

DOCKET NO. 223-SE-0416

STUDENT, b/n/f PARENT	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
LEANDER INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner STUDENT, b/n/f PARENT, (collectively, Petitioner) requested an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* The respondent to the complaint is the Leander Independent School District (the District). Petitioner alleges the District unreasonably refused Petitioner’s request for a special education evaluation and failed to identify Student’s disabilities pursuant to the Child Find provisions of the IDEA. The District denies Petitioner’s allegations. The Hearing Officer finds that Petitioner failed to meet its burden of proving that Student was in need of special education services. Therefore, Petitioner’s requested relief is denied.

I. DUE PROCESS HEARING REQUEST

Petitioner filed a Request for a Due Process Hearing (Complaint) on April 13, 2016. In the Complaint, Petitioner alleged that the District:

1. Unreasonably denied Student’s request for evaluation of all areas of suspected disability;
2. Denied Student a Free and Appropriate Public Education (FAPE) because the District failed to find Student eligible for special education services as a student qualified with Other Health Impairment with diagnoses of reading disability, Attention-Deficit/Hyperactivity Disorder (ADHD), ***, and Depressed Mood.
3. Violated the Child Find provisions of the IDEA by taking inadequate measures to identify Student’s disabilities.

4. Failed to develop an Individualized Education Program (IEP) to address Student's unique individual needs, including accommodations or modifications necessary to ensure Student makes educational progress.

For IDEA-related relief, Petitioner seeks:

1. Reimbursement to Parent for the costs associated with the private neuropsychological assessment; and
2. Compensatory educational and related services to address the District's failure to implement an appropriate IEP, including reading in the 2012-13, 2013-14, 2014-15, and 2015-16 school years.

II. ISSUES AND BURDEN OF PROOF

A. Issues

The Hearing Officer does not have jurisdiction to hear claims arising under law other than the IDEA. Issues and relief sought pursuant to non-IDEA laws, as well as asserted rights regarding payment of the prevailing party's attorney's fees, were dismissed in Order No. 2. The IDEA issues in dispute are listed above. All requests for relief prior to April 13, 2015, are dismissed as outside the statute of limitations. No exception to the statute of limitations was proven.

B. Burden of Proof

IDEA creates a presumption that a school district's decisions made pursuant to IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.¹ To prevail, Petitioner must, therefore, establish that the District (1) inappropriately denied Student's request for a special education evaluation; (2) failed to meet its Child Find obligations with respect to Student by failing to identify Student's disabilities; and (3) wrongly denied Student special education eligibility and FAPE.

¹ *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *see also White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d. 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

III. HEARING AND DECISION DUE DATE

The hearing was held on January 5-6, 2017, before Hearing Officer Tommy Broyles. Yvonnilda Muniz and Olivia B. Ruiz represented Petitioner. Susan B. Graham and Kelly Shook represented the District. Both parties submitted written closing arguments on or before February 6, 2017. This decision was timely rendered and forwarded to the parties on March 27, 2017.

IV. FINDINGS OF FACT

Based upon the evidence and argument of the parties, the Hearing Officer makes the following findings of fact:

1. Student, ***, resides within the geographical boundaries of the District.
2. Student first enrolled in the District in *** grade and ***.
3. Student was identified as a student with Dyslexia at a previous district when in the *** grade and qualified for Section 504 services.² Upon enrollment in the District, Student participated in a Dyslexia program but later was dismissed from direct services and placed on “monitor status” for related services.³
4. ***. With the ***, Student developed *** and *** (***)⁴.
5. Student has experienced difficulty keeping up with assignments, a lack attention/focus at times, mood swings, and ***.⁵
6. Student has many strengths including kindness to others. Student is smart, independent, and displays a good attitude. Student is ***, catches on easily, and will help others in need. Student also has good behavior and gets along well with others.⁶

² Ex. J-12 at 2.

³ Ex. J-8 at 1, 5.

⁴ Ex. J-12 at 2.

⁵ Ex. J-12 at 3.

⁶ Ex. J-8 at 2; Ex. J-12 at 3.

7. Student's overall intellectual functioning is high-average to superior.⁷
8. Student's Section 504 Team Meetings in 2013 and then again in 2016 found that Student had a disability, dyslexia, affecting major life activities including reading. In 2013, writing and organization were also included as affected major life activities.⁸
9. Student presents in the educational setting as both attentive and inattentive (***), the latter when Student is overwhelmed. Student may ***.
10. The accommodations provided to Student remained the same from 2013-2016, with the addition of allowing the use of *** in class for *** and ***.⁹
11. The Section 504 accommodations offered from 2013 to 2016 to student were:
 - a. no penalization for spelling errors on unedited work;
 - b. extra time for reading and writing assignments;
 - c. ***;
 - d. class notes provided; and
 - e. extra time on tests.
12. Mother, and subsequently *** Student, requested an evaluation for special education services prior to the Section 504 Team meeting held on February ***, 2016 (2016 Team Meeting). The initial email requesting a Full and Individual Evaluation (FIE) was sent by Mother on February ***, 2016, and followed by a request from *** Student.
13. The request was denied by the District's Educational Diagnostician (Diagnostician) on February ***, 2016.¹⁰
14. During the 2016 Team Meeting, Mother noted that Student suffered from ***. The team declined to consider these medical conditions due to a lack of information.¹¹
15. Twenty-four accommodations were requested by Mother during the 2016 Team Meeting, but the Section 504 Team found them unnecessary.¹²
16. On February ***, 2016, a physician provided a letter with the active diagnoses for Student's health issues including ***.

⁷ Ex. J-12 at 7.

⁸ Ex. J-8 at 3-6; Ex. J-10 at 2-5.

⁹ Ex. J-8 at 2.

¹⁰ Ex. J-7; Tr. at 73.

¹¹ Ex. J-8 at 1-2.

¹² Ex. J-8 at 2, 10-11.

17. Student was medically diagnosed with ***¹³ and with ***.¹⁴
18. Student received outside counseling by October 2013.¹⁵
19. Student struggled with inattention in Student's coursework, and with reading in particular, at least by October 2013.¹⁶
20. Student's academic anxieties substantially existed around particular courses, including *****, ***(***)*****, and *****,
21. Student worked through Student's struggles by ***,¹⁷ ***,¹⁸ and by participating in ***.¹⁹
22. In March 2015, Student advised a District counselor that Student wanted to ***.²⁰ Student was not allowed to make this decision as Student was ***, but the counselor feared Student would *** Student's ***.
23. As classes became stressful and more challenging for Student, Student received assistance from teachers and ***. *** monitored Student's progress and required study time. *** ultimately provided one-to-one help, when necessary.²¹ Teachers reduced Student's coursework load to help Student.²² Teachers also allowed *** without penalty, an accommodation also offered to other students.
24. At least one teacher substituted a ***-week grade of *** for a *** in order to allow Student to ***. This substitution was available to other students.
25. Support was provided to Student through Section 504 accommodations and with teachers, ***, and counselors all appropriately helping Student.

¹³ Ex. J-17 at 41.

¹⁴ Ex. J-17 at 57.

¹⁵ Ex. P-6 at 14.

¹⁶ Ex. P-6 at 6-14; Tr. at 427.

¹⁷ Ex. P-6 at 3; Tr. at 623.

¹⁸ Tr. at 4-7; Exs. P-7 at 19, P-8 at 11, and P-7 at 21.

¹⁹ Tr. at 401, 488-489, 493-496.

²⁰ Tr. at 386-387.

²¹ Tr. at 395-396.

²² Tr. at 396-397.

26. Student experienced remarkable stress in Student's educational experience.²³ A District counselor worked with Student to prepare a plan of action so Student would not be as stressed.²⁴
27. Student's *** did not directly affect Student's academic progress. All students were allowed to ***.²⁵ However, the emotional stress was significant.
28. When she declined the request for an FIE, the Diagnostician determined there was a lack of evidence supporting a need for specially designed instruction. She based her decision on Student's history of passing Student's classes and Student's state assessments.²⁶
29. In making her determination, the Diagnostician did not review some relevant information on whether suspicion existed that Student's disability required special education instruction, including that:
- a. the District sought consent to conduct an evaluation of Student in January 2012 and that Mother provided consent (there is no evidence that an evaluation was conducted);²⁷
 - b. only a "very brief" meeting was held with Student prior to making the decision to deny the request for an FIE;²⁸ the Diagnostician did not learn of Student's ***, and she did not discuss Student's absences from school;²⁹
 - c. Student struggled in the past year with *** requiring the intervention of a District counselor;³⁰ and
 - d. direct input from the *** teacher was needed about Dyslexia affecting the Student and whether Student was expected to ***.³¹
30. In making her determination, the Diagnostician also considered that ***.

²³ Tr. at 413.

²⁴ Tr. at 71.

²⁵ Tr. at 525.

²⁶ Ex. P-7.

²⁷ Ex. J-10 at 9-11; Tr. at 44 – 46. While this is relied on as evidence for the need of an evaluation in 2016, the failure to conduct an evaluation in 2012 is not considered for whether it was an IDEA violation as the statute of limitations has run on that issue. This is considered in a similar light to educational performance over past years, as relied on by the Diagnostician in making her determination.

²⁸ Tr. at 69, 81.

²⁹ Tr. at 86.

³⁰ Ex. P-7 at 18.

³¹ Tr. at 76-77, 609, 612-613.

31. It was not objectively (looking at all the relevant information, not just that reviewed by Diagnostician) proven that the Diagnostician's decision to decline Student's request for an evaluation was unreasonably or improperly made. At the time of the decision, Student had passed all Student's classes and state subject matter assessments. Student had acceptable behavior, good social skills, and a pattern of *** (as was common with other general education students).³²
32. The notice of procedural safeguards was provided to Student regarding the February 2016 determinations.³³
33. A private Neuropsychological Assessment (Assessment) was performed on February *** and ***, 2016, with the report issued on March ***, 2016. Petitioner paid to have this assessment.
34. The clinical neuropsychologist and LSSP (one person) who performed the Assessment retired and moved out of state, so he did not testify during the hearing.³⁴
35. The Assessment confirmed Student's diagnosis of dyslexia and added the diagnoses of ***, ADHD---Predominantly Inattentive Type, and *** ***.³⁵
36. The Assessment was incomplete and insufficient and may not be relied upon as an FIE:³⁶
 - a. the Assessment was a clinical assessment performed using only the one setting and without an educational setting (psychoeducational assessments are performed across settings to look for patterns);³⁷
 - b. the Assessment used at least one instrument not generally used by LSSPs and for which the reliability is so poor that it should not be used to measure reading (Visograph), another instrument that is out of date in that the most recent version was not used, and the Woodcock-Johnson test for reading fluency was not included when it should have been;³⁸ and
 - c. substitutions were made during two subtests for an instrument (WAIS-IV) in the Assessment where the clinical decision to substitute was not explained, potentially lessening Student's IQ score;³⁹

³² Tr. at 52; 580-583

³³ Tr. at 84-85; Ex. J-8 at 7.

³⁴ Tr. at 587-588.

³⁵ Ex. J-12 at 16-17.

³⁶ Tr. at 560, 580.

³⁷ Tr. at 293, 554-558.

³⁸ Tr. at 291-302, 540-543, 546-559.

³⁹ Tr. at 541.

37. The Assessment and the input from teachers, LSSPs, Mother, and Student established that additional data was needed to determine whether Student met eligibility for special education.⁴⁰
- a. The District's *** specialist stated she would like to see documentation that supports that Student's behavior in class and Student's tendencies are due to the medical issues before making a determination;⁴¹
 - b. One teacher noted that Student had changed but that she could not determine what was causing the changes;
 - c. The 504 Team determined that not enough information was presented to include the medical issues as 504 disabilities at the 2016 Team Meeting;
 - d. An updated assessment for basic reading skills and reading fluency skills was necessary;⁴² and
 - e. Both LSSPs who testified (for the District and Petitioner) concluded additional information was necessary before a determination could be made.
38. After the Assessment was provided to the District, a 504 Team meeting was scheduled to address this additional information but Mother and Student declined to attend.
39. Student received significant assistance from the District and ***.⁴³
40. Student was ***.

V. ANALYSIS

The two essential controversies in this case are whether the District failed to timely evaluate Student to determine whether Student was a student with an IDEA-designated learning disability (a potential procedural violation), and whether Student was in need of special education and related services. The Hearing Officer finds that Petitioner failed to meet Petitioner's burden of proof on both accounts.

⁴⁰ Tr. at 584-585, 600, 630-633.

⁴¹ Ex. J-8 at 2.

⁴² Tr. at 580, 631.

⁴³ Tr. at 513.

A. Background and Overview

Student was found to have the disability of Dyslexia at a previous district. In 2013, Dyslexia was confirmed by the District as affecting major life activities for Student, and Student was found qualified for Section 504 services. Student was medically diagnosed with *** and with ***. Student received private counseling at least by 2013. In March 2016, an outside assessment (not an Independent Educational Evaluation (IEE) as it did not include the academic setting) confirmed Student's diagnosis of dyslexia and added the diagnoses of ***, ADHD, and *** **.

Student struggled throughout Student's *** years, with significant swings from participating and succeeding, to withdrawing and failing. Student's ***, 2014-2015, was particularly difficult. Student *** and spoke to the District's *** counselor. In working with Student, this counselor feared Student *** for Student's ***. Student passed all classes Student's *** and returned for Student's ***.

To the District's credit, Student was greatly assisted in general education by *** who provided oversight, motivation, and assistance.⁴⁴ The ***, to great extent, provided the oversight and interventions that Student needed to succeed. When Student's grades were low, Student was required by *** to attend tutoring. And, when deadlines were fast approaching and Student needed more assistance, the *** directly helped Student with Student's classwork. The monitoring provided by *** was evident as Student was more successful in *** than in ***, having Student's lowest lows in *** of Student's *** and ***. It was the *** of Student's *** when Student struggled terribly and ***. It was the *** of Student's *** that, even while ***, Student almost failed. Not until days before *** and after an assistant principal and *** intervened at the request of the District's Superintendent, was Student's *** assured.⁴⁵ Following ***, Student went on to ***.

⁴⁴ Tr. at 353-354.

⁴⁵ Tr. at 353.

B. Child Find: Denial of Request for Evaluation

Pursuant to the IDEA, a school district must identify, locate, and evaluate any child who it suspects (1) has a disability, and (2) needs special education and related services.⁴⁶ Either a child/parent or a district may initiate a request for an evaluation to determine if the child qualifies for IDEA special education.⁴⁷ When a district refuses to conduct an evaluation requested by a child/parent, the denial must be in writing and must include a description of each evaluation procedure, assessment, record, or report used as a basis for the refused action.⁴⁸

The Fifth Circuit has found that the existence of a disability, even when coupled with persistent academic difficulties and misconduct, does not automatically trigger a school's duty to conduct a special education evaluation.⁴⁹ Rather, the Child Find duty is triggered when the local educational agency has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address the disability.⁵⁰

When these suspicions arise, the local educational agency must evaluate the student within a reasonable time.⁵¹ However, not every struggling child with a disability requires an evaluation.⁵² At the same time, a District may not ignore the information or choose and pick the information to rely on when deciding whether an evaluation is warranted. Children to be evaluated include those 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.⁵³

⁴⁶ 20 U.S.C § 1412(a)(3)(A); 34 C.F.R. §§ 300.8(a)(1), 300.111; *see also D. G. v. Flour Bluff Indep. Sch. Dist.*, 481 Fed. App'x. 887, 891 (5th Cir. 2012).

⁴⁷ 34 C.F.R. § 300.301 (b); *D.K. v. Abington School Dist.*, 696 F.3d 233, 249 (3rd Cir. 2012).

⁴⁸ 34 C.F.R. § 300.503.

⁴⁹ *See Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 384 (5th Cir. 2007).

⁵⁰ *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008); *see also C.P. v Krum Indep. Sch. Dist.*, No. 4:13CV63, 2014 WL 4651534, *10 (E.D. Tex. Sept. 17, 2014).

⁵¹ *Richard R.*, 567 F. Supp. 2d at 949-50.

⁵² *Alvin Ind. Sch. Dist. V. A.D.*, 503 F.3d 378, 384, 384 (5th Cir. 2007).

⁵³ 34 C.F.R. § 300.111(c)(1); *Richard R.*, 567 F. Supp. 2d at 950.

Turning specifically to Student, on February ***, 2016, Petitioner (first Mother and then *** Student) requested the District perform an FIE. Mother stated that Student had *** affecting Student's academic performance. She feared Student ***. On February ***, 2016, the District's Diagnostician declined Petitioner's request for an FIE, noting a lack of information supporting a need for specially designed instruction. As the reasoned bases for her decision, the Diagnostician pointed out that Student had passed all Student's classes and state assessments.⁵⁴

Within that same week, a 504 Team Meeting was called to address whether the additional medical issues should be included as 504 disabilities. The only recognized disability at that time was dyslexia. The 504 Team determined that the medical information relayed by Mother was insufficient to give rise to additional Section 504 disabilities. Rather, additional information was needed regarding Student's medical diagnoses and then whether Student's medical conditions were "substantially limiting" Student in the academic setting. The 504 Team also considered two dozen 504 accommodations suggested by Mother. At that same meeting, the requested accommodations were not found to be necessary. However, they were attached to the minutes as potential accommodations that teachers could implement, as needed.

Petitioner responded to the Diagnostician and the 504 Team with a letter from Student's physician confirming the diagnoses as previously noted by Mother. Moreover, a private evaluation was performed and the medical diagnoses were again confirmed. The District then set up an additional 504 Team meeting to consider this information. However, Petitioner did not respond and was apparently unwilling to attend this meeting.

The Hearing Officer notes, as an initial matter, that he is without jurisdiction to consider the actions of the Section 504 Team. Rather, this information is provided as background information for determination on the IDEA issues. Considering only the IDEA issues, the Hearing Officer finds the Diagnostician's decision not to perform an evaluation was reasonable, even though it was made without consideration of several relevant facts. These include

⁵⁴ Ex. J-7.

Student's present and past struggles with ***, as well as Student's previous *** difficulties associated with school. The failure to consider these issues does make the Hearing Officer's decision more difficult.

On the one hand, children to be evaluated include those 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.⁵⁵ The Diagnostician was unaware of Student's history and failed to obtain this information from Student, teachers, ***, Mother, and others. A denial of a request for an FIE should be based on more than whether Student is passing classes and state assessments, particularly when a disability is already known and is being addressed by Section 504 accommodations. Nevertheless, the applicable question here is whether the decision was objectively reasonable, not whether the breadth of the investigation was acceptable.

To the applicable question, and affording the District the appropriate deference to its educational decisions, the Hearing Officer finds that Petitioner failed to prove that the decision to deny the request for an FIE was unreasonable. Student's situation the *** of Student's *** was similar to Student's experiences over the past two ***. ***. This same pattern was observed by teachers and administrators from a significant number of students in general education, so it did not raise the suspicion of other disabilities.

Moreover, at the time of the Diagnostician's decision, medical information from a physician regarding Student's *** was not yet provided to the District. The Diagnostician's short interview with Student did not point to significant emotional issues. The week of the request, one teacher reported that Student was not attentive after *** ended.⁵⁶ A reasonable assumption, then, is that Student was not so affected by Student's disability that Student could not do the work. Rather, Student was no longer motivated by *** and, as noted during the hearing, it was common for ***. Other teachers noted that Student sometimes was *** rather than paying attention in class. In ***, Student's *** and the one directly impacted by Student's

⁵⁵ 34 C.F.R. § 300.111(c)(1); *Richard R.*, 567 F. Supp. 2d at 950.

⁵⁶ Ex. J-8 at 1.

known disability, Student's teacher reported that Student ***, does not participate in class, and never attends tutorials. In another class, Student was noted to be 100 percent prepared, always timely, with a great attitude, and Student's quality of work showed great effort. These reports would not lead to a suspicion of another disability.

Moreover, no teacher found there was enough information from their classes or the other information provided by Student or Mother during the 2016 Team Meeting to determine that additional medical issues affected Student's academic achievement. The 504 Team and the Diagnostician left open the possibility of reconsidering their determinations, should additional information be provided.

Whether the 504 Team should have considered additional evaluations for *** pursuant to Student's performance in *** and the *** teacher's input as compared to that of other teachers is not at issue. Rather, the question is whether the Diagnostician should have found suspicion of IDEA disabilities and reason to perform an FIE. At the time the decision was made, the Diagnostician's decision was not objectively unreasonable.

Finally, it should be noted that by the time additional information was provided, the primary focus of the District was for Student ***. Nevertheless, the District called a Section 504 Team Meeting to consider the new information. It may reasonably be assumed that the parties considered that at this point, taking the time to evaluate Student could have negatively impacted Student's ***. The decision not to pursue the 504 Team meeting apparently made by Student and Mother, as well as the District's attention and efforts directed at Student ***, rather than an evaluation, were not unreasonable given Student's unique situation. The Diagnostician testified that Student's proximity to *** was a significant factor in her decision. Thus, while the District could have pursued an evaluation on its own, it was reasonable not to.

None of the above should distract from the significant struggles Student experienced in school. The record supports that Student was correctly medically diagnosed with ***, ADHD, and dyslexia. Nevertheless, Student, with significant assistance from Mother and the District, overcame these disabilities ***. ***.

C. Need for Special Education

“Special education” is defined to mean “specially designed instruction . . . to meet the unique needs of a child with a disability, including (i) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) instruction in physical education.”⁵⁷ The specially designed instruction includes adaptation of the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability. The purpose of the instruction is to ensure that children with disabilities have access to the general curriculum, and to allow them to meet the educational standards applicable all children.⁵⁸ In short, to qualify as a “student with a disability” pursuant to the IDEA, Student must need “specially designed instruction” in order to have access to, and benefit from, the general educational curriculum.⁵⁹ Significantly, a student who has a disability and needs only a related service, but not special education, is not a “student with a disability” under the IDEA.⁶⁰ Moreover, students who can be served appropriately outside special education should be served outside special education.⁶¹

It is undisputed that Student has a Section 504 disability: dyslexia. As noted above, medically Student also suffers from ***, and ADHD. The question then turns to whether Petitioner proved that these conditions adversely affect Student’s educational performance such that there is a need for specially designed instruction as related to these disabilities.⁶²

After careful review of the evidence, the Hearing Officer concludes that Petitioner failed to meet Petitioner’s burden to show the need for specially designed instruction in order to receive

⁵⁷ 34 C.F.R. § 300.39(a)(1).

⁵⁸ 34 C.F.R. § 300.39(b)(3).

⁵⁹ The “need” for special education must be a present need. That is, concern that a student may experience problems in the future that could affect Student’s learning or behavior is not a valid basis for IDEA eligibility. Thus, Student’s performance while ***, are not relevant for consideration of this issue.

⁶⁰ 34 C.F.R. § 300.8(a)(2).

⁶¹ *Vincent S. v. Pasadena ISD*, Docket No 324-SE-699 (Tex. SEA, 1999).

⁶² *Northside Indep. Sch. Dist.*, Dkt. No. 336-SE-0605 (TX SEA 2005).

an educational benefit. First, even though Student struggled, Student passed all Student's classes ***. Student's State of Texas Assessments of Academic Readiness (STAAR) *** test was unsatisfactory in 2013, but satisfactory in all other instances.⁶³ Similarly, *** *** and *** were not met Student's ***, but Student passed both classes.⁶⁴ Student met or was commended on all other ***, ***.

The Hearing Officer is mindful that while Student's academic achievement is important in determining Student's educational need, it is only one factor in the analysis of whether special education is necessary.⁶⁵ The decision of whether a student who is advancing from grade to grade is in need of special education must be determined on an individual basis.⁶⁶ Educational need includes behavioral progress and the acquisition of appropriate social skills, as well as academic achievement.⁶⁷ In this case, the evidence shows that Student had few behavioral issues, all of which were minor. Student was socially successful, well liked, and ***. Student did not demonstrate social or behavioral needs requiring specially designed instruction.

Without question, Student struggled with certain classes, with time management, and with becoming overwhelmed by work in specific classes. The three most significant times this occurred, the District and Mother collaborated to change Student's classes or to assist Student in participating in *** general education program at the District ***. Student struggled with ***, so with Mother's oversight Student was moved into *** where Student was successful. Student's ***, Student was initially enrolled in *** class but it proved so challenging that Student began ***. Student was moved into the ***. Finally, during Student's ***, it appeared that Student would fail *** and Student ***. At this point, the assistant principal, *** ***, and others rallied around Student and helped Student recover necessary concepts and grades through the *** program. With this help, Student once again pulled it out ***.

⁶³ J-1 at 3.

⁶⁴ J-1 at 3.

⁶⁵ *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176, 207 n. 28 (1982); *Venus Ind. Sch. Dist. v. Daniel S.*, 2002 U.S. Dist. LEXIS 6247 (N.D. Tex. 2002).

⁶⁶ *Rowley*, *supra*.

⁶⁷ *Venus Ind. Sch. Dist. v. Daniel S.*, *supra*.

It may be reasonably argued that Student's higher intelligence suggested Student was capable of making better than average grades and that Student's struggles at school would not have progressively worsened over time with greater District intervention. The Hearing Officer finds that the evidence supports such an argument. However, the District is not tasked with assuring that Student reaches Student's full potential or that Student makes the best grades possible given Student's intelligence. The District provided Student reasonable accommodations and the same access to the benefits of a public education as other students. This was achieved primarily through accommodations that were mostly available to other *** students in general education. These included ***, extra time, make-up for homework and tests, tutoring and use of ***.

Moreover, the District should not be required to provide the support Student needs only through Section 504 accommodations or other special education. In this instance, the District's support offered to general education students, especially those in ***, was potentially more helpful than the Section 504 accommodations. Student received the oversight Student needed to keep Student on task and the individual tutoring to help Student pass classes from Student's ***.

Surely Student would have benefitted from additional accommodations and greater direction and oversight for Student's Dyslexia, ADHD, ***, and ***. However, a need for specialized instruction due to these disabilities was not proven. Reviewing the evidence presented, to require as much would task the District with Student achieving Student's best: a *** and ultimately with providing Student with ***. These were some of the shortcomings noted by Petitioner but they are not the goals of special education.

Finally, this is not the appropriate forum to address Section 504 matters. As related to the IDEA, Student was provided a basic floor of opportunity in the educational setting. This was achieved, in part and perhaps even greatly, by the general assistance the *** provide to their ***. Whether the assistance is provided through a special education program or through assistance offered to the general education population is not of concern. In fact, if it is possibly provided through general education then that is the legal preference. Student was provided what Student

needed to succeed and it did not require specially designed instruction. It should be noted that the Assessment did not prove an educational need for special education. The Assessment did not consider the educational setting and is not probative for this purpose.

The Hearing Officer concludes that Petitioner did not meet Petitioner's burden to prove by the preponderant evidence that Petitioner's medical disabilities required special education services pursuant to the IDEA.


VI. CONCLUSIONS OF LAW

1. The Leander Independent School District (the District) is a local educational agency responsible for complying with the Individuals with Disabilities Education Improvement Act (IDEA) as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a "free appropriate public education" (FAPE), pursuant to IDEA, 20 U.S.C. § 1400 *et seq.*
2. Student, b/n/f Parent, (collectively, Petitioner) bears the burden of proof on all issues raised in the proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The District's decision not to evaluate Student for IDEA disabilities was not a procedural violation of the IDEA as the District lacked suspicion of an IDEA defined disability affecting Student's educational performance at the time the decision was made. 34 C.F.R. § 612(a)(3), 20 U.S.C.A. §1412(a)(3).
4. It was not proven that Student was a child in need of special education and related services in order to progress in the general education setting and through the general education curriculum. 34 C.F.R. § 300.8(a)(1).
5. It was not proven that the District failed to meet its Child Find obligations with respect to Student by failing to identify all of Student's disabilities and by failing to conduct an evaluation. 20 U.S.C § 1412(a)(3)(A), 34 C.F.R. § 300.111; *see also D. G. v. Flour Bluff Indep. Sch. Dist.*, 481 Fed. App'x. 887, 891 (5th Cir. 2012).
6. Petitioner did not prove that the District wrongly denied Student a FAPE.

ORDER

After considering the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer hereby orders that all claims and remedies requested are denied.

SIGNED March 27, 2017.



Tommy L. Broyles
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

This Decision of Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decision 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.⁶⁸

⁶⁸ 20 U.S.C. § 1451(i)(2); 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).