

STUDENT <i>B/N/F</i> PARENT, Petitioner,	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER
	§	
MINERAL WELLS ISD, Respondent.	§	FOR THE STATE OF TEXAS

FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

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

Student asserted multiple issues in Student’s Complaint. Specifically, Student asserted that the District violated its child find duty in failing (1) to evaluate Student in all areas of suspected need; (2) to identify all of Student’s disabilities, and to provide Student with a free, appropriate public education (“FAPE”).

A. PETITIONER’S ISSUES:

Student asserted that the District denied Student FAPE in the Least Restrictive Environment (“LRE”) based upon the following violations of IDEA, as well as numerous non-IDEA statutes, occurring during school year 2021-22:

1. Respondent failed to evaluate Student in all areas of suspected disability and need;
2. Respondent failed to identify Student as eligible for special education as a student with *** and other health impaired (“OHI”) for attention deficit hyperactivity disorder (“ADHD”);
3. Respondent failed to conduct a functional behavior assessment (“FBA”);
4. Respondent failed to develop an appropriate individualized education program (“IEP”);
5. Respondent failed to provide Student with a safe, nonhostile educational environment;
6. Respondent failed to provide Student with a FAPE following Student’s ***;
7. Respondent failed to provide Student with appropriate related services.

B. PETITIONER’S REQUESTED RELIEF:

Petitioner asks the SEHO to award the following:

1. Private placement at District expense. Alternatively,
2. An Order requiring Respondent to provide Student with an appropriate IEP in Student’s LRE;
3. An Order providing Student with an independent education evaluation (“IEE”);
4. An Order requiring Respondent to convene an Admission, Review, and Dismissal Committee (“ARDC”) meeting to implement the recommendation of the IEE;
5. An Order requiring Respondent to pay for the IEE evaluators to attend ARDC meeting to implement the IEE;
6. An Order for compensatory education and related services;
7. An Order for reimbursement for education and related services provided by Student’s Parents; and
8. Any other relief deemed appropriate by the SEHO. ¹

C. RESPONDENT’S ISSUES AND AFFIRMATIVE DEFENSES:

1. Respondent generally and specifically denied Petitioner’s allegations and denied responsibility for providing any of Petitioner’s requested relief;
2. Respondent asserted the one-year statute of limitations as an affirmative defense. ²
3. Respondent requested dismissal of all claims arising under statutes other than the IDEA. ³

**II.
PROCEDURAL HISTORY**

On July 1, 2022, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Mineral Wells ISD (“Respondent” or “School” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On July 5, 2022, TEA assigned this matter to Special Education Hearing Officer (“SEHO”) Steve Elliot at the State Office of Administrative Hearings (“SOAH”).

SEHO Elliot issued Order No. 1: Initial Scheduling Order, which scheduled the case as follows: Prehearing Conference (“PHC”): July 26, 2022; Disclosure Deadline: August 11, 2023; Due Process Hearing: August 19, 2023; and Decision Deadline: September 18, 2022.

On July 5, 2023, Respondent filed its Notice of Counsel.

On July 14, 2023, Respondent filed its Plea to the Jurisdiction and 10-Day Response to Complaint.

¹ Petitioner also requested reimbursement of all costs and expenses attendant to bringing the Complaint. Texas SEHOs do not have jurisdiction to award such reimbursement; according, SEHO Elliot dismissed this request.

² At the time of Petitioner’s filing, the one-year Statute of Limitations in Texas was in place. On September 1, 2022, Texas adopted a two-year Statute of Limitations, which does not apply to this case. See 19 TEX. ADM. CODE §89.1151(c). SEHO Elliot confirmed that Petitioner’s timeline for all issues was school year 2021-22.

³ SEHO Elliot dismissed all non-IDEA claims in his Order No. 2: Order Memorializing Initial Prehearing Conference and Granting Joint Motion for Continuance and Extension of Decision Due Date for Good Cause, page 3.

On July 26, 2022, the Parties convened the PHC. In attendance were the following: (1) Mr. Jordan McNight, Petitioner's Counsel; (2) Mr. Dean Micknal, Respondent's Counsel; (3) SEHO Elliot; and (4) the court reporter who make a transcript of the PHC. At that time, the Parties requested extensions of time for the Due Process Hearing and Decision Deadlines. On August 1, 2022, SEHO Elliot issued Order No. 2: Order Memorializing Initial Prehearing Conference and Granting Joint Motion for Continuance and Extension of Decision Due Date for Good Cause. This Order rescheduled the hearing and decision deadlines as follows: Disclosures: October 18, 2022; Due Process Hearing: October 26-27, 2022; and Decision: December 8, 2022.

On October 10, 2022, Petitioner filed an Unopposed Motion for Continuance. On October 18, 2022, SEHO Elliot granted the unopposed continuance motion and rescheduled the hearing as follows: PHC: January 30, 2023; Disclosures: February 7, 2023; Due Process Hearing: February 15-16, 2023; and Decision Deadline: March 30, 2023.

On January 30, 2023, the Parties convened the second PHC. In attendance were the following: (1) Mr. Jordan McNight, Petitioner's Counsel; (2) Mr. Dean Micknal, Respondent's Counsel; (3) SEHO Elliot; and (4) the court reporter who make a transcript of the PHC. The Parties and SEHO Elliot discussed the pending Due Process Hearing but did not reschedule the hearing or decision due dates.

On February 1, 2023, SEHO Elliot issued Order No. 4: Order on Hearing Procedures and Disclosures.

On February 3, 2023, Petitioner filed an Unopposed Motion for Continuance. On February 10, 2023, SEHO Elliot issued Order No. 5: Order Granting Petitioner's Second Unopposed Motion for Continuance and Extension of Decision Due Date for Good Cause. This Order rescheduled the hearing and decision deadlines as follows: Disclosures: June 5, 2023; Due Process Hearing: June 13-14, 2023; and Decision Deadline: July 29, 2023.

SEHO Elliot processed this case until May 25, 2023, when the above case was reassigned to the undersigned SEHO.

On June 6, 2023, the Parties convened the third PHC. In attendance were the following: (1) Mr. Jordan McNight, Petitioner's Counsel; (2) Mr. Dean Micknal, Respondent's Counsel; (3) the undersigned SEHO; and (4) the court reporter who make a transcript of the PHC. The Parties verified the current schedule but for the Parties' agreement to allow June 6, 2023, to be the Disclosure Deadline.

The Due Process Hearing:

Both Parties disclosed their exhibits and witnesses timely. Neither Party objected to the Disclosures.

The Parties and the SEHO convened the Due Process Hearing on June 13-14, 2023. The Parties introduced their Joint Exhibits, Respondent's Exhibits, and Petitioner Exhibits. Petitioner called three (3) witnesses, who were cross-examined by Respondent; Respondent did not call any witnesses. During the Hearing, Petitioner was represented by (1) Mr. Jordan McNight, Petitioner's Counsel; (2) Ms. Debra Liva, Petitioner's Advocate; (3) ***, Petitioner's Parents; (4) Mr. Dean Micknal, Respondent's Counsel; and (5) Ms. ***, Respondent's Director of Special Education. At the conclusion of the Hearing, the Parties jointly requested an extension of the Decision Deadline to allow time for the preparation, receipt, and review of

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

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

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

III. RESOLUTION SESSION

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

IV. FINDINGS OF FACT ⁴

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

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

B. SCHOOL YEAR 2019-20: MINERAL WELLS ISD:

6. Upon Student's transfer to Student's home district on February ***, 2030, the District convened a Transfer Agreement meeting on March ***, 2020 [J14.15]. This meeting was held to review Student's eligibility and IEP. The District dismissed Student from ST based upon the recommendation of the *** ARDC [J14.2].
7. At the time of Student's enrollment in the District, Student had many failing grades in *** [J14.15]. Shortly after the transfer, the District closed its campuses due to the COVID-19 pandemic [J14.15].

C. SCHOOL YEAR 2020-21: MINERAL WELLS ISD:

8. On September ***, 2020, Student's ARDC conducted a REED as Student's three-year evaluation [J14.15.01]. The Committee noted that Student continued to benefit from verbal and visual supports when making inferences, but this area of need could be addressed through accommodations. The ARDC confirmed that Student did not require SI to access the general education curriculum, and that Student's dismissal from SI in March 2020 was correct [J14.2].
9. The ARDC confirmed that some of Student's teachers had concerns with Student's organizational skills as well as Student's lack of motivation to complete assignments and turn in work [J14.4]. The ARDC noted that Student's behavior neither impedes Student's learning nor that of other students [J14.4]. The ARDC also noted that Student has a significant normative cognitive weakness in long term retrieval related to a SLD in the areas of Oral Expression, Listening Comprehension, Written Expression, Reading Comprehension, Mathematics Calculation, and Mathematics Problem Solving [J15.01].
10. The ARDC found, *inter alia*, that Student is not a student with an intellectual disability, an emotional disturbance, cultural factors impacting achievement, or limited English proficiency [J15.03].
11. On November ***, 2020, Student's ARDC convened a Revision to the Annual ARD. The purpose of this ARDC meeting was to review the REED and to modify Student's March ***, 2020, ARDC Report [J2.1]. Student's teachers provided input as to Student's academic and social success in class:
 - a. Student's *** teacher reported that Student is in a *** classroom with smaller class size and content delivered on grade level, but at a slower pace; Student received oral administration of materials as needed. During class Student needed some reminders to stay on task, redirection, and reminders of the rules. Student participated in discussions [J2.01]. As of the date of this ARDC meeting, Student had completed all assignments.
 - b. Student's *** teacher reported that Student is in the general education setting and that Student has a co-teacher in the room to add additional support. Student received oral administration of materials, extra time, and simplified vocabulary as needed. Student was able to complete assignments in class with ***% accuracy. Student's *** teacher stated that Student's being in quarantine hurt Student's grades. Student claimed that Student did not know how to do the work; however, Student was no checking in [J2.002]. During class Student would ask questions but needs prompting or teacher checks to make sure Student

is on task and understanding [J2.01].

- c. Student's *** teacher reported that while Student had not been back on campus for long, Student had been doing well in class. Student completed assignments Student missed while on quarantine. Student's *** teacher explained that when Student is in the classroom, Student does okay; when at home, Student does not perform as well. [J2.02]. Student needed reminders to stay on task and teacher encouragement to complete tasks [J2.01].
 - d. Student's teachers had little to say about Student's behavior. They generally reported that Student needed reminders to stay on task, prompting, and extra time to complete assignments. Student tended to be indifferent to completing Student's assignments and occasionally sat quietly but did no work. Student's biggest struggle was when Student switched to remote instruction at home. Teachers reported that Student did limited work while in quarantine and fell behind. As of the date of this ARDC meeting, Student had *** behavior incidents that resulted in *** placement [J2.01].
12. The November 2020 ARDC added Facilitated Support to Student's Schedule of Services in Student's plan; ⁵ the Committee reviewed and revised Student's accommodations; the Committee reviewed and approved the Remote Learning Supplement [J2.02]. The Committee established Student's Schedule of Services: placement in the general education population for all subjects except ***, where Student will receive instruction in the *** Room for forty-five (45) minutes per day, running from April ***, 2020, to January ***, 2021. [J2.07]. Additionally, Facilitated Support would be provided at the school for ten (10) minutes two (2) times per six weeks, running from March ***, 2020, to January ***, 2021 [J2.07]. The Committee reached consensus [J2.02].
 13. On January ***, 2021, Student's Annual ARDC meeting occurred [J5]. Reports from Student's teachers were all quite similar. Student had a good attitude in the classroom; Student got along with Student's peers; Student participated in class. All noted that Student did much better work when Student was in class and not distracted.
 14. At that time, Student's behavior was not an issue. During school year 2020-21, Student continued to struggle during transitions and any unstructured times. Student sometimes initiated conflicts with Student's peers *** [J5.003]. A few of these ***. School personnel handled those instances safely.
 15. The January ***, 2021, ARDC prepared, and approved, new IEP goals and accommodations. The ARDC determined that Student would spend ***%) in the general education setting and less than ***%) in the *** Room [J5.19]. The ARDC found that Student did not qualify for ST. The ARDC determined that Student would *** [J5.08].

⁵ Facilitated Support provides support to the teacher and student in reviewing grades, attendance, behavior, and implementing accommodations toward mastery of IEP goals [J2.07].

16. The ARDC agreed that Student's behavior did not impede Student's learning or that of Student's peers. Accordingly, the January ***, 2021, ARDC did not think Student needed a Behavior Intervention Plan ("VIP") [J5.8].
17. The ARDC found that Student's SLD in Oral Expression, Listening Comprehension, Written Expression, Reading Comprehension, Mathematics Calculation, and Mathematics Problem Solving [J15.01] affected Student's involvement and progress in the general education curriculum in the areas of ***.
18. The January ***, 2021, ARDC reached consensus, including Student's Parents [J5.23].

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

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

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

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

22. The ARDC found that Student follows the regular code of conduct. The ARDC determined that Student would receive forty-five (45) minutes per day for ***; Student would continue with Facilitated Support ten (10) minutes every three (3) weeks direct and consulting services [J8.08].
23. The January ***, 2022, ARDC reached consensus, including the Parents [J8.16; J10.01]. The Committee developed Student's IEP to run between January ***, 2022, to January ***, 2023 [J13.40].
24. On February ***, 2022, Student ***. ***, 6***. Student stated that Student was *** [J12.20; J25; J31.01].
25. Student was *** [R5.01]. Subsequently, Student received ***; Student was never *** [J16.01].

6 ***.

26. Also on February ***, 2022, Respondent's Assistant Superintendent informed Student and Student's Parents that an *** meeting was scheduled on February ***, 2022 [J25.01].
27. On February ***, 2022, Student's ARDC convened for a Manifestation Determination Review ("MDR") to address Student's ***. At that time Student had been sent to *** days [J13.14]. This Committee determined that Student's *** was not a manifestation of Student's disabilities [J12.23-25]. This Committee changed Student's placement from *** to *** [J12.24]. At this time, Student's placement had not been determined [J12.24].
28. The MDR ARDC agreed that Student would be placed in a setting in which Student could participate in general education curriculum. Student would continue to receive those services and modifications, including those described in Student's current IEP, that would enable Student to meet the goals set out in Student's IEP [J12.25]. This MDR ARDC reached consensus [J13.16].
29. Following the MDR Committee meeting, the District convened the ***. Student and Student's Parents were in this meeting and participated. This hearing resulted in Student's *** [J26.01].
30. On February ***, 2022, Respondent's Assistant Superintendent notified the family of this determination. On February ***, 2022, Student's Parents notified the District that they were appealing the decision from the ***. On March ***, 2022, the Assistant Superintendent notified the family of the date and time for the Board meeting [J28.01].
31. On February ***, 2022, Student's ARDC met to discuss the support the District would provide Student during Student's ***. The District offered to provide Student one (1) hour per week assistance from a certified special education teacher in making progress on Student's IEP goals, as well as access to Edgenuity. However, Student would not *** [J13.014]. The ARDC did not reach consensus and agreed to reconvene on February ***, 2022.
32. Student's ARDC reconvened on February ***, 2022 [J13.21]. The District increased its offer for a certified special education teacher to work with Student for four (4) hours one (1) day per week. The Committee also offered access to on-line platforms Edgenuity and Read 180 with a Special Education Chromebook. The Parents disagreed with the plan; accordingly, the Committee did not reach consensus [J13.41].
33. On April ***, 2022, Respondent's Counsel notified the family that the Board of Trustees unanimously voted to deny Student's appeal and to uphold the decision made by the administration [J29.01]. Counsel also informed the family that Student would be entitled to a review of Student's status by the campus behavior coordinator at intervals not to exceed one hundred twenty (120) days. This review would include Student's academic status progress ***. At the review Student and Student's Parents would have the opportunity to present arguments for Student's return to the regular classroom or campus [J29.01].
34. Student filed Student's Due Process Complaint on July 1, 2022. Student was evaluated by an outside provider, Dr. ***, on October *** and ***, 2022 [J16; T1.17].

E. DR. *'S IEE:**

35. Dr. *** used a variety of rating scales and questionnaires. Dr. *** diagnosed Student with Autism Spectrum Disorder, Level 2, with accompanying language impairment (T1.18.1-4). Dr. *** found that Student has ADHD, Combined; an SLD with impairment in reading (reading comprehension); an SLD with impairment in Math (memorization of arithmetic facts, accurate calculation, fluent calculation, Math reason); and an SLD with impairment in written expression (grammar and punctuation accuracy, clarity, or organization of written expression) [J16.29]. Dr. *** determined that Student does not have an ED.
36. This finding of AU was shocking to Respondent. At no time prior to Dr. ***'s evaluation had anyone flagged AU as one of Student's disabilities. Indeed, Petitioner's Complaint does not mention AU.
37. Dr. *** evaluated Student eight (8) months after Respondent *** Student. Accordingly, Student depended on information from Student and Student's Parents. Dr. *** did not receive a copy of the documentation related to the*** [TI.106-108]. Dr. *** did not review Student's report cards, classwork, teacher questionnaires, or disciplinary file. Dr. *** opined that the District's *** constituted a denial of FAPE [J16.29].
38. Dr. ***'s IEE has never been presented to Student's ARDC.

F. RESPONDENT'S EVALUATIONS WERE APPROPRIATE:

39. On September ***, 2020, Student's ARDC conducted a REED as Student's three-year evaluation [J14.15.01]. The Committee noted that Student continued to benefit from verbal and visual supports when making inferences, but this area of need could be addressed through accommodations. The ARDC confirmed that Student did not require SI to access the general education curriculum, and that Student's dismissal from SI in March 2020 was correct [J14.2].
40. The evidence established that the District's REED was appropriate. In conducting its evaluation, the District relied upon prior FIEs conducted in 2014 and 2017; teachers provided current information regarding Student's academics and behaviors; the Parents provided information of Student's daily activities and concerns. There reviewed evaluations and other information were selected and administered so as not to be discriminatory on a racial or cultural basis; were provided and administered in the Student's language (English); were used for the purposes for which the assessments or measures are valid and reliable; were administered by trained and knowledgeable personnel.
41. The District assessed Student in all areas of suspected disabilities: SLD. The District's evaluations were sufficiently comprehensive to identify all of Student's needs. The District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs.

G. STUDENT'S IEPs DEVELOPED DURING BETWEEN JULY 1, 2021-JULY 1, 2022 WERE APPROPRIATE:

42. At the time of Student's Complaint, July 1, 2022, the last agreed ARDC Report concerned the January ***, 2022, Annual ARDC meeting. Prior to that another ARDC was convened on August ***,

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

43. At the time of these ARDC meetings, teachers reported Student's status in their classes. All comments were favorable as to Student's behavior, involvement with Student's peers and teachers, with noted teacher concerns of inattention and failure to complete Student's work. Both ARDC meetings modified Student's goals and objectives; acknowledged that Student follows the regular code of conduct. Both ARDC meetings reached consensus, including the Parents.
44. The IEPs were individualized based on evaluation data and Present Levels of Academic Achievement and Functional Performance ("PLAAFP").
- 45.. The IEPs were implemented in the Least Restrictive Environment ("LRE"). The ARDCS determined that Student would receive forty-five (45) minutes per day for ***; Student would continue with Facilitated Support ten (10) minutes every three (3) weeks direct and consulting services [J8.08]; Student would be in general education the rest of Student's school day.
46. Student made progress both academically and non-academically. Student passed all Student's courses in the *** grades [J17;18]. Student participated in *** and had a good relationship with Student's ***, Student's peers, and Student's teachers and ***.
47. Student's August ***, 2021, and January ***, 2022, IEPs were created in a coordinated and collaborative manner by the key stakeholders, including Student's Parents.

H. RESPONDENT COMMITTED NO CHILD FIND VIOLATION:

48. Student's first two issues involve accusations that Respondent failed to evaluate Student in all areas of suspected need and then failed to identify Student as a student with an ED and ADHD, an OHI category. At the hearing Student dropped the request for an ED finding and exchanged the ED request for an AU finding. The first time AU was associated with Student was in Dr. ***'s October 2022 IEE [J16.28].
49. Respondent had no reason to suspect that Student was autistic and in need of special education and related services for this disability at any time prior to the issuance of Dr. ***'s IEE. This includes the August ***, 2021, ARDC meeting; the January ***, 2022, ARDC meeting; the February ***, 2022, MDR ADRC meeting; the February ***, 2022, ***; the Parents' appeal of the *** finding. At most, Respondent learned of the AU diagnosis when Petitioner provided the District with a copy of Dr. ***'s IEE.
50. The evidence to support the finding of ADHD was at best *de minimis*. Because of Student's behavior, classroom work, and interchanges with Student's peers and adults, Respondent did not suspect that Student had ADHD and needed services to address this disability. Neither the Parents nor Student's staff mentioned ADHD as a possible disability.
51. Student's attempt to revisit the MDR on February ***, 2022, is not viable. The evidence established

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

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

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

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

54. While there was some evidence of bullying, it was never presented to Student's ARDC meetings or the District's administration prior to Student's ***. Dr. *** did not determine that there was bullying to such an extent that it resulted in Student's not receiving meaningful educational benefit.
55. The evidence failed to prove that Student was bullied to the point of depriving Student of a meaningful educational benefit.

K. RESPONDENT'S ALLEGED FAILURE TO PROVIDE STUDENT WITH AN APPROPRIATE IEP FOLLOWING *:**

56. At the time of Student's MDR ARDC meeting, Student had been ***. Student was in a *** placement pending the ***, which occurred after this ARDC meeting.
57. The February ***, 2022, ARDC reached consensus as to the MDR determination. On February ***, 2022, the ARDC reconvened following Student's ***the District. The District offered the help of a certified special education teacher for one hour per week as well as access to Edgenuity. When the Parents refused this offer, the Committee reconvened on February ***, 2022, and expanded the offer. The Parents refused the services.
58. Student's *** from the District was not temporary. This *** was the permanent ***. Student's *** was supported by Tex. Govt. Code §37.007 [J25.01]. Student was no longer enrolled in the District and Student would not be allowed to ***. Student would have to find another District to enroll Student and ***. But in the meantime, Respondent offered to provide sufficient special education services. Because Student's Parents declined these services, no special education services have been provided since Student's ***.
59. The proffered services would have enabled Student to continue to participate in the general education program in another setting and to progress toward IEP goals.

L. RESPONDENT’S ALLEGED FAILURE TO PROVIDE STUDENT WITH RELATED SERVICES:

60. There was insufficient evidence to find that Respondent owed Student related services. To the contrary, the evidence established that Respondent removed Student’s ST services based upon the last IEP developed in *** ISD. The ARDC found that Student had mastered those goals and did not need to continue with this service. Aside from that, there was no evidence that Student needed related services, that Student’s Parents requested such services, or that the ARDC contemplated such services

**V.
DISCUSSION**

IDEA defines FAPE as special education and related services that (1) are provided at public expense, (2) meet the standards of the state education agency, (3) include an appropriate preschool, elementary school, or secondary school education in the state involved, and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§300.320-324.

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. The Court defined “educational benefit” as one that is meaningful and that provides a “basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.” *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). In a more recent opinion, the Court affirmed that IDEA cannot, and does not, promise any educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). The correct standard for providing FAPE is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress considering the student’s individual circumstances. *Id.* at 999.

The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. It is well-settled that a party challenging the district’s eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d at 754, 762-63 (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253-54 (5th Cir. 1997); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).

**A.
CHILD FIND ISSUE**

Although Petitioner did not frame Petitioner’s issues under the child-find paradigm, it is clear that child find was at the center of Petitioner’s arguing that Student’s MDR ARDC failed to consider Student’s newly diagnosed autism and ADHD in making the decision that Student’s action was not a manifestation of Student’s disabilities.

A “child with a disability” is a defined term under the IDEA. The student must meet the criteria under one or more of the enumerated disability classifications. 34 C.F.R. § 300.8 (a). A child with a disability may

qualify for special education services under more than one classification. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 758 F. 3d 1162(9th Cir. 2014), cert. denied, 2015 U.S. Lexis 204 (2015). Even if a student can meet the criteria of one or more of the disability classifications, a student must also demonstrate a need for special education and related services for eligibility purposes. 34 C.F.R. § 300.8 (a)(1). The determination of whether a student is “in need of special education” must be determined on an individual basis. *Bd. of Hendrick Hudson Int. Sch. Dist.*, v. Rowley, 458 U.S. 176, 207 (1982).

The “child find” obligation is triggered when the school district has reason to suspect the student (i) has a disability; and (ii) the student needs special education services. 34 C.F.R. §§ 300.8 (a) (1); 300.111 (a) (c) (1); *Goliad Ind. Sch. Dist.*, 32 IDELR 134 (SEA Tex. 2000). Not every student who struggles in school requires an evaluation for special education. *Alvin Ind. Sch. Dist. v. A.D.*, 503 F. 3d 378, 384 (5th Cir. 2007); 34 C.F.R. §300.111 (a)(1); *Carrollton-Farmers Branch Ind. Sch. Dist.*, 113 LRP 14998 (SEA Tex. 2013) (school district had no reason to suspect student who performed well academically, behaviorally, and socially had a disability or needed special education).

In the instant case, the evidence fails to prove that the District violated any child find obligations with respect to Petitioner. There was no evidence that until Dr. *** issued Student’s IEE, anyone suspected or hinted that Student should be evaluated for AU and ADHD. Part and parcel of Petitioner’s child find argument is Student’s allegations that the District failed to evaluate Student in all areas of suspected disability and to identify Student as eligible for services under AU and ADHD. The September ***, 2020, REED was an appropriate evaluation and no one challenged its eligibility determination of SLD. Student’s Complaint only referred to ED and ADHD services. No one had any concept of the latent determination in Dr. ***’s IEE, i.e., that Student has AU and ADHD.

B. INDIVIDUALIZED EDUCATION PROGRAM

Petitioner did not identify which IEP violated Student’s right to FAPE. To the extent Student was referring to the IEPs developed during the Relevant Time of July 1, 2021 – July 1, 2022, Student has failed to prove that these IEPs were inappropriate under *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253-54 (5th Cir. 1997).

In 1997, the Fifth Circuit established a four-factor test to determine whether a school district’s IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA: (1) Is the program individualized on the basis of the student’s assessment and performance?; (2) Is the program administered in the LRE?; (3) Are the services provided in a coordinated and collaborative manner by the key stakeholders?; and (4) Does the student demonstrate both positive academic and nonacademic benefits? *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d at 249. These factors were re-affirmed by the Fifth Circuit as appropriate under, and consistent with, *Andrew F. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

Petitioner argued that Factors 1 and 4 do not support a finding that any IEP developed between July 1, 2021, and July 1, 2022, was appropriate. The evidence does not support these claims.

At the time of Student’s Complaint, July 1, 2022, the last agreed ARDC Report concerned the January ***, 2022, Annual ARDC meeting. Prior to that another ARDC was convened on August ***, 2021,

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

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

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

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

Student's August ***, 2021, and January ***, 2022, IEPs were created in a coordinated and collaborative manner by the key stakeholders, including Student's Parents. Consensus was reached at both ARDC meetings.

C. PROVISION OF FAPE POST ***

Petitioner argues that Respondent failed to provide Student FAPE following Student's ***. Respondent's failure to provide Student with special education accommodations ensued only because Student's Parents did not agree with the proffered IEP at the February *** and ***, 2022, ARDC meetings.

At the time of Student's MDR ARDC meeting, Student had been ***. Student had not been in school since February ***, 2022.

The February ***, 2022, ARDC reached consensus as to the MDR determination. On February ***, 2022, the ARDC reconvened following Student's *** from the District. The District offered the help of a certified special education teacher for one hour per week as well as access to Edgenuity. When the Parents refused this offer, the Committee reconvened on February ***, 2022, and expanded the offer. The Parents refused the services.

Student's *** the District was not temporary. This ***. Student's *** was supported by TEX. GOVT. CODE §37.007 [J25.01]. Student was no longer enrolled in the District and Student would not be ***. Student would have to find another District to enroll Student and pursue ***. But in the meantime, Respondent offered to provide sufficient special education services. Because Student's Parents declined these services, no special education services have been provided since Student's ***.

Not to be forgotten was the District's offer to revisit the *** and consider rescinding it. Student did not take advantage of this option.

The proffered services would have enabled Student to continue to participate in the general education program in another setting and to progress toward IEP goals.

VI. CONCLUSIONS OF LAW

1. MWISD is a local education agency responsible for complying with IDEA. 20 USC § 1400 *et. seq.*
2. Petitioner had the burden of proof on all issues they raised under IDEA at the due process level. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005). IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.
3. Petitioner failed to prove that the District failed to meet its child find duty in a timely manner under the IDEA 34 C.F.R. § 300.111; 19 TEX. ADMIN. CODE § 89.1151 (c).
4. Petitioner failed to prove that the District's REED was inappropriate, untimely, and not comprehensive.
5. Petitioner failed to prove that Student's *** IEPs were not reasonably calculated to provide a meaningful educational benefit. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d at 249.
- 6.. Petitioner failed to prove that Respondent denied Petitioner a FAPE.

VII. ORDER

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Student is DENIED and this case is DISMISSED WITH PREJUDICE TO REFILEING.

SIGNED this the 11th day of August 2023.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be

initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

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