DOCKET NO. 017-SE-0920

STUDENT, *B/N/F* PARENT, Petitioner, V. CHILDRESS INDEPENDENT SCHOOL DISTRICT, Respondent.	§ § § § § § § § § §	BEFORE A SPECIAL EDUCATION HEARING OFFICER FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

I.
STATEMENT OF THE CASE

On September 28, 2020, Student, *b/n/f* Parent, ("Student" or "Petitioner") filed a Complaint with the Texas Education Agency ("TEA") against Childress Independent School District ("Respondent" or "District"), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On September 29, 2020, TEA assigned this matter to Stacy May as the impartial Special Education Hearing Officer ("SEHO") and sent a copy of the Complaint and Notice of Filing to Respondent.

A. PETITIONER'S DUE PROCESS HEARING ISSUES:

Petitioner asserted multiple issues in Petitioner's Complaint. Specifically, Petitioner asserted that the District procedurally and/or substantively denied Petitioner a Free Appropriate Public Education ("FAPE") during school year 2018-19 and 2019-20 in the following particulars: [1]

1. Whether the District failed to timely evaluate and identify Petitioner as a student with a disability under the IDEA;

2. Whether the District failed to provide Petitioner necessary related and supplementary services;

3. Whether the District failed to provide Petitioner services in a coordinated, collaborative manner;

[1] Respondent asserts that this is beyond the one-year Texas Statute of Limitations.

4. Whether the District failed to develop a program for Petitioner that provided academic and non-academic benefits;

5. Whether the District denied Petitioner a meaningful educational benefit by failing to appropriately address *** issues related to Petitioner; and

6. Whether the District was required, but failed, to provide a Notice of Procedural Safeguards to Petitioner.

B. Petitioner's Requests for Relief:

1. Prospective and compensatory reimbursement for the family for counseling and therapy services;

2. An independent consultant, retained by the District, to provide training, supervision, and monitoring of Child Find activities for the District for one year;

3. Requiring the District to provide notice of procedural safeguards required under the IDEA to parents and to display them on the District's website;

4. Reimbursement for out-of-pocket expenses incurred; and

5. Any relief that the SEHO officer deems appropriate or which is recommended by independent experts and evaluators.

C. Respondent's Affirmative Defenses:

Respondent requested that SEHO May's previous Order regarding Respondent's affirmative defense of Statute of Limitations and Plea to the Jurisdiction of claims, other than those arising under IDEA, are maintained. [2]

II. PROCEDURAL HISTORY

On September 30, 2020, Respondent's Counsel filed a Notice of Representation. On October 1, 2020, SEHO May issued Order No. 1: Initial Scheduling Order, stating the prehearing telephone conference ("PHC") would convene on October 19, 2020; the Document and Witness Disclosures would occur on October 27, 2020; the Due Process Hearing would convene on November 4, 2020; and the Decision would issue on December 13, 2020.

On October 12, 2020, SEHO May issued Order No. 2: Resetting Prehearing Telephone Conference, which continued the PHC, by agreement, to October 21, 2020.

[2] SEHO May set out her ruling in her Order No. 8 that "to the extent the Second Amended Complaint seeks to raise any claims arising under a statute other than the IDEA, including Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act (ADA), those claims are hereby DISMISSED for lack of jurisdiction as are Petitioner's requests for reimbursement of representational fees and costs. Respondent's Plea to the Jurisdiction with respect to the statute of limitations is DENIED at this time." [Order No. 8]

On October 14, 2020, Respondent filed its Challenge to the Sufficiency of the Complaint. On October 19, 2020, SEHO May issued Order No. 3: Granting Respondent's Challenge to the Sufficiency of the Complaint and Requiring the Filing of an Amended Complaint. By this Order, SEHO May ordered Petitioner to file an Amended Complaint on, or before, October 22, 2020.

On October 22, 2020, Petitioner filed the Amended Complaint. On October 29, 2020, SEHO May issued Order No. 4: First Revised Scheduling Order, stating the PHC would convene on November 12, 2020; the Document and Witness Disclosures would occur on November 20, 2020; the Due Process Hearing would convene on December 2, 2020; and the Decision would issue on January 5, 2021.

On November 1, 2020, Respondent filed its Plea to the Jurisdiction and Response to Petitioner's First Amended Request for a Special Education Due Process Hearing. On November 6, 2020, Respondent filed its Notice of Insufficient Complaint and Motion to Dismiss Petitioner's First Amended Request for a Special Education Due Process Hearing. On November 20, 2020, SEHO May issued Order No. 5: Granting Respondent's Challenge to the Sufficiency of the Complaint and Requiring the Filing of a Second Amended Complaint. SEHO May ordered Petitioner to file the Second Amended Complaint on, or before, November 16, 2020.

On November 16, 2020, Petitioner filed Petitioner's Second Amended Request for a Special Education Due Process Hearing. On November 19, 2020, SEHO May issued Order No. 6: Second Revised Scheduling Order, stating the PHC would convene on December 3, 2020; the Document and Witness Disclosures would occur on December 17, 2020; the Due Process Hearing would convene on December 29, 2020; and the Decision would issue on January 30, 2021.

On November 25, 2020, Respondent filed its Plea to the Jurisdiction and Response to Petitioner's Second Amended Request for Special Education Due Process Hearing. On December 1, 2020, Respondent filed its Notice of Insufficient Complaint and Partial Motion to Dismiss Petitioner's Second Amended Request for a Special Education Due Process Hearing.

On December 3, 2020, the Parties convened the PHC. In attendance were the following: (1) Mr. Daniel Garza, Petitioner's counsel; (2) Ms. ***., Petitioner's Parent; (3) Ms. Janet Bubert and Mr. Slater Elza, Respondent's counsel; (4) SEHO May; and (5) the court reporter, who made a record of the telephone conference.

On December 4, 2020, SEHO May issued Order No. 7: Memorializing Prehearing Conference; Denying Respondent's Notice of Insufficient Complaint and Partial Motion to Dismiss; Granting Joint Motion for Continuance and Extension of Decision Due Date for Good Cause; and Third Revised Scheduling Order, stating the PHC would convene on February 22, 2021; the Document and Witness Disclosures would occur on February 17, 2021; the Due Process Hearing would convene on February 25-26, 2021; and the Decision would issue on April 16, 2021.

On, or about, January 22, 2021, the Parties filed a joint continuance motion, which SEHO May granted. On February 1, 2021, SEHO May issued Order No. 8: Granting Joint Request for Continuance of Hearing Dates and Extension of Due Date for Written Decision. Per this Order, SEHO May stated the PHC would convene on March 19, 2021; the Document and Witness Disclosures would occur on March 22, 2021;

the Due Process Hearing would convene on March 31-April 1, 2021; and the Decision would issue on May 20, 2021.

On March 8, 2021, TEA re-assigned this case to the undersigned SEHO, Deborah McElvaney. Upon receipt of the case, the undersigned contacted the Parties to verify the hearing and attendant deadlines and to schedule a PHC.

Also on March 8, 2021, Respondent filed a Traditional Motion for Summary Judgment and a No Evidence Motion for Summary Judgment, arguing that Summary Judgment should be entered because (1) the evidence conclusively established that there is no Child Find violation;(2) the evidence conclusively established that Petitioner did not have a qualifying disability under the IDEA; (3) the evidence conclusively established that Petitioner did not require special education and related services; (4) the evidence conclusively established that Petitioner's claims are barred by the applicable statute of limitations; (5) the Hearing Officer lacked authority to award the relief request by Petitioner; (6) there was no evidence to establish a child-find violation; (7) there was no evidence to establish Petitioner had a qualifying disability under the IDEA; and (8) there was no evidence to establish Petitioner required special education and related services.

On March 16, 2021, Petitioner filed Petitioner's Response to Childress Independent School District's Motion for Summary Judgment and No Evidence Motion for Summary Judgment, arguing that issues of material fact as to each issue pled and relief requested precluded the entry of summary judgment. Respondent filed its Reply to Petitioner's Response to Respondent's Motion for Summary Judgment and No-Evidence Motion for Summary Judgment on March 24, 2021; Petitioner filed its Sur-Reply to Childress Independent School District's Reply to Petitioner's Response to Respondent's Motion for Summary Judgment and No-Evidence Motion for Summary Judgment on March 31, 2021.

Following an in-depth review of the motions, responses, evidence, and pleadings, on April 28, 2021, the undersigned denied Respondent's summary judgment motions.

On March 17, 2021, the Parties convened the PHC. In attendance were the following: (1) Mr. Daniel Garza, Petitioner's counsel; (2) Mr. David Beinke and Ms. Cindy Udelhofen, Petitioner's Advocates; (3) Ms. ***., Petitioner's Parent; (4) Ms. Janet Bubert and Mr. Slater Elza, Respondent's counsel; (5) the undersigned SEHO; and (6) the court reporter, who made a record of the telephone conference. The Parties requested a continuance of the hearing and attendant deadlines. Finding good cause for the requested continuances, the undersigned granted the requests and on April 8, 2021, issued Order No. 9: Scheduling Order Following PHC, which rescheduled the Due Process Hearing and attendant deadlines as follows: the Document and Witness Disclosures would occur on April 23, 2021; the Due Process Hearing would convene on May 3 & 5, 2021; and the Decision would issue on June 23, 2021.

The Parties made their Disclosures timely and the SEHO convened the Due Process Hearing on May 3 & 5, 2021. Both Parties introduced documentary evidence; Petitioner called several witnesses, who were cross-examined by the District. When Petitioner rested Petitioner's case, Respondent likewise rested and called no witnesses.

During the Hearing, Petitioner was represented by (1) Mr. Daniel Garza, Petitioner's counsel; Mr. David Beinke, Petitioner's Advocate; Ms. Cindy Udelhofen, Petitioner's Advocate and the Petitioner's Parents and; (2)

Mr. Slater Elza and Ms. Janet Sobey Bubert, Respondent's counsel.

At the conclusion of the Hearing, the Parties requested additional time for filing their written Closing Arguments and for the SEHO's delivery of the Final Decision, both of which were granted. Accordingly, the Closing Arguments would be due on, or before, June 14, 2021, and the Decision would issue on, or before, June 23, 2021.

Both Parties filed and served their Closing Arguments on the agreed briefing deadline, June 14, 2021. This Decision of the Special Education Hearing Officer is being delivered to the Parties on the agreed Decision Deadline of June 23, 2021.

III.
RESOLUTION SESSION

The Parties agreed to mediate this case in lieu of convening a Resolution Session. The mediation occurred on January 21, 2021, but the Parties did not settle their issues.

IV.
FINDINGS OF FACT [3]

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District. The District is responsible for providing FAPE under IDEA and its implementing rules and regulations.

2. Petitioner had attended classes in the District since *** school. Petitioner was never provided special education and related services. During *** grade, Petitioner earned passing grades in Student's classes and satisfactory performance on state assessments [Jt.1.1-2].

School Year 2017-18: *** **Grade**

3. During the 2017-18 school year, Petitioner was enrolled at ***. Student received general education interventions, including tutoring and small group instruction, through the District's Response to Intervention Program ("RTI") program [Jt.11].

4. Although Petitioner's Mother described Student as "full of life," "really funny" and "always on the go," Petitioner's Mother and the District agreed *** grade was a difficult year [T.1.172].

5. Petitioner was often ***: Student enjoyed ***"; Student was often engaged in ***; Student had trouble focusing,[4] doing Student's work, keeping Student's grades up, and engaged in *** [T.1.173]. Student did not make good grades. Notwithstanding these facts, Petitioner's Mother never reported

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[3] 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 May 3 & 5, 2021, and the specific volume, page, and line numbers contained therein; "Jt.#.# refers to the Parties' Joint Exhibits by number and page; "P.#.#" refers to Petitioner's Exhibits by number and page; "R.#.#" refers to the District's Exhibits by number and page; JS.# refers to the Parties' Statement of Facts.

[4] Petitioner's teachers were able to redirect Student to focus on the lesson [T.1.263.1-5].

that Student engaged in significant misconduct that would result in out-of-school suspension or placement in a Disciplinary Alternative Educational Placement ("DAEP").

6. Petitioner's Mother described Student's behavior at school as typical for Student's age [Jt.S.6]; Petitioner manifested weaknesses in reading and math, and it was a struggle to get Student to read [T.1.179].

7. Petitioner had five *** referrals to In-School Suspension ("ISS") resulting in Student's placement in ISS for *** [Jt.6.1-5].

8. Petitioner did not enjoy doing homework; Student kept Student's Mother in the dark when Student had homework. Petitioner's Mother had to stay on Student to complete Student's homework [T.1.185.6-17], although this was difficult because she was working *** and was not around to supervise Student [T.1.226.17].

9. Petitioner often had failing grades. The District responded by offering tutorials and summer school [T.1.195.14]. At the end of *** grade, Petitioner had to attend summer school to raise Student's failing grade in *** [Jt.1.2]. Petitioner was successful and advanced to *** grade.

10. Although Student's scores were very close, Petitioner did not meet satisfactory performance on the *** STAAR assessment for *** [R.6.2].

11. Petitioner passed all of Student's *** grade classes. Petitioner's final grades for *** grade were as follows: *** [Jt.2.2).

12. In May 2018, Petitioner's Mother applied for Petitioner's placement at ***, a residential community for at-risk youth [JS.9]. Petitioner's Mother did not share the application to *** with the District until after this due process proceeding was filed [Jt.7.1; T1.216.19-217.1].

13. Petitioner was upset about the possibility of going to ***. Petitioner's *** talking with other kids garnered Student's attention and understanding that Student's Mother was serious about Student improving Student's behavior [Jt.7.3; T1.238.14-23]. ***.

School Year 2018-19: *** **Grade**

14. After struggling in *** grade, *** grade proved to be a much better year for Petitioner behaviorally and academically [JS.12; T1.42.17-43.; T1.1240.20-22; T1.246.2-5]. Petitioner had some minor struggles but Student kept Student's grades up and did not get in much trouble [T1.228.10; 245.7-14]. Petitioner was motivated by *** to improve Student's behavior and try harder at school [T1.246.16-19]. Petitioner also was motivated to improve Student's school performance because Student wanted ***. [T1.218.10-18].

15. Petitioner did not exhibit any physical aggression, but for an incident between Petitioner and Student's Mother regarding the application to attend *** [T.1.63-65].

16. Petitioner had no discipline referrals [T1.175.24-25; 176.1.11]. Petitioner benefitted from tutoring when Student attended [T.1.44].

17. Petitioner achieved satisfactory performance on the *** STAAR *** assessment. Although Student's score was close, Petitioner did not achieve satisfactory performance on the *** STAAR *** assessment [R.6.4 & T1.220.14-19].

18. Petitioner attended and successfully completed summer school after *** grade for *** [T1.277.3-21].

19. Petitioner passed all of Student's *** grade classes with the following grades: *** [Jt.2.2).

School Year 2019-20: * Grade**

20. Petitioner attended *** grade for ***. *** [JS.13]. At the time ***, Petitioner was passing all of Student's classes [Jt.1.3]; Student had no discipline referrals but for the ***, , incident at school [T1.219.710].

21. On ***, , Petitioner was involved in *** incident. ***. Upon review of a video of the incident, the District determined that Petitioner ***.

22. Shortly thereafter, the District informed Petitioner's Mother that Petitioner had participated in the incident. ***[T1.53.3-10].

23. The District assigned Petitioner to ISS *** (T.55.21-25). ***. Although Petitioner's Parents initially did not object to Student's punishment, they did not agree with Petitioner's placement ***. The Parents believed that *** was the prudent thing to do [T1.60.12-22].

24. *** [T1.49.2-23]. ***.

25. At the time ***, Petitioner had no history of *** issues [R.4.1]. Petitioner's Mother never discussed Petitioner's education with Student's physician or *** counselors, and none of Student's professional service providers ever recommended an evaluation or assessment related to educational needs [T1.232.1-14].

26. Petitioner's Mother received and read the Student Handbook, but she could not remember if she reviewed the sections of the handbook related to special education and what to do to request additional services [T1.248.5-9].

27. Prior to ***, Petitioner was not referred for an evaluation for special education eligibility by either Student's Parents or the District. There was no evaluation or other data that identified Petitioner as eligible for special education and related services under IDEA [JS.5].

28. Petitioner failed to prove that the District made intentional, specific misrepresentations that prevented the Parents from requesting a Due Process Hearing during school years 2017-18; 2018-19; and 2019-20.

29. Petitioner failed to prove that the District withheld required information from the Parents that

prevented them from requesting a Due Process Hearing during school years 2017-18; 2018-19; and 2019-20.

30. Petitioner failed to prove that the District suspected the Student had an IDEA-related disability.

31. Petitioner failed to prove that Petitioner had an IDEA-related disability.

32. Petitioner failed to prove that Student needed special education and related 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 Individual Education Plan ("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 Petitioner 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 particular 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 in light of the student's individual circumstances. *Id*. at 999.

A. The Statute of Limitations Issues:

Under IDEA 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 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, which requires that 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).

IDEA allows very narrow exceptions to its time limitations: (1) the statute of limitations shall not apply ifa parent was prevented from requesting a due process hearing due to specific misrepresentations by the local district that it had resolved the problem forming the basis of the complaint; 20 U.S.C.

§1415(f)(3)(D)(i); 34 C.F.R. §300.511(f)(1); and/or (2) the statute of limitations shall not apply where a parent failed to exercise his/her right to a due process hearing because the local district withheld information that it is required toprovide to the parent. 20 U.S.C. §1415(f)(3)(D)(ii); 34 C.F.R. §300.511(f)(2). There are no other exceptions. 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).

Petitioner filed this request for a due process hearing on September 29, 2020, alleging that Student's claims go back to school year 2017-08. Petitioner argued that the one-year statute of limitations is not applicable to the facts of this case because the District (1) made misrepresentations that prevented the Parents from filing a timely request for due process hearing, and (2) withheld required information. Petitioner had the burden of proving that one of these exceptions tolled the one-year statute of limitations. *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918, 945 (W.D. Tex. 2008), *rev'd in part on other grounds*, *El Paso Indep. Sch. Dist. v. Richard R.*, 591 F.3d 417 (5th Cir. 2009).

1. Petitioner Failed to Prove Intentional, Specific Misrepresentations.

Simply alleging that a misrepresentation was made by a district does not carry the burden of proving that the misrepresentation prevented the disabled child from filing a complaint under IDEA. Additionally, establishing that a misrepresentation actually was made by a district does not carry the burden of proving that the misrepresentation prevented the disabled child from filing a complaint under IDEA. The "misrepresentation," contemplated by federal statutes, regulations, and interpreted by case law, must be a specific, intentional, or flagrant misrepresentation that the problems forming the basis of the complaint have been resolved. *Richard R.,* 567 F.Supp.2d at 944-945. In other words, the district must have subjectively determined that the Petitioner was not receiving FAPE and intentionally misrepresented that fact to the Petitioner's parents. *Evan H. v. Unionville-Chadds Ford Sch. Dist.,* 51 IDELR 157 (E.D. Pa. 2008); *Student v. Pasadena Indep. Sch. Dist.,* 58 IDELR 210 (SEA Tex. 2012).

In this case, Petitioner does not specifically name any misrepresentations/and or promises made by the District that it had resolved any of the claimed violations. Rather, Petitioner argues that the combination of Petitioner's academic and non-academic performances should have alerted the District to suspect Petitioner had a qualifying disability. To read the term "misrepresentation" to include actions by a school district anytime it failsto remedy an educational problem encountered by a Petitioner is too broad. Such an interpretation would "swallow the rule established by the limitation period." *Evan H. v. Unionville-Chadds Ford Sch. Dist.,* 51 IDELR 157 (E.D. Pa. 2008).

Petitioner's Mother knew of these events at the time they occurred; Petitioner's Mother and the District discussed Petitioner's grades, STAAR tests, and behavior. There is no evidence that the District reported to the Parent that (1) Petitioner's academic achievement was greater than it actually was; (2) the District represented it was providing an intervention and then failed to do so; or (3) the District made any false representations that a special education evaluation was in the offing and then failed to do so. At all times, the District and the Parents maintained communication about the opportunities for support provided to Petitioner. Absent a specific and intentional misrepresentation by the District that it resolved the basis of the complaint, this exception does not toll the limitation period. *Krawietz by Parker v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018).

2. Petitioner Failed to Prove the District Withheld Information It Was Required to Provide

The second exception to the statute of limitations applies when a school district withholds information it is required to provide under the IDEA. 20 U.S.C. §1415(f)(3)(D)(ii). This exception incorporates the obligation to provide the parents of a child with a disability with notice of the IDEA procedural safeguards. 34 C.F.R. §300.504(a). For the parent of a child with a disability, the notice must be provided once a year, except that a copy also shall be given to the parent: (i) upon initial referral or parental request for an evaluation; (ii) upon the first occurrence of the filing of a due process complaint; and (iii) upon request of the parent. 20 U.S.C. §1415(d)(1)(A).

There is no dispute that Petitioner was never identified as a "child with a disability" under the IDEA. At the time ***, there was no request for special education services; no FIE evaluation contemplated; and no indication that Petitioner had disabilities requiring special education services. Simply put, there was no evidence that the District had the obligation to provide Petitioner with information such as procedural safeguards. *See* 20 U.S.C. §1415(d)(1)(A).

Because the law never required the District to provide procedural safeguards, this exception to the statute of limitations does not apply as a matter of law; Petitioner's request for a due process hearing *** was untimely. Petitioner's claims accrued on ***, ***. Accordingly, this Decision will consider violations of IDEA that may have occurred between ***, 2019, and ***, 2020, the date Petitioner filed Petitioner's complaint. Any violations of IDEA that may have occurred outside of those dates will not be considered in this case.

B. PETITIONER'S CHILD-FIND ISSUE:

A "child with a disability" is defined under IDEA as a Petitioner who meets 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 Petitioner can meet the criteria of one or more of the disability classifications, a Petitioner 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 Petitioner 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).

Petitioner alleges the District has violated its child-find duty under IDEA. Congress enacted the IDEA's child-find provisions to guarantee access to special education for students with disabilities. 20 U.S.C. § 1412(a)(3). To that end, the IDEA's child-find duty imposes on each local educational agency an affirmative obligation to have policies and procedures in place to locate and timely evaluate children with suspected disabilities in its jurisdiction, including "[c]hildren who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade[.]" 34 C.F.R. §§300.111(a) & (c)(1).

The child-find duty is triggered when the local educational agency has reason to suspect a child has a disability coupled with reason to suspect the child needs special education services. *Krawietz*, 900 F.3d at 676; *Richard R.,* 567 F.Supp.2d at 949-50. When these suspicions arise, the local educational agency "must evaluate the Petitioner within a reasonable time after school officials have notice of behavior likely to indicate a disability." *Krawietz*, 900 F.3d at 676. Schools do not need to "rush to judgment" and immediately evaluate

a child who demonstrates average or below-average performance. *D.K. v. Abington Sch. Dist.,* 696 F.3d 233, 252 (3rd Cir. 2012).

1. Petitioner Failed to Prove the District Had Reason to Suspect Petitioner Had a Disability.

Petitioner failed to establish that the District had reason to suspect Student had a disability. To the contrary, the evidence established that Petitioner was continuing to make academic progress. The District was carefully monitoring Petitioner's progress.

At the time ***, there was no evidence that Student had any disability. Petitioner offered no evidence of an evaluation by a qualified evaluator to support a determination that Petitioner met the criteria of one or more of the IDEA's disability categories; Petitioner offered no expert testimony to support a determination that Student met the criteria of one or more of the IDEA's disability categories at any time during Student's attendance at the District.

Following ***, Petitioner's physician confirmed that Petitioner had no history of *** issues [R.4.1]. Further, Petitioner's Mother denied Petitioner suffered from an emotional disturbance or required special education in the application she submitted to *** and she repeatedly referred to Petitioner's demeanor and behavior as "typical for a *** Student's age."

2. Petitioner Failed to Introduce Evidence of a Need for Special Education.

Even if a disability condition is identified, the second part of the eligibility determination requires the Petitioner to demonstrate a need for special education services as a result of the disability. See 34 C.F.R. §300.8. Consequently, a student who meets the IDEA-eligibility criteria but who does not show a need for special education services, has not met the definition of a student with a disability under the IDEA. *See* 34 C.F.R. §300.8. The determination of the nature and extent of special education and related services that a child needs must also be based on an evaluation conducted in accordance with the procedures mandated by IDEA. 34 C.F.R. §300.15.

Educational need 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). While the achievement of passing marks and the advancement from grade to grade is important in determining educational need, it is but one factor in the analysis. *Bd. of Hendrick Hudson Int.,* 458 U.S. at 207, n. 28 (1982).

Petitioner enjoyed ***. Student was friendly and engaged with Student's peers in class; Student liked ***." Petitioner successfully advanced from grade to grade with support in the general education setting. Through RTI, Petitioner received tutoring and small group instruction to address off-task behavior, which allowed Student to make progress in the general education curriculum. With the RTI support, Petitioner consistently showed improvement on progress monitoring conducted by the District. Additionally, as Petitioner progressed through ***, Student's stabilizing home life, developing maturity and interest in *** motivated Student to pay more attention to schoolwork. Student was motivated by Student's love for *** and desire to ***, which resulted in improved behavior.

The District offered accommodations in the general education setting that were effective and sufficient to overcome any alleged child find violation. *See Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 272 (3rd Cir. 2012) (no child find violation occurred where a school district appeared to be invested in addressing the Petitioner's needs and in providing appropriate instruction and interventions "before rushing to special education identification").

Petitioner offered no evidence, expert or otherwise, that Student required special education services to receive an educational benefit despite. Petitioner offered no evidence that Student required specialized instruction to make appropriate progress. Petitioner had no evaluation completed in accordance with the IDEA procedures that demonstrated Petitioner required special education and related services. To prevail on the claim that Petitioner was denied FAPE, Petitioner must (1) prove Student was an eligible Petitioner under the IDEA because Student had a qualified disabling condition and (2) required special education and related services. Petitioner did prove either requirement; accordingly, there is no evidence available to support either prong.

This case presents a ***. Based upon the Statute of Limitations findings Petitioner's accrual date for asserting claims was ***, 2019. The only issue occurring between *** 2019, and ***, 2020, was ***. This alone precluded Petitioner from presenting a child-find violation.

VI.
CONCLUSIONS OF LAW

1. 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.

2. Petitioner failed to prove that the one-year statute of limitations should apply to this proceeding; Petitioner failed to prove either exception to the one-year statute of limitations. 19 TEX. ADMIN. CODE §89.1151(c).

3. Petitioner's claims are limited solely to those that arose after ***, 2019, the date *** prior to the date on which the complaint was filed. 20 U.S.C. 1415(f)(3)(C); 19TEX. ADMIN. CODE §89.1151(c); Richard R., 567 F.Supp.2d at 944.

4. Petitioner failed to prove that the District violated its child-find duty. 34 C.F.R. §300.111; 19 TEX. ADMIN. CODE § 89.1151(c); *Krawietz*, 900 F.3d. at 706; *Richard R.*, 567 F.Supp.2d at 949-50.

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 Petitioner is DENIED.

SIGNED this the 23rd day of June 2021.

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).

COPIES SENT TO:

VIA EMAIL: daniel@cirkielaw.com
Mr. Daniel Garza
VIA EMAIL: specialedmarine@yahoo.com
Mr. David Beinke
CIRKIEL & ASSOCIATES, P.C.
1901 E. Palm Valley Boulevard
Round Rock, TX 78664
Petitioner's Counsel/Advocate

VIA EMAIL: janet.bubert@uwlaw.com
Ms. Janet S. Bubert
VIA EMAIL: slater.elza@uwlaw.com
Mr. Slater Elza
UNDERWOOD LAW FIRM, P.C.
1008 Macon Street, Suite 101
Fort Worth, TX 76102
Counsel for Respondent