pp. 4-5 (D.C. Pa. 2008)*.

Furthermore, not just any misrepresentation will trigger the exception but instead the misrepresentation must be such that it prevents the parent from requesting a due process hearing regarding claims that would otherwise be time-barred. *C.H. v. Northwest Ind. Sch. Dist., 815 F. Supp 2d 977, 984 (E.D. Tex. 2011)*; *G.I. v. Lewisville Ind. Sch. Dist., 2013 U.S. Dist. LEXIS 120156 (E.D. Tex. 2013)(Magistrate’s Report and Recommendation)*.

Petitioner contends Petitioner’s family repeatedly expressed concerns about Petitioner’s educational progress and behavior over the years. Petitioner contends the family was not advised by school district personnel they could pursue claims in a due process hearing and that the school district failed to provide Petitioner with an appropriate program and placement. However, to read the term “misrepresentation” to include actions by a school district anytime it fails to remedy an educational problem encountered by a student is too broad. Such an interpretation would “swallow the rule established by the limitation period.” *Evan H. v. Unionville-Chadds Ford Sch. Dist. 2008 U.S. Dist. LEXIS 91442 at p. 5, n. 3*.

This reasoning was applied in a case where the parent alleged the school district repeatedly misrepresented that the student was doing well and making significant progress in all areas including reading. The parents alleged the school district misled them by withholding information about the student’s standardized test scores. *Sch. Dist. of Philadelphia v. Deborah A., 2009 U.S. Dist. LEXIS 24505, pp. 3-4(D.C. Pa. 2009)*. The federal court found that at most the parent merely demonstrated the student’s IEPs were deficient. The court reasoned the exception would swallow the rule if all that was required was merely a showing that IEP’s were inadequate to meet a student’s needs. In hindsight, parents may consider the school district’s assessment of a student’s progress to be wrong, but that does not rise to a specific misrepresentation for statute of limitation purposes. *Id.*

I conclude that the record on file in this case does not support a finding that the school district’s actions beginning in April *** rose to the level of flagrant, intentional misrepresentation required by the first exception to the statute of limitations rule. In order to apply this exception Petitioner had to establish that the school district knew that it was not providing Student with FAPE and intentionally misled Student’s family into believing otherwise. I find insufficient support for such a conclusion in the record. *D.K. v. Abington Sch. Dist., supra*; See, *Evan H. v. Unionville Chadds Ford Sch. Dist., 2008 U.S. Dist. LEXIS 91441 at p. 5 (D.C. Pa. 2008)*.

Withholding Information/Prior Notice

The second exception to the application of the one year statute of limitations rule requires a determination that Student’s family was prevented from requesting a due process hearing because the school district withheld information from the family it was otherwise obligated to provide under prior notice provisions of the IDEA. *20 U.S.C. § 1415 (f)(3) (D)*.

Petitioner contends the school district did not fulfill IDEA notice obligations when it failed to provide or explain the procedural rights to Student's parent, failed to provide prior written notice when Student was "dismissed" from special education, when the school district failed to conduct an evaluation during the ***, and, when it ceased providing student with counseling as a related service ***.

The information that a school district must provide to parents under IDEA for statute of limitations purposes is specific and includes:

- Notice of evaluation procedures the school district proposes to use;
- Notice that the school district has determined no further evaluation is necessary and that parents may then seek an IEE;
- Notice of procedural safeguards; and,
- Prior notice any time the school district proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE or refuses to change the identification, evaluation, or educational placement of the child or the provision of FAPE.

20 U.S.C. § 1415 (b) (6) (A) (B) (c); 34 C.F.R. § 300.511 (f).

When a school district delivers a copy of IDEA procedural safeguards to parents the statute of limitations period for IDEA violations begins regardless of whether parents later examine the text to acquire actual knowledge of procedural rights – the simple act of delivering the procedural safeguards notice suffices to impute constructive knowledge of parental rights under IDEA. *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (D.C. Tex. 2008), *aff'd in part and vacated on o.g.* 591 F. 3d 417 (5th Cir. 2009); *C.P. v. Krum Ind. Sch. Dist.*, 2014 U.S. Dist. LEXIS 131098 (E.D. Tex. 2014)(*one year SOL applied to limit IDEA claims where school district gave parents copies of procedural safeguards on numerous occasions*). The record on file in this case supports the conclusion that Student's parent received the requisite notice of procedural safeguards.

While Student's family may have expressed concerns about Student's educational progress and behavior over time, the record on file demonstrates that Student's family was provided with the requisite notice of procedural safeguards by the school district time and time again. In doing so, Student's parent had either actual or constructive knowledge of the parental right to file a due process hearing at any point along the way whether the family knew their concerns were actionable or not. *Deborah A.*, 2009 U.S. Dist. LEXIS 24505 at pp. 4-5; *19 Tex. Admin. Code § 89.1151 (c)*.

The record on file clearly establishes that Student's mother and *** participated in any number of ARD meetings. The allegations that the school district intentionally misled Student's parent and failed to inform the family of the parental right to a due process hearing is simply not supported by the record on file in this case. *Fern v. Rockwood R-VI Sch. Dist.*, 48 IDELER 35, pp. 3-4(D.C. Mo. 2007)(*holding neither of the exceptions applied where record showed parents fully participated in IEP process, met with district representatives, and were continuously advised of the status of child's program*).

Furthermore, the one year statute of limitations contemplates parental exercise of reasonable diligence to discover facts that give rise to an IDEA claim. The one year time frame is consistent with the legislative intent that special education disputes should be resolved in an expeditious manner. *See, Mandy S. v. Fulton Cnty. Sch. Dist.*, 31 IDELR 79 (D.C. Ga. 1999)(*interest of student best served by prompt resolution of educational disputes*); *Hall v. Knott Cnty. Bd. of Educ.*, 941 F. 2d 402, 408 (6th Cir. 1991)(*IDEA requires need for immediate action in resolving disputes*).

Student received special education and related services from the school district for a period of over five years before Student's family withdrew Student from public school *** Student instead. The evidence shows that at multiple junctures and at every ARD meeting from November *** through June *** the school district provided Student's parent with either Notice of Procedural Safeguards and/or explained the procedural rights in effect at the time to the parent. In at least one ARD meeting the family was also accompanied and advised by legal counsel. Student's ***

attended a private school consultation meeting in *** where information about making a special education referral was distributed. Nevertheless Student's family did not request a due process hearing to resolve any concerns they had about Student's educational services or placement while Student was enrolled or after Student withdrew and ***.

Student also argues the school district should have continued to provide Student with related services over the course of Student's *** and failed to provide the requisite notice when it decided to terminate those services. The evidence showed the school district continued to provide counseling services *** but ceased those services thereafter. I agree with the school district this complaint is a challenge to an alleged lack of proportionate share of services. *See, 34 C.F.R. § 300.133 (a)(1)*.

In Texas, children *** are considered to be parentally-placed private school children within the meaning of the IDEA. *34 C.F.R. § 300.130; 19 Tex. Admin. Code § 89.1096 (a)*. Disagreements over proportionate share services are not subject to resolution in a due process hearing but instead are limited to State complaint procedures. *34 C.F.R. § 300.140; Student bnf Parents v. McKinney Ind. Sch. Dist., TEA Dkt. No. 107-SE-0110*.

Therefore I conclude the one year statute of limitations rule applies to any and all of Student's claims that arose prior to February 9, 2014. Student's parent either knew or should have known a claim under the IDEA could be asserted in a due process hearing. Therefore, Student's claims regarding a failure to provide FAPE, failure to provide prior written notice, and failure to provide related services during the *** shall be dismissed as outside the one year limitations period. *19 Tex. Admin. Code § 89.1151 (c)*.

Child Find: The General Rule

The school district has a duty under the IDEA to identify, locate, and evaluate students with disabilities who are in need of special education and related services. This duty is known as "Child Find." *34 C.F.R. § 300.111 (a) (1) (i)*. The Child Find duty includes children suspected of having a disability and in need of special education even though they are advancing from grade to grade. *34 C.F.R. § 300.111 (c) (1)*. The Child Find duty includes students who are defined as parentally-placed private school students. *34 C.F.R. § 300.131*. ***.

Failure to Evaluate During ***

The statute of limitations analysis above also applies to any claims that the school district failed to re-evaluate Student during the ***. The record shows Student's parent knew or should have known she could have challenged the school district's failure to conduct the re-evaluation when it became due in October ***. Furthermore, the school district convened a private school consultation meeting in May *** which Student's *** attended. The evidence shows information about special education and the referral process was provided to the attendees but Student's parent took no steps to initiate a request for a re-evaluation or challenge the school district's failure to do so. Therefore, the one year statute of limitations bars the Child Find claim with regard to the failure to evaluate Student during Student's ***. *19 Tex. Admin. Code § 89.1151 (c)*.

Continuing Child Find Duty

I must next consider whether the school district should have evaluated and identified Student as a student with a disability when Student returned to the public school district and enrolled in ***. The evidence showed the school district failed to maintain Student's records properly. Had the school district's electronic database included the appropriate information the first prong of the Child Find duty would have been triggered, i.e., there was a reason to suspect the student had a disability. The evidence also showed the application for enrollment at *** included a statement that Student received special education services in the past. That information also triggered the first prong of the Child Find inquiry. Instead, the school district either disregarded the information on the application or simply did not attend to it. The school district does not dispute Student received special education services in the past.

The evidence showed the school district's special education records were maintained through an arrangement with

***. The school district speculates *** misplaced Student’s records. The misplacement or destruction of Student’s special education records was, at best, a serious mistake. It is the school district, not the Student or Student’s family, who bears the legal responsibility for maintaining Student’s records and providing parental access to inspect and review those records. *34 C.F.R. §§ 300.611, 300.300.612(a)(3), 300.613, 300.614, 300.616, 300.623.* The school district is required to inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information may only be destroyed at the request of the parents. *34 C.F.R. §300.624.*

In Texas the school district is also required to maintain an “eligibility folder” for each student receiving special education services in addition to the student’s cumulative folder. The eligibility folder must include, at a minimum, copies of referral data, documentation of notices and consents, evaluation reports and supporting data, ARD reports, and the student’s IEPs. *19 Tex. Admin. Code § 89.1075 (a).*

The school district must also protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. At least one school district official must assume responsibility for ensuring the confidentiality of the personally identifiable records, and all persons who collect or use the personally identifiable information must receive training or instructions regarding state policies and procedures in compliance with the Family Educational Rights & Privacy Act (FERPA). *34 C.F.R. §§600.611 (b); 300.623.*

Had the school district properly maintained student’s eligibility folder and other educational records the information in those records would have been available to the principal and staff at *** when Student returned to the school district as a *** grader in the fall of *** and certainly by February 2014. The information in the records would have alerted the staff at *** that Student was previously identified as a student with a disability and received special education services from the district.

The rationale for requiring the school district to maintain this kind of information is to prevent precisely what occurred here – i.e., that the school district made decisions about student’s educational needs and programming without consideration of highly relevant and useful information regarding Student’s eligibility for special education and the provision of services in the past.

The IDEA does not require a parent to use “magic words” to specifically request a special education evaluation or special education services. It is the school district’s duty to locate and identify children who are suspected of having a disability not the parent’s duty. *34 C.F.R. § 300.111.* The statute ultimately lays the responsibility for identifying students with disabilities at the school district’s door-step. *34 C.F.R. § 300.301 (b).*

Student was ***. The evidence shows Student’s re-evaluation was overdue upon Student’s initial re-enrollment. *See, 34 C.F.R. § 300.303 (b)(2).* Had the school district properly maintained Student’s records it would have suspected Student was a student with a disability and needed an updated evaluation. An updated evaluation would have confirmed Student’s disabilities and need for special education services – as the school district’s FIE conducted in April 2015 ultimately did. Instead, school staff erroneously concluded Student had been dismissed from special education – there is no evidence in the record that was true.

The school district decided to serve Student under 504 beginning in November ***. This was a curious choice given the school district’s access to the *** evaluations and the psychiatrist’s letter confirming Student’s myriad of diagnoses and that Student was receiving psychiatric treatment. While a medical diagnosis alone may not be sufficient for eligibility purposes the list of conditions provided by the psychiatrist was reason enough for the school district to suspect Student had a disability that warranted further inquiry.

The school district does not now dispute Student’s identification as a student with a disability or that Student needs special education. Instead, the school district argues it had no duty to conduct such an evaluation until the spring semester of Student’s *** grade year when Student began to struggle with Student’s academics. I disagree. The

delay in evaluating Student was a direct result of the school district's failure to maintain Student's records and review Student's *** application more carefully – either one of which would have triggered a re-evaluation.

Instead, the re-evaluation did not occur until this litigation was filed. The school district's Child Find duty carried over each semester and continued within the one year statute of limitations period – i.e. beginning on February 9, 2014. Under Texas law special education referral is required as part of the school district's overall regular education referral or screening system for students experiencing difficulty in the regular classroom. *19 Tex. Admin. Code § 89.1011*. It was clear by the end of the first semester of *** grade Student was experiencing academic difficulty at ***.

I agree with the school district that the one year statute of limitations period bars any claims the school district failed to fulfill its Child Find Duty when Student first enrolled in August *** and during the fall semester of *** grade. However, the failure in maintaining accurate educational records was a continuing violation and the school district had a continuing Child Find Duty into the spring semester of 2014 – at least beginning on or after February 9, 2014. The evidence showed that medical information provided to the school district was also reason enough to suspect Student might be a student with a disability (even if Student was performing adequately academically) to trigger the Child Find duty.

Certainly by the fall of 2014 when Student's academic performance began to falter and Student appeared to be lethargic, apathetic, and sleepy the school district had reason to suspect a disability. In September 2014 the school district knew Student was *** when family concerns about Student's behavior were discussed in a meeting at school in the presence of the *** principal. These factors, taken together, should have prompted the school district to initiate an evaluation that fall. Instead, Student's academic slide continued until the follow spring semester in 2015 when this litigation ensued and the school district finally conducted an FIE.

I conclude the school district failed in its Child Find Duty beginning in the spring semester of 2014 and through most of the 2014-2015 school year until April 2015 when the FIE was completed. This is the type of procedural violation that caused a substantive educational harm and impeded Student's right to a free, appropriate public education. *34 C.F.R. § 300.513 (a)(2)*.

Eligibility as a Student with an Emotional Disturbance.

An emotional disturbance under the IDEA is defined as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; and
- A tendency to develop physical symptoms or fears associated with personal or school problems. *34 C.F.R. § 300.8(c)(4)*.

The preponderance of the evidence supports the conclusion that student meets the criteria as a student with an emotional disturbance – indeed the school district's own evaluation completed while this litigation was pending confirms this conclusion. Furthermore, the extensive set of medical and counseling records from a variety of sources and the school district's own ARD documents and prior evaluations confirm Student exhibits inappropriate types of behavior and feelings under normal circumstances (for example Student's impulsivity and ***) and an inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

Eligibility as a Student with Other Health Impairment

Other Health Impairment under the IDEA means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that (i) is due to chronic or acute health problems – including attention deficit hyperactivity disorder – and (ii) adversely affects the student’s educational performance. 34 C.F.R. § 300.8 (c)(9). The preponderance of the evidence also supports the conclusion that student meets the criteria for OHI as well.

Student’s diagnosis of *** and Attention Deficit Hyperactivity Disorder over the years confirms Student is often distracted and unable to concentrate or focus on academics due to these chronic health problems. The educational and medical records also confirm Student’s history of ***, attentional deficits, and impulsive behavior that was inappropriate and interfered with Student’s ability to make and keep friends.

Eligibility as a Student with Specific Learning Disabilities

A specific learning disability means a disorder in one or more the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities and dyslexia. A specific learning disability does not include learning problems that are the result of visual, hearing, motor disabilities, mental retardation, or an emotional disturbance or of environmental, cultural or economic disadvantage. 34 C.F.R. § 300.8 (c)(10).

Although there is some evidence that Student’s inability to think clearly is related to Student’s *** and Student meets criteria as a student with an emotional disturbance there is also complementary evidence that Student exhibits perceptual deficits (i.e., that Student processes information at a much slower rate than peers) and that Student was identified with dyslexia and received dyslexia services at an early age. The evidence also shows that Student has a history of difficulty reading and writing, failed those portions of state mandated assessments, and certainly at *** struggled to process and absorb material even with additional accommodations and teacher support. The school district’s FIE also confirmed Student meets eligibility as a student with a learning disability, specifically in the areas of basic reading, math calculation and written expression. There is no real dispute that Student is eligible for special education as a student with a learning disability.

Failure to Devise Appropriate IEPs

Student argues the school district’s failure to meet its Child Find duty resulted in an educational harm to Student; i.e., the school district did not devise or implement an appropriate Individualized Educational Plan (IEP) for Student during the *** grade (*** and *** school years). I agree. *See, Brock v. New York City Dept. of Educ., 2015 U.S. Dist. LEXIS 44254(S.D. N.Y. 2015)(school district’s failure to evaluate student for six years meant there was a lack of substantive evaluative material to form a basis for proposed placement back at the public school from the small private school student previously attended; failure to timely evaluate impeded student’s right to a FAPE and denied student educational benefit).*

The school district did not timely evaluate Student for special education beginning in February 2014. Instead, it was not until this litigation was filed and Student was not progressing well academically in *** grade that the school district conducted an evaluation. Although there was evidence that Student made some meaningful educational progress during Student’s first year at *** the preponderance of the evidence showed that any educational benefit Student received from the *** program began to unravel the more time Student spent at *** without the instructional and behavioral supports Student needed.

There was credible evidence Student ***. It is reasonable to conclude Student was not monitored as closely as Student needed to be. The evidence clearly demonstrates that at least by the end of the first semester of *** grade

Student struggled academically and was not well suited for the self paced computer based instructional program at ***. Instead, the evidence showed Student needed small group instruction, face to face instruction, and one-on-one attention by teachers in order to learn.

Residential Placement

In this jurisdiction a residential placement under the IDEA is appropriate when it is (i) essential in order for the student with a disability to receive a meaningful educational benefit; and (ii) primarily oriented toward enabling the student to obtain an education. *Richardson Ind. Sch. Dist. v. Michael Z.*, 58 F. 3d 286, 300 (5th Cir. 2009). This two part test includes consideration of two factors: first, whether the student was placed at the private facility for educational reasons and second whether the student's progress at the private facility is primarily judged by educational achievement. *Richardson Ind. Sch. Dist. v. Michael Z.*, 58 F. 3d at 301.

Furthermore, when an educational benefit is merely incidental to a private placement made primarily for medical reasons the first prong of the test is not met. *See, Fort Bend Ind. Sch. Dist. v. Douglas A.*, 65 IDELR 1 (5th Cir. 2015)(*school district not required to reimburse placement at a mental health facility where primary goal of facility was to treat children with reactive attachment disorder – unilateral private placement by parents made for emotional and mental health reasons and not educational purpose*).

In this case Student seeks prospective placement at *** at school district expense. Therefore, in applying the two part test established in *Michael Z.*, I must consider whether the evidence supports the reasonable conclusion that placement at *** would be essential in order for Student to receive a meaningful educational benefit and second, would the *** placement be primarily oriented toward enabling Student to obtain an education.

Least Restrictive Environment

Before reaching those questions I must also consider whether residential placement, even if beneficial and appropriate for Student, would nevertheless meet the IDEA's requirement of placement in the least restrictive environment. The IDEA requires the school district ensure, to the maximum extent appropriate, students with disabilities are educated with their non-disabled peers. Special classes, separate schooling or removal of students with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114 (a)(2).

In addition, the school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Supplementary services such as resource room or itinerant instruction provided in conjunction with regular class placement is also required. 34 C.F.R. § 300.115.

A residential placement, with the exception of placement in a juvenile detention facility or a state supported living center, is the most restrictive instructional setting along the continuum of alternative placements. *See, 19 Tex. Admin. Code §89.63(c)*. State law places additional requirements on the use of state and federal funding for a residential placement. No state funding will be provided if the placement is due primarily to the student's medical problems or primarily to problems in the student's home. Funding is also denied if the school district did not first attempt to implement less restrictive placements prior to the residential placement (except in an emergency documented by the ARD) or when residential placement is not cost effective when compared with other alternative placements. *19 Tex. Admin. Code §89.61(b)*.

I do not doubt placement at *** would be beneficial for Student. The record shows it certainly offers a comprehensive set of services that meet Student's needs. However, I agree with the school district that no intermediate interventions have yet been attempted with Student. There are a number of less restrictive alternatives available before a residential

placement is appropriate for educational purposes under the IDEA. *See, Bristol Twnshp. Sch. Dist., 38 IDELR 86 (SEA Pa. 2002)(IHO erred by failing to explore less restrictive alternatives before ordering out of state residential placement)*. Furthermore, the evidence shows that although Student is struggling academically and has problems with attention, focus, processing, and concentration, the serious behaviors that worry Student's family are not as problematic in the school environment. There were only a limited number of serious behavioral incidents over the *** year period at ***.

Following the conclusion of the hearing Petitioner notified the hearing officer and the school district that Student ***. I am to infer *** is further support for Student's need for residential placement. That may be *** but based on the evidence and record in this case I cannot conclude that a residential placement is the least restrictive environment for Student at this time.

Instead, the law requires the school district address Student's academic and behavioral needs in the regular school environment with appropriate supports, accommodations, and related services to the maximum extent appropriate. *34 C.F.R. § 300.114 (a)(2)*. However, I do agree with Petitioner that any educational program provided by the school district must address Student's behavioral, personal care, emotional, and *** needs. The need for special education services is not strictly limited to academics but also includes behavioral progress and the acquisition of appropriate social skills as well as academic achievement. *Venus Ind. Sch. Dist. v. Daniel S. 2002 U.S. Dist. LEXIS 6247 (N.D. Tex. 2002)*.

Because I conclude a residential placement is not the least restrictive environment for Student's educational placement at this time I need not determine whether placement at *** would be either essential or primarily oriented towards enabling Student to receive an education. *Richardson Ind. Sch. Dist. v. Michael Z., supra*. Even if such an analysis is required I would still conclude residential placement under the IDEA would not be appropriate at this time.

Residential Placement Would Be Primarily Medical Not Educational

Where placement in a residential treatment facility is primarily medical rather than educational a school district is not responsible for the placement under the IDEA. *Richardson Ind. Sch. Dist. v. Michael Z., supra; Fort Bend Ind. Sch. Dist. v. Douglas A., supra (parents made unilateral residential placement due to concerns student would make another suicide attempt and because of student's on-going drug problem)*.

In this case the evidence shows that the primary motivation for residential placement is to relieve the family's significant distress coping with Student's behavior at home and in the community. Certainly there is evidence the family is deeply concerned about Student's behavior – they felt compelled to monitor Student 24 hours a day and Student's independence was strictly limited. These constraints and fears placed a huge burden on the entire family. Although a residential placement would provide Student's family with relief the evidence shows it is premature to conclude residential placement is necessary in order for Student to receive a meaningful educational benefit within the meaning of the IDEA.

Student's defiant and difficult behaviors *** at home and in the community are not seen in the school environment to the same degree. I do not minimize the serious nature of Student's inappropriate, ***. The interplay between the manifestation of Student's medical conditions (i.e., *** and ADHD) as well as the psychological consequences of Student's *** must be addressed and recognized in any educational program.

However, the preponderance of the evidence shows that Student's behavior overall at *** is fairly good – Student is respectful, polite, compliant, tries hard, and is easily re-directed. While there is also evidence that Student's needs include improving *** and developing appropriate social skills that do not include *** I am not persuaded those needs could not be adequately addressed in the school setting through a behavior plan, counseling and psychological services, and social skills training. These are at least intermediate steps that the school district should be allowed to

attempt before considering residential placement for an educational purpose. *Richardson Ind. Sch. Dist. v. Michael Z., supra*; 34 C.F.R. § 300.114 (a)(2).

Procedural Rights

I have already concluded that any claims the school district failed to comply with the procedural rights of both Student and Student's parent are barred by the one statute of limitations rule applied in Texas. 34 C.F.R. §300.507; 19 Tex. Admin. Code § 89.1151(c).

Right to Independent Educational Evaluation

A parent has a right to an independent educational evaluation at school district expense if the parent disagrees with the results or recommendations of the school district's own evaluation. 34 C.F.R. §300.502 (b)(1). In this case the parent secured an IEE from Dr. *** in preparation for the due process hearing and before the school district could complete its own FIE. I agree with the school district's argument that under these circumstances Petitioner is not entitled to an IEE at school district expense.

The request for an IEE is premature to the extent it was completed before the school district conducted its own FIE – there was no school district evaluation to disagree with under the unique circumstances of this case. *Id.*; *See, T.P. v. Bryan Cnty. Sch. Dist., 2015 U.S. App. LEXIS 11439 (11th Cir. 2015).*

Other Claims

The jurisdiction of a special education hearing officer in Texas is strictly limited to the issues identified as subject to a due process hearing under the IDEA. Any claims arising under any law other than the IDEA are outside my jurisdiction and shall be dismissed. 34 C.F.R. §§ 300.503; 300.507.

Student's Need for an IEP

By failing to evaluate Student in a timely manner under Child Find duty the school district deprived Student of the benefit of an IEP beginning in February 2014 up through April 2015 when Student was finally evaluated. 34 C.F.R. § 300.101. Student has a right to an IEP. 34 C.F.R. § 300.322 (a)(c). By failing to conduct an FIE by February 2014 and thereafter (under its on-going Child Find duty) the school district also deprived Student of the supplementary aids and services, ***, and related services Student needs in order to receive a meaningful educational benefit from Student's program and placement at ***. *Bd. of Educ. Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 201, 203(1982).*

ARD Meeting

Under the IDEA the school district has the obligation to convene an ARD no later than 30 days from the determination the student needs special education. 34 C.F.R. § 300.323 (c)(1). The record shows the school district's FIE was completed on ***, 2015. It is unclear from the record whether an ARD has already been convened. If not, now that Student has been identified as a student with a disability and eligible for special education, an ARD Committee must meet to design an IEP with measurable goals and objectives that address each area of need. The school district must then immediately implement the IEP.

If an ARD has been convened and an IEP designed, another ARD must convene to ensure the IEP includes *all* the recommendations stated in the school district's FIE including the recommendations for development of replacement behaviors (stated on page 32 of 36 of the FIE) *and* the recommendations to address processing deficits and behavioral accommodations (stated on pages 34-35 of 36 of the FIE).

Additional Services

Supplementary aids and services mean aids, services and other supports provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings to enable a student with a disability to be educated with nondisabled peers to the maximum extent appropriate. *34 C.F.R. §§ 300.42; 300.114*. The ARD must also consider and select the aids, services and supports Student needs in regular education classes, extracurricular activities, and in nonacademic settings.

Related services mean whatever support services the student needs to assist the student in benefitting from the educational program. Related services can include counseling services, occupational therapy, parent counseling and training (to assist parents in understanding the special needs of their child, providing information about child development, and helping parents acquire social skills to support implementation of the student's IEP); psychological services, therapeutic recreation services; school health services, social work services, and transportation. *34 C.F.R. §300.34*.

The school district has already concluded Student needs counseling services. However, parent counseling and training are also warranted where, as here, the family is having great difficulty coping with Student's behavior at home and in the community. School health services, social work services, and transportation may also be required in order to support Student in the school environment.

The school district's own FIE recommends the development of ***. The record shows the school district began *** assessment after the FIE was completed – it is not clear whether the school district completed that assessment. In any event, it must complete the *** assessment so the ARD may review the results and recommendations and incorporate those into Student's IEP.

The record also demonstrates Student is receiving outside counseling and other related medical services that need to be better understood and coordinated with the school district. Communication needs to be improved between family and the school district as well. Therefore, parental consent to allow qualified school district staff to communicate directly with Student's medical and therapeutic providers is critical to improve communication and understanding of Student's psychological and medical needs at school. Furthermore, a mechanism for improving communication between family and school is also required as an aspect of Student's IEP such as designating a school staff member to serve as a communication liaison and/or use of a weekly journal or email.

Compensatory Services and Equitable Relief

It has long been the rule that compensatory education is a proper method for providing a free, appropriate public education to students with disabilities who have been improperly denied that right. An impartial hearing officer has the authority to grant all relief deemed necessary, including compensatory education, to ensure the student receives the requisite educational benefit denied by the school district's failure to comply with the IDEA. *Letter to Kohn, 17 IDELR 522 (OSERS 1991)*.

Compensatory education imposes liability on the school district to pay for services it was required to pay all along and failed to do so. *See, Meiner v. Missouri, 800 F. 2d 749, 753 (8th Cir. 1986); D.A. v. Houston Ind. Sch. Dist., 716 F. Supp 2d 603, 612 (S.D. Tex. 2009), aff'd 629 F. 3d 450 (5th Cir. 2010)(upholding HO's decision that student failed to prove amount of compensatory reimbursement student entitled to for school district's failure to timely evaluate)*.

Compensatory education may be awarded by a hearing officer after finding a violation of the IDEA. It constitutes an award of services to be provided prospectively in order to compensate the student for a deficient educational program provided in the past (or in this case the complete absence of an educational program). *G. ex. Rel RG v. Fort*

Bragg Dependent Schools, 343 F. 3d 295 (4th Cir. 2003). Hearing officers have broad equitable powers, as courts do, to fashion appropriate relief where there has been a violation of the IDEA. *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 35, 374 (1996); *Harris v. Dist. of Columbia*, 19 IDELR 105 (D.C.D.C. 1992). The trend in the case law is to utilize a qualitative, rather than quantitative, standard in fashioning appropriate compensatory and equitable relief. *Reid ex rel Reid v. District of Columbia*, 401 F. 3d 516, 523-524 (D.C. Cir. 2005).

The evidence showed that although the school district conducted an FIE it did not include evaluations for parent training, ***, or an assessment of Student's sensory needs. Because the family's distress is related in large part to concerns and anxiety over Student's inappropriate social behaviors Student would benefit from the support of parent training – i.e., training and education for Student's mother and *** to learn effective behavioral strategies when interacting with Student in setting boundaries and ensuring Student's safety and acquisition of appropriate social skills. Therefore the school district must conduct a parent training assessment and provide the family with the training and counseling they need to effectively address Student's behavioral needs identified by the assessment.

The evidence also showed that *** develop appropriate social skills. The school district needs to complete the *** assessment it began and provide Student with compensatory *** either as a component of Student's school day during the upcoming 2015-2016 school year or during the summer of 2016 – whichever the ARD concludes fits Student's schedule best. *** arrangement as a component of Student's educational program is appropriate compensatory relief.

The ARD Committee must meet to determine the nature and scope of *** services based on the assessment and should include Student's interest and ***, ***.

Finally, the evidence showed Student's teachers had virtually no understanding of the nature of Student's disabilities. In order to implement Student's IEP and BIP Student's teachers, and any other school district staff who interact with Student (including counselors, administrators and/or paraprofessionals) need training on the provisions of the IEP and BIP and on the nature and extent of Student's disabilities.

Conclusions of Law

1. Petitioner is eligible as a student with a disability for special education and related services under the Individuals with Disabilities Act as a student with an emotional disturbance, specific learning disabilities, and other health impairment. 34 C.F.R. §§ 300.8 (c)(4)(8)(9).
2. Petitioner's claims arising before February 9, 2014 are barred by the one year statute of limitations rule as applied in Texas. 34 C.F.R. § 300.507(a)(2); 19 Tex. Admin. Code §89.1151 (c); Petitioner did not meet Petitioner's burden of proving the exceptions to the rule should apply. 34 C.F.R. §300.511 (f)(1)(2); *G.I. v. Lewisville Ind. Sch. Dist.*, 2013 U.S. Dist. LEXIS 120156 (E.D. Tex. 2013).
3. Respondent failed to fulfill its Child Find duty in a timely manner when it failed to maintain Petitioner's educational records properly or consider relevant information from Petitioner's family that would otherwise have led Respondent to suspect Student was a student with a disability in need of special education thereby triggering a Full Individual Evaluation.
Respondent's Child Find duty was on-going and Respondent failed to conduct the requisite evaluation beginning on February 9, 2014 and thereafter; the evaluation conducted in April 2015 was therefore untimely. 34 C.F.R. §§300.111 (a)(c); 300.611-300.614; 300.616; 300.623; 19 Tex. Admin. Code § 89.1075 (a).
4. Respondent's failure to fulfill its Child Find duty in a timely manner caused a deprivation of educational benefit and impeded Petitioner's right to a free, appropriate public education. 34 C.F.R. § 300.513 (a)(2).
5. Petitioner is not entitled to an Independent Educational Evaluation at school district expense. 34 C.F.R. § 300.502 (b)(1).

6. Petitioner did not meet Petitioner's burden of proving the need for residential placement for educational purposes. Residential placement is not the least restrictive environment for Petitioner at this time. *34 C.F.R. § 300.114 (a); 19 Tex. Admin. Code § 89.61; Richardson Ind. Sch. Dist. v. Michael Z., 58 F. 3d 286, 300-301(5th Cir. 2009).*
7. Petitioner is entitled to equitable and compensatory relief for Respondent's failure to meet its Child Find duty in a timely manner. *34 C.F.R. §§300.111; G. ex. Rel RG v. Fort Bragg Dependent Schools, 343 F. 3d 295 (4th Cir. 2003).* The hearing officer has the authority to make an award of equitable relief and compensatory educational services. *D.A. v. Houston Ind. Sch. Dist., 716 F. Supp 2d 603, 612 (S.D. Tex. 2009); Harris v. Dist. of Columbia, 19 IDELR 105 (D.C.D.C. 1992).*
8. Petitioner's claims that arise under any law other than the Individuals with Disabilities Education Act are dismissed as outside the hearing officer's jurisdiction. *34 C.F.R. §§ 300.503; 300.507.*

ORDERS

Based upon the foregoing findings of fact and conclusions it is therefore ORDERED that Petitioner's requests for relief are hereby **GRANTED IN PART AND DENIED IN PART AS FOLLOWS:**

1. The school district shall complete the *** assessments within ten school days from the date of this Decision;
2. The school district shall conduct a parent training assessment within ten school days from the date of this Decision or by a date agreed to by the parties;
3. Student's mother shall sign the requisite consent within seven calendar days the consent documents are received by the parent in order to permit the Director of Special Education or her designees to confer directly with Student's private therapists and physicians in order to exchange information about Student's medications, their effect on Student in the school environment, and to coordinate counseling goals and needs;
4. The school district shall convene an ARD meeting no later than 30 calendar days from the date of this Decision and invite representatives from local and state agencies under the State's Memorandum of Understanding to the ARD for the purpose of designing a *** IEP that includes a *** for Student;
5. The ARD committee shall design (or revise any existing IEP) to include *all* the recommendations stated in the school district's FIE of ***, 2015 including, but not limited to, measurable goals and objectives to address both behavioral and academic needs identified in the FIE including: a Behavior Intervention Plan; social skills training; parent training and counseling services; individual counseling services for Student; direct, small group instruction; and, regularly scheduled, individualized, one on one teacher support and tutoring as additional components of Student's educational program;
6. The school district shall implement the *** as a component of Student's IEP beginning no later than the second week of school in the upcoming 2015-2016 school year or within the first week of a summer 2016 program, unless the parties agree otherwise;
7. The school district shall conduct an assessment of Student's sensory needs within 30 school days from the first day of school including observations in various instructional settings and issue a written report that shall be provided to Student's family within five school days of the date of the report;
8. The recommendations of the sensory needs assessment report shall be incorporated into Student's new IEP – the parties may simply amend Student's IEP without convening an ARD meeting if they so agree although either party may request an ARD meeting to discuss the sensory needs assessment and its recommendations and an ARD meeting shall then be convened on a date and at a time by mutual agreement;

9. The school district shall conduct a training session for all teachers and staff responsible for the implementation of Student's IEP and BIP, including administrators and related service staff that includes training on the provisions of the IEP and BIP, including the use of effective instructional and behavioral strategies, and on the nature and extent of Student's disabilities no later than the first day of the upcoming 2015-2016 school year; and,
10. The school district shall designate a school district staff member to serve as a communication liaison between Student's family and the school; the communication liaison shall be selected through discussion with the family during the ARD meeting; the communication liaison and the family will design a mutually agreeable communication system that may include, for example, a weekly journal, email, or periodic conferences, or any other method and on whatever schedule the parties agree on; the communication system shall begin within the first week of the upcoming 2015-2016 school year.

It is further **ORDERED** that any and all claims arising prior to February 9, 2014 are hereby **DISMISSED** as outside the one year statute of limitations rules as applied in Texas;

It is further **ORDERED** that any and all claims arising under any law other than the Individuals with Disabilities Education Act are hereby **DISMISSED** for want of jurisdiction.

All other relief not specifically stated herein is **DENIED**.

SIGNED the 7th day of July 2015

Ann Vevier Lockwood
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 34 C.F.R. § 300.516; 19 Tex. Admin. Code Sec. 89.1185 (n).

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT,
bnf PARENT,
Petitioner,**

§
§
§
§
§
§
§

v.

DOCKET NO. 163-SE-0215

**GALVESTON INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

SYNOPSIS

ISSUE:

Whether *** student with ***, ADHD, PTSD (***), and oppositional disorder should be identified as a student with an emotional disturbance, learning disability and Other Health Impairment for purposes of special education eligibility and services under the IDEA.

HELD:

FOR THE STUDENT

School district's own FIE concluded Student met criteria as student with an emotional disturbance and specific learning disability; sufficient documentation from Student's medical providers and in prior educational records to establish eligibility for OHI based on diagnosis of ADHD and Student's distractibility and lack of focus in the classroom. **34 C.F.R. §300.8 (c)(4)(8)(9)**

ISSUE:

Whether school district failed to identify Student in a timely manner as a student with a disability under the IDEA based on its Child Find Duty.

HELD:

FOR THE STUDENT

School district's failure to maintain Student's educational records, to act upon information stated in Student's application for enrollment in *** school, or to initiate a special education referral after review of medical records confirming various diagnoses and psychiatric treatment, led to school district's failure in meeting its Child Find duty in a timely manner under the IDEA.

Had school district properly maintained Student's educational records or investigated information on application form, school district would have had reason to suspect Student was a student with a disability -- Student formerly received special education services from the school district before a ***. Student's three year re-evaluation was overdue by date of Student's initial enrollment at the *** school.

School district's failure to meet Child Find duty was on-going violation of IDEA within the one year statute of limitations period up through the date the school district finally conducted an FIE while the litigation was pending. **34 C.F.R. § 300.111**

ISSUE:

Whether Student’s claims that school district denied Student a FAPE, failed to comply with parental and student procedural rights by failing to give notice of Student’s exit from special education, failing to conduct an exit evaluation before dismissing Student from special education, failing to provide notice that counseling services to be terminated while Student ***, and failing to provide prior written notice “at all appropriate junctures.”

HELD:

FOR THE SCHOOL DISTRICT

Student’s claims arising prior to one year from the date of the filing of Student’s request for hearing dismissed as outside the one year statute of limitations period applied in Texas; Student did not meet burden of proving the exceptions to the rule should apply. **34 C.F.R. § 300.507; 19 Tex. Admin. Code § 89.1151**

ISSUE:

Whether Student needs residential placement in order to receive the requisite meaningful educational benefit from Student’s educational program.

HELD:

FOR THE SCHOOL DISTRICT

Residential placement not the least restrictive environment for Student at this time; school district should have opportunity to provide Student with the supplementary and support services Student needs in order to receive education with non-disabled peers to the maximum extent appropriate; residential placement is one of the most restrictive instructional arrangements along the continuum and not appropriate when school district has not yet implemented a less restrictive setting.

Furthermore, placement at residential treatment center with focus on behavior issues made for medical reasons and based on family needs and not essential for educational purposes. **34 C.F.R. § 300.114**

ISSUE:

Whether Student entitled to an IEE at school district expense.

HELD:

FOR THE SCHOOL DISTRICT

IEE conducted in anticipation of litigation and not in response to disagreement of parent with school district’s evaluation – school district had not yet completed an FIE before Student requested an IEE at school district expense during current school year. **34 C.F.R. § 300.502**

ISSUE:

Whether school district failed to provide Student with a FAPE during the relevant time period.

HELD:

FOR THE STUDENT IN PART AND THE SCHOOL DISTRICT IN PART

Student's FAPE claims outside one year statute of limitations dismissed. School district failed to identify and evaluate Student in a timely manner within the one year statute of limitations period led to deprivation of educational benefit and impeded Student's right to a FAPE.

School district ordered to convene an ARD, design an IEP and BIP that included the recommendations stated in the school district's FIE, including supplementary aids, services, supports and related services; school district ordered to complete a *** assessment and add to IEP for *** Student; other forms of compensatory education and equitable relief also awarded for school district's failure to provide Student with a FAPE, including ***, parent training assessment and services, appointment of communication liaison, and teacher and staff training. **34 C.F.R. §§ 300.34; 300.101; 300.320; 300.322**