

**SOAH DOCKET NO. 701-20-3171.IDEA  
TEA DOCKET NO. 234-SE-0320**

**STUDENT, B/N/F PARENT,  
Petitioner**

**v.**

**ROCKWALL INDEPENDENT  
SCHOOL DISTRICT,  
Respondent**

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**BEFORE A SPECIAL EDUCATION**

**HEARING OFFICER FOR**

**THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

**I. PROCEDURAL HISTORY**

Student, by next friend Parent (Student or, collectively, Petitioner), brought this case against the Rockwall Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations on March 25, 2020. Petitioner filed a First Amended Complaint on April 8, 2020. Respondent filed a Ten-Day Response to the Amended Complaint on April 17, 2020.

The main issue in this case is whether the District violated its Child Find responsibilities, and failed to evaluate and identify Student for special education and related services. The Hearing Officer concludes the District did not have reason to suspect Student may need special education and thus did not violate its Child Find obligation.

**II. DUE PROCESS HEARING**

The due process hearing convened remotely via the Zoom platform on March 2 and March 31, 2021, and was recorded and transcribed by a certified court reporter. Petitioner was represented by Jordan McKnight, assisted by Bonnie Garza. Student's mother attended the hearing. Respondent was represented by Nona Matthews, assisted by co-counsel Lindy French. \*\*\*, Executive Director of Special Education for the District, attended as the party representative.

### III. ISSUES

#### A. Petitioner's Issues

The legal issues presented in this case are as follows:

1. Whether the District failed to comply with its Child Find responsibilities in a timely manner by failing to conduct an evaluation and identify Student as a student eligible for special education and related services.

If Petitioner meets their burden of proof by demonstrating the District failed in its Child Find responsibilities and the District should have identified Student as a student eligible for special education and related services,

2. Whether the District denied Student a free, appropriate public education (FAPE) by failing to provide specialized instruction and related services – including, but not limited to, counseling services, psychological services, and parent training – for Student's alleged \*\*\*.
3. Whether the District denied Student a FAPE by failing to prevent Student from being bullied and/or failing to address the alleged bullying once it occurred in a way that denied Student a FAPE.

#### B. Petitioner's Requested Relief

Petitioner seeks the following items of relief:

1. An Order directing the District to provide Student compensatory education including, but not limited to, tutoring services, social skills services, and counseling/therapy services.
2. An Order directing the District to provide an Independent Educational Evaluation in the areas of cognitive, achievement, counseling, and a Functional Behavioral Assessment.
3. An Order directing the District to reimburse expenses incurred by Student's parents related to education, related services, and evaluations for Student.
4. Any other relief the Hearing Officer deems to be in the interest of justice and fairness.

**C. The School District's Legal Position**

1. Respondent generally and specifically denied Petitioner's allegations and denied responsibility for providing any of Petitioner's requested relief.
2. Respondent asserted a plea to the jurisdiction over any claims and requests for relief arising under statutes other than the IDEA (granted in Order No 4).
3. Respondent asserted the one-year statute of limitations as an affirmative defense.

Respondent also requested specific findings of fact as to whether the parent unreasonably protracted the final resolution of the issues in controversy. 19 Tex. Admin. Code § 89.1185(m)(1).

**IV. FINDINGS OF FACT**

1. Student is \*\*\* years old. Student enrolled in the District in \*\*\* at the beginning of the 2012-13 school year and attended school in the District through \*\*\*. Student attended \*\*\* grade in \*\*\* Independent School District. Student returned to school in the District at the beginning of the 2019-20 school year, Student's \*\*\* grade year, and attended \*\*\*.<sup>1</sup>
2. The District did not suspect Student had a disability during Student's enrollment in \*\*\* through \*\*\*. Student achieved good grades and District assessments in 2014, 2017, and 2018 showed Student was performing at an expected level in reading and math.<sup>2</sup>
3. During Student's \*\*\* grade year in \*\*\* Independent School District, Student was impacted by \*\*\*. Student was diagnosed with “\*\*\*” and received counseling towards the end of Student's \*\*\* grade year. \*\*\* Independent School District did not refer or evaluate Student for special education.<sup>3</sup>
4. Before beginning \*\*\* grade in August 2019, Student re-enrolled in the District. Student's history of \*\*\* was not known to the District when Student re-enrolled.<sup>4</sup>
5. On or about October \*\*\*, 2019, Student \*\*\*. Student did not tell the teacher.<sup>5</sup>

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<sup>1</sup> Joint Exhibit (JE) 19, Joint Stipulation 1, 2; Transcript (Tr.) at 44.

<sup>2</sup> JE 18 at 1-12; Tr. at 82-83.

<sup>3</sup> Petitioner's Exhibit (PE) 1 at 2; Tr. at 83-85, 87.

<sup>4</sup> Tr. at 44, 159.

<sup>5</sup> JE 1 at 1; Tr. at 46.

6. On or about October \*\*\*, 2019, Student and Student's mother met with Student's academic counselor to report this incident, but did not characterize it as bullying. Student's mother assumed the counselor would report it due to the severity. The academic counselor did not investigate or report the incident as bullying, finding it involved "student conflict" because \*\*\*. The academic counselor spoke with the \*\*\* teacher, who was not aware of anything out of the ordinary occurring with Student.<sup>6</sup>
7. Student was upset during the October \*\*\*, 2019 meeting and did not want to return to class. Student spent the day in the counselor's office. Student had \*\*\*. The academic counselor offered to allow Student to change classes. Student's mother declined because this intervention was punitive to Student and sent the wrong message to the other students.<sup>7</sup>
8. Approximately two weeks later, Student \*\*\* and Student's parents took Student for an evaluation at \*\*\*. Student was \*\*\*. Student received individual and group counseling and was diagnosed with \*\*\*. After \*\*\*.<sup>8</sup>
9. Student was absent from school from \*\*\*, 2019, missing \*\*\* days of school \*\*\*. On \*\*\*, 2019, the academic counselor contacted Student's mother about Student's absence and learned Student \*\*\*. The counselor requested Student's safety plan, which Student's mother provided. Student's mother did not want the academic counselor to disclose the reason for Student's absence to Student's teachers.<sup>9</sup>
10. The District received no further reports about difficulties with peers until Student returned to school on November \*\*\*, 2019. Student and Student's mother met with the academic counselor that day. Because Student had been out of school and no further incidents had been reported, the academic counselor was unaware of ongoing issues until Student's mother reported continued bullying, with the same student bothering Student. Student had not reported it to the teacher and the academic counselor conveyed the importance of reporting.<sup>10</sup>
11. On November \*\*\*, 2019, Student's mother made a third report, contacting the academic counselor and Assistant Principal about "serious issues with bullying" \*\*\*. She reported an incident \*\*\*. The Assistant Principal was not aware of the parental concerns about bullying brought to the academic counselor until this meeting. She met with Student's mother that day.<sup>11</sup>

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<sup>6</sup> JE 1 at 1-2; JE 4 at 2; Tr. at 47, 132-33, 134-35, 140-43, 160-61, 167, 217.

<sup>7</sup> JE 1 at 2; JE 5 at 5; Tr. at 48-49.

<sup>8</sup> Tr. at 53-56.

<sup>9</sup> JE 1 at 2; JE 2 at 1-2; JE 13 at 2; Tr. at 134-35, 163-64.

<sup>10</sup> JE 1 at 2; Tr. at 161-62.

<sup>11</sup> JE 3 at 1; Tr. at 59-60, 177-78, 179-80, 212-13.

12. The Assistant Principal began an administrative investigation the same day she received the report. She first interviewed Student and then interviewed the other students involved. She also interviewed other students and staff who had or might have personal knowledge of the facts and reviewed relevant video footage. Student reported the behavior had ceased and Student did not have a concern it would continue. Student reported Student felt safe at school, but not comfortable and like Student wanted to be there. Student disliked the people and noise distracting Student from Student's work. Student said Student wanted to be homeschooled.<sup>12</sup>
13. On November \*\*\*, 2019, Student's parents filed a Level One Grievance with the Principal. It alleged Student was bullied a minimum of \*\*\* at school, with the \*\*\* incidents reported to the academic counselor and no apparent action taken. The grievance alleged \*\*\*, as reported to the academic counselor on October \*\*\*, 2019. During the week of October \*\*\*, 2019, the \*\*\*, as reported to the academic counselor on November \*\*\*, 2019. On November \*\*\*, 2019, the \*\*\*, which was reported the same day.<sup>13</sup>
14. The Level One Grievance advised the District that, after \*\*\*, Student needed counseling, \*\*\*. The Principal handles grievances and first learned Student had \*\*\* at that time. The Principal met with Student's parents, the academic counselor, and the Assistant Principal on November \*\*\*, 2019, to clarify and discuss the complaint. Student's parents conveyed that Student was having significant emotional issues at the meeting.<sup>14</sup>
15. The Level One Grievance was filed two days after the Assistant Principal began her bullying investigation. As a result of the allegations in the grievance, the Assistant Principal expanded the scope of students she interviewed, creating a concern by Student's mother that too many students were interviewed and how this would impact Student.<sup>15</sup>
16. Bullying typically involves an imbalance of power. An investigation into whether an allegation constitutes bullying takes into account how the students know each other, how often it occurred, and the severity of the incident. The impact on a student can be a factor in whether an allegation constitutes bullying.<sup>16</sup>
17. District policy defines bullying as a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct that: (a) has the effect or will have the effect of physically harming a student,

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<sup>12</sup> JE 9 at 1-3; JE 11 at 1; Tr. at 213-14, 231-32.

<sup>13</sup> JE 5; JE 5 at 4.

<sup>14</sup> JE 4 at 1; JE 5 at 1, 4; Tr. at 293-95, 301.

<sup>15</sup> JE 8 at 1; Tr. at 214-15, 225, 301.

<sup>16</sup> Tr. at 140, 181, 297.

damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; (b) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student; (c) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or (d) infringes on the rights of the victim at school.<sup>17</sup>

18. A communication dated November \*\*\*, 2019 from the Assistant Principal advised Student's parents the investigation found the reported conduct did not constitute bullying or harassment as defined in the law and District policy. The Assistant Principal also concluded the evidence did not support that the allegations were substantially accurate or happened as alleged.<sup>18</sup>
19. Consistent with the Assistant Principal's administrative investigation, the Level One Grievance by the Principal concluded the reported conduct did not constitute bullying as defined in the law and District policy. The evidence did not show Student was bullied. Student's mother was dissatisfied with this conclusion, but did not appeal the outcome.<sup>19</sup>
20. On November \*\*\*, 2019, the Assistant Principal communicated with Student's mother about a schedule adjustment because Student did not want to participate in \*\*\*. Student sometimes spent time in the Assistant Principal's office during \*\*\* class for this reason, not due to bullying or inappropriate treatment in the class.<sup>20</sup>
21. The Assistant Principal's interactions with Student and reports from teachers did not create a suspicion Student may have a disability and need special education. Student presented as "a pretty average \*\*\* grader" who could speak up for \*\*\*self, communicate problems, and take care of \*\*\*self. Student's academic performance was strong and Student's teachers did not report any concerns.<sup>21</sup>
22. Student's \*\*\* teacher described Student as a hardworking and creative student who asked questions when needed and turned in Student's work on time. Student had friends in class. Student and a \*\*\*. The teacher did not observe indications Student was being bullied and did not suspect Student may need special education and related services.<sup>22</sup>

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<sup>17</sup> Rockwall Independent School District, Student Welfare, Freedom from Bullying 199901, FFI(LEGAL), Issued November 13, 2017. Available at [https://pol.tasb.org/Policy/Download/1030?filename=FFI\(LEGAL\).pdf](https://pol.tasb.org/Policy/Download/1030?filename=FFI(LEGAL).pdf)

<sup>18</sup> JE 9 at 1; Tr. at 189-90, 245.

<sup>19</sup> JE 11 at 1; Tr. at 116, 234, 302-03.

<sup>20</sup> JE 10 at 1; Tr. at 204-06, 223-24.

<sup>21</sup> Tr. at 240.

<sup>22</sup> Tr. at 332-35, 340, 343.

23. Student's \*\*\* teacher described Student as an "everyday normal Student." Student excelled in class and received grades in the 90s. The \*\*\* teacher did not observe any behavioral concerns in class or have concerns about Student's emotional well-being. The teacher did not observe Student being bullied or anything to suggest Student was being bullied. He did not have reason to suspect Student had a disability or may need special education and related services.<sup>23</sup>
24. Student's \*\*\* teacher described Student as a "very normal student" who was calm and academically solid, with grades in the 80s and 90s. Student made friends fast and had friends in class. The teacher did not have concerns about Student's behavior or emotional well-being or that Student was being bullied. Student's performance and demeanor in class did not create a suspicion Student may need special education and related services.<sup>24</sup>
25. Student's \*\*\* teacher described Student as a "mature" student who would come in and get Student's work done. Student passed class assessments with a B average. The \*\*\* teacher did not have behavioral concerns or receive reports of bullying, and observed only positive interactions with peers. She had no reason to suspect Student may need special education due to academic or emotional concerns.<sup>25</sup>
26. Student did not report bullying or mistreatment by peers to Student's teachers or the Assistant Principal. The academic counselor did not receive reports from Student's teachers Student had conflicts with peers in class.<sup>26</sup>
27. Student did not have excessive absences after returning to school following Student's \*\*\*. Student was absent \*\*\* on several occasions.<sup>27</sup>
28. Student performed well academically. Student achieved the following scores on Student's report card during the \*\*\* weeks of the 2019-20 school year in the District: \*\*\*. A progress report for the \*\*\* weeks (\*\*\*) showed the following scores: \*\*\*.<sup>28</sup>
29. The District's special education referral process, or Multi-Tiered Systems of Support (MTSS), typically entails any staff member bringing a concern about a particular student to a committee that decides whether to move forward with a referral. Teachers document concerns and then speak with a counselor before getting the MTSS process started. Staff fill out a report online and teachers report information about how the student is doing in class and what, if anything, they are seeing. Student was not referred for an MTSS meeting

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<sup>23</sup> Tr. at 348-49, 350-51.

<sup>24</sup> Tr. at 370-72, 373-75.

<sup>25</sup> Tr. at 390-92, 395.

<sup>26</sup> Tr. at 166, 212-13, 334, 350, 372, 392.

<sup>27</sup> JE 13 at 2; Tr. at 238-39.

<sup>28</sup> JE 14 at 2-3; JE 18 at 14.

and Student's teachers did not raise concerns about Student's behavior or performance at school.<sup>29</sup>

30. \*\*\* alone does not necessitate a special education referral in all cases. That fact, along with how the student is doing in school and impact on educational performance, must be considered. Bullying of a student is a factor, among others, to consider.<sup>30</sup>
31. Citing "poor experiences" at \*\*\*, Student's mother advised the District on December \*\*\*, 2019 she was withdrawing Student. Student's last day in the District was December \*\*\*, 2019.<sup>31</sup>
32. Student has attended \*\*\* online public schools since withdrawing from the District and has not been evaluated for special education.<sup>32</sup>
33. After withdrawing from the District, Student attended \*\*\* online school until the end of the 2019-20 school year. Student was not evaluated for special education or Section 504 services. Student enrolled in another online public school, \*\*\*, at the beginning of the 2020-21 school year, Student's \*\*\* grade year, for one semester. Student was not evaluated for special education or Section 504 services.<sup>33</sup>
34. Student enrolled in another online public school, the \*\*\*, in January 2021. Student has not been evaluated for special education, but Student's parent provided the school a private neuropsychological evaluation and is in discussions about appropriate supports for Student at school, including Section 504.<sup>34</sup>
35. On March \*\*\*, 2020, the District's Executive Director for Special Programs initiated a special education referral after receiving Petitioner's due process hearing request. Because the hearing request raised a parental concern about Student's eligibility for special education as a student with an emotional disturbance, the District requested a meeting to discuss the evaluation process and obtain consent to evaluate Student. When a student has not been evaluated and the parent alleges a Child Find violation, a school district may initiate the evaluation process to gain information about whether the student may need special education.<sup>35</sup>

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<sup>29</sup> Tr. at 172-73, 186-87, 242, 336, 349-50.

<sup>30</sup> Tr. at 276, 462-63.

<sup>31</sup> JE 14 at 2; JE 19, Joint Stipulation 3; Tr. at 239-40.

<sup>32</sup> Tr. at 87, 114.

<sup>33</sup> Tr. at 77-79.

<sup>34</sup> Tr. at 79-82, 113.

<sup>35</sup> JE 16 at 1; Tr. at 269-70, 274-75, 278-79, 475.



36. The District did not receive a response. On April \*\*\*, 2020, the District provided a Notice of Full and Individual Evaluation to determine whether Student qualifies for special education. Areas of evaluation included Communicative Status, Health, Motor Abilities, Emotional/Behavioral Status, Sociological Status, Intellectual/Adaptive Behavior, Academic Performance, and Assistive Technology. The District provided a consent form. Student's parent did not respond or consent to an evaluation.<sup>36</sup>
37. On June \*\*\*, 2020, the District provided a revised Notice of Full and Individual Evaluation which proposed adding several areas of evaluation, including Speech-Pragmatics, Occupational Therapy/Sensory, Other Health Impairment, and Autism. The District again sought consent for an evaluation.<sup>37</sup>
38. Student's mother did not meet with the District. She has not consented to an evaluation because Student no longer attends school in the District. The District remains willing to conduct an evaluation.<sup>38</sup>
39. Student had a neuropsychological evaluation by Dr. \*\*\*, a Licensed Clinical Psychologist, on September \*\*\*, 2020. The purpose of the evaluation was to determine Student's present level of cognitive, academic, and emotional functioning and make recommendations for intervention and treatment. Presenting problems included \*\*\*, poor attention and focus, and social withdrawal. Student's mother received the report in January 2021.<sup>39</sup>
40. Dr. \*\*\* evaluated Student over one day. The evaluation consisted of a clinical interview and records review, and testing in the areas of intellectual functioning, adaptive behavior, achievement, attentional and executive processing, language functioning, visual-spatial and sensorimotor functioning, and emotional/behavioral functioning.<sup>40</sup>
41. Dr. \*\*\* diagnosed Student with \*\*\*. These conditions interfered with Student's ability to focus and attend to tasks effectively and efficiently. Student did not meet the criteria for an attentional deficit, autism, or post-traumatic stress disorder. With regard to academics, Dr. \*\*\* concluded Student also met criteria for a Specific Learning Disability in Mathematics though the report does not specify how Student reached that conclusion.<sup>41</sup>
42. Dr. \*\*\* administered only standardized tests and did not consider criterion-referenced information from Student's schools or consider records showing Student's current level of functioning in the school setting. She did not seek input from District teachers and the

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<sup>36</sup> Respondent's Exhibit (RE) 1 at 1, 3-8; Tr. at 280-81.

<sup>37</sup> RE 2 at 1-7; Tr. at 281-82.

<sup>38</sup> Tr. at 110-12, 280, 282.

<sup>39</sup> PE 1; PE 1 at 1; Tr. at 87-89.

<sup>40</sup> PE 1 at 1, 4-12; Tr. at 88.

<sup>41</sup> PE 1 at 13; Tr. at 427-29.

evaluation did not consider information from current or former online instructors. Student's school-based experiences detailed in the report were garnered only from parent and student reports.<sup>42</sup>

43. The evaluation does not support a finding Student meets criteria for a particular eligibility category under the IDEA.<sup>43</sup>
44. The evaluation did not indicate Student met eligibility criteria as a student with an emotional disturbance by exhibiting one of five specified characteristics over a long time to a marked degree. More information, including school-based performance information and information from teachers, would be required to make this determination. The Behavior Assessment Rating for Children only included parent rating scales and did not include teacher rating scales. These are necessary to gain a picture of the impact of any behaviors on educational performance.<sup>44</sup>
45. The scope of the evaluation was also not adequate to determine whether Student has a specific learning disability under the IDEA. This determination requires consideration of multiple sources of data. An evaluation for a specific learning disability typically consists of curriculum and criterion-referenced information to show the student is not achieving adequately in his or her grade level. This information is not reflected in the report. Dr. \*\*\* did not conduct the required observations of Student in the learning environment. Student's intellectual functioning was not assessed using the typical battery of cognitive testing across seven areas of learning necessary to determine eligibility as a student with a specific learning disability under the IDEA. The evaluation also did not, as required, identify which of two methods of establishing the presence of a specific learning disability was used—Response to Intervention or establishing a pattern of strengths and weaknesses relative to age and grade level standards over time.<sup>45</sup>
46. Dr. \*\*\* did not recommend Student receive special education, instead recommending Student receive accommodations through a Section 504 plan.<sup>46</sup>
47. Petitioner's due process hearing request sought relief other than an evaluation. Though parental consent for an evaluation was not given after the District initiated a referral for special education, Petitioner did not unreasonably protract the final resolution of the issues in controversy in the hearing.<sup>47</sup>

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<sup>42</sup> Tr. at 336, 356, 376, 395-96, 408-09, 446-47.

<sup>43</sup> Tr. at 430, 457-59.

<sup>44</sup> PE 1 at 9-10; Tr. at 450-51, 458-59, 460-61.

<sup>45</sup> Tr. at 409-15, 427-29, 436-37.

<sup>46</sup> PE 1 at 14; Tr. at 429, 459.

<sup>47</sup> Petitioner's First Amended Due Process Hearing Request at 4.

## V. DISCUSSION

Petitioner alleges the District denied Student a FAPE by violating its Child Find obligation, and failing to identify and evaluate Student for special education and related services and propose an appropriate program.

### A. Burden of Proof

There is no distinction between the burden of proof in an administrative hearing and judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009). The burden of proof in a due process hearing is on the party challenging the student's Individualized Education Program and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1991). The burden of proof is therefore on Petitioner to show the District violated its Child Find obligation and did not provide Student a FAPE.

### B. Free, Appropriate Public Education

Under the IDEA, students with disabilities are entitled to a FAPE that provides special education and related services designed to meet their unique needs, and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). A school district must offer a FAPE to all students with disabilities living in its jurisdiction between the ages of three and twenty-one. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a)(3). These students must receive specially designed, personalized instruction with sufficient support services to meet their unique needs and confer educational benefit. Instruction and services must be at public expense, and comport with the Individualized Education Program developed by the student's Admission, Review, and Dismissal Committee. 20 U.S.C. § 1401(9)(A)-(D); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982).

“Special education” means specially designed instruction to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education. 34 C.F.R. § 300.39(a)(1). “Specially designed instruction” means adapting, as appropriate to the needs of the eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability; and to ensure access to the general curriculum so the child can meet the educational standards applicable to all children. 34 C.F.R. § 300.39(b)(3).

### **C. Child Find Under the IDEA**

The IDEA's Child Find provisions guarantee access to special education for students with disabilities. 20 U.S.C. § 1400(d)(1)(A). A school district, like Respondent, has an affirmative duty 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. 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.111(a), (c)(1); *El Paso Indep. Sch. Dist. v. Richard R.R.*, 567 F. Supp. 2d 918, 949-50 (W.D. Tex. 2008).

The Child Find obligation is triggered when a school district has reason to suspect the student has a disability, coupled with reason to suspect special education services may be needed to address the disability. *Richard R.R.*, 567 F. Supp. 2d at 950; *Dep't of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Hawaii 2001). When these suspicions arise, the school district must evaluate the student within a reasonable time after school officials have notice of reasons to suspect a disability. *Richard R.R.*, *supra*. State regulations also require referral and evaluation of potential special education students as part of a school district’s overall regular education referral or screening system for students experiencing difficulty in the regular classroom. 19 Tex. Admin Code § 89.1011(a).

In circumstances, such as those alleged here, involving a student who has not previously been identified as a child with a disability under the IDEA, bullying may trigger a school’s Child

Find obligations. *Dear Colleague: Bullying of Students with Disabilities*, U.S. Department of Education, Office of Special Education and Rehabilitative Services (August 20, 2013) at 2; 34 C.F.R. § 300.111.

A two-part inquiry is required to resolve a Child Find claim. The first inquiry is whether the school district had reason to suspect the student has a disability. The second inquiry is whether the school district had reason to suspect the student may need special education and related services as a result of the disability. *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 467 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F. 3d. 303, 320 (5th Cir. 2017). The inquiry is not whether the student actually *qualifies* for special education, but instead whether the student should be *referred* for a special education evaluation. *Cari Rae S.*, 158 F. Supp. 2d at 1195; *Woody*, 178 F. Supp. 3d at 467.

A critical distinction exists between whether a school district should have identified a student as *eligible* for special education under one of the enumerated disability classifications under the IDEA. Questions of eligibility and identification as a student with a disability are resolved on the basis of whether an evaluation shows the student meets the criteria of one or more of the enumerated disability classifications *and* demonstrates a need for special education and related services. *See* 34 C.F.R. § 300.8(a), (c)(1-13).

### **1. Reason to Suspect a Disability**

The District did not have reason to suspect Student may have a disability during Student's enrollment from \*\*\* through \*\*\*, nor was the District aware Student sought counseling \*\*\* during Student's \*\*\* grade year while attending school in another school district. When Student returned to school in the District for \*\*\* grade at the beginning of the 2019-20 school year, there was no reason to suspect Student may have a disability.

The evidence showed the academic counselor learned Student \*\*\*, in response to an inquiry regarding attendance, but did not establish how much information Student's mother shared

at that time. On November \*\*\*, 2019, when Student's parents filed a Level One grievance, the District received more specific additional information about Student's recent emotional challenges. The grievance conveyed that Student required ongoing counseling \*\*\* in the wake of three alleged instances of bullying at school. On November \*\*\*, 2019, the District convened a meeting to discuss the grievance and Student's parents conveyed Student was having significant emotional issues. The evidence supports the conclusion the District had reason to suspect Student may have a disability due to parental reports Student was experiencing \*\*\* challenges in early November 2019.

## **2. Reason to Suspect Need For Special Education Services**

Reason to suspect a disability alone, however, is insufficient to trigger the District's Child Find obligation. To meet Petitioner's burden, Petitioner must also demonstrate the District had reason to suspect Student may need special education and related services. *Woody*, 178 F. Supp. 3d at 467. The evidence showed that, despite the District's reason to suspect Student had a disability in early November 2019, the District did not also have reason to suspect Student may need special education during Student's enrollment that fall.

Petitioner argues the District should have suspected Student may need special education during Student's enrollment as a result of the emotional challenges Student experienced due to the alleged bullying, including \*\*\*. The District argues it had no reason to suspect Student may have a disability and need special education until Petitioner filed a due process hearing request in March 2020, at which point it immediately sought to evaluate Student.

Petitioner contends the District mishandled the initial report to the academic counselor on October \*\*\*, 2019, and impeded the bullying investigation by failing to initiate it sooner. Petitioner further contends the investigation and Level One grievance improperly found Student was not bullied. These arguments, however, focus too narrowly on the factual question of whether or not Student was bullied, not the legal question under the IDEA presented in a Child Find case—whether the District had reason to suspect Student had a disability and may need special education.

According to Petitioner, “[h]aving the bullying investigation trigger child find would have been appropriate and consistent with federal guidelines that state that bullying may trigger a school’s child find obligations under IDEA.” Petitioner’s Closing Brief at 20. While Department of Education guidance indeed provides that bullying may trigger a school district’s Child Find obligation, this guidance is permissive. *Dear Colleague: Bullying of Students with Disabilities*, *supra*, at 2. Not all bullying, even if substantiated, will do so. Similarly, not all students with emotional challenges or mental health diagnoses or disorders, including \*\*\*, need specially designed instruction under the IDEA. Here, whether the parental characterization of the other students’ behavior towards Student met the legal definition of bullying, or whether the investigation and Level One grievance improperly concluded bullying did not occur, are not dispositive in answering the legal question raised.

Whether or not Student’s experiences at school constituted bullying or peer conflict, Student experienced significant emotional challenges in the fall of 2019 and \*\*\*. These events should not be minimized. The evidence showed, however, that while the academic counselor, Assistant Principal, and Principal were privy to Student’s need for \*\*\* and counseling beginning in early November 2019, Student’s emotional struggles—and potential need for specially designed instruction under the IDEA—were not otherwise readily apparent at school, and did not give the District notice a referral for special education was warranted.

None of Student’s teachers noted or reported any concerns with peers or otherwise had concerns about Student’s demeanor, behavior, or classroom performance, either after the first instance of alleged bullying in early October or as the semester progressed. Student maintained solid academic performance and did not have excessive absences when Student returned to school. Student had friends in Student’s classes. In this case, in the relatively short time between Student’s return to school on November \*\*\*, 2019 and Student’s withdrawal from the District on December \*\*\*, 2019 – a little over a month later – sufficient indicators of a potential need for special education triggering duty to initiate a referral did not emerge.

The Hearing Officer concludes the weight of the credible evidence does not support the conclusion the District had reason to suspect a disability *and* concurrent reason to suspect Student may need specially designed instruction under the IDEA to address that disability. *Woody*, 178 F. Supp. 3d at 467. Petitioner therefore did not meet Petitioner’s burden on Petitioner’s Child Find claim.

### **3. Reasonable Time Period for an Evaluation**

A school district must “identify, locate, and evaluate students with suspected disabilities within a reasonable time after the school district is on notice of facts or behavior likely to indicate a disability.” *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018); *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 790-91 (5th Cir. 2020). A delay is reasonable when, throughout the period between notice and referral, a school district takes proactive steps to comply with its Child Find duty to identify, locate, and evaluate students with disabilities. Conversely, a time period is unreasonable when the school district fails to take proactive steps throughout the period, or ceases to take such steps. *O.W.*, 961 F.3d at 793.

Because the Hearing Officer concludes Petitioner did not meet the burden of proof on Petitioner’s Child Find allegation, the reasonableness of the delay between notice and referral is not determinative. That said, even if the District’s duty to evaluate Student arose in March 2020 when Petitioner filed litigation alleging a Child Find claim, it was satisfied when the District initiated a referral for special education and made continuing efforts to evaluate Student.

Student withdrew from the District in early December 2019 and has been enrolled in an online public school program since that time. Though enrolled in an online public school, Student is a resident of the District and the District does not dispute it has a duty under the IDEA’s Child Find provisions to identify, locate, and evaluate resident students with disabilities, including Student. 34 C.F.R. § 300.111(a)(1); 20 U.S.C. § 1412(a)(3). Here, the evidence showed the District properly undertook unsuccessful efforts to evaluate Student and comply with any Child Find responsibility after receiving the due process hearing request alleging a Child Find violation.



When a school district proposes to conduct an initial evaluation to determine if a child qualifies as a child with a disability, it must first obtain informed consent from the child's parent. 34 C.F.R. § 300.300(a)(1)(i). School districts must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. 34 C.F.R. § 300.300(a)(1)(iii). Even though the District did not have an earlier reason to suspect Student may need special education when Student withdrew in December 2019, the District nonetheless took proactive steps between notice Student may be a student with a disability under the IDEA, as was alleged in the March 2020 due process hearing request, and referring Student for an evaluation. *O.W.*, 961 F.3d at 793.

The District took Petitioner's March 2020 due process hearing request and Child Find claim at face value, treating the allegation as a parental report Student had a disability and may be eligible under the IDEA. The District's Executive Director of Special Education initiated a special education referral the day after receiving Petitioner's hearing request, providing notice of a proposal to evaluate and seeking consent for an evaluation. The District also made additional efforts to obtain parental consent in April 2020, when it proposed specific areas of evaluation and sought consent, and June 2020, when it proposed additional areas of evaluation and again sought consent. Student's parents declined.

Parental consent to evaluate is voluntary and may be withheld. 34 C.F.R. § 300.9(c)(1). Though consent was not given, the District nonetheless satisfied any Child Find obligation it may owe Student by making immediate and continuing efforts to obtain informed consent for an initial evaluation. The District therefore did not unreasonably delay an evaluation after it was on notice of facts or behavior likely to indicate a disability in March 2020. 34 C.F.R. § 300.300(a)(1)(iii); *O.W.*, 961 F.3d at 790-91. This is particularly true in light of its continued willingness to evaluate Student because Student is a resident of the District.

#### **D. Eligibility Determinations under the IDEA**

Even if the District's Child Find obligation and corresponding duty to evaluate Student arose, the sole evaluation in evidence does not support Student's eligibility under the IDEA as either a student with an emotional disturbance or specific learning disability. A school district is not liable for a Child Find violation unless the student has a need for special education. *D.G. v. Flour Bluff Indep. Sch. Dist.*, 481 Fed. Appx. 887, 893 (5th Cir. 2012) ("the IDEA does not penalize school districts for not timely evaluating students who do not need special education").

An eligibility determination is made on the basis of an evaluation that meets IDEA criteria and finding a student meets one or more of thirteen eligibility classifications, and by reason thereof, needs special education and related services. 34 C.F.R. §§ 300.8(a)(1), 300.304-.311; 19 Tex. Admin. Code § 89.1040. Assessments and other evaluations must assess the student in all areas of suspected disability. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4). An evaluation must also be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

Here, as discussed, the District did not conduct a Full and Individual Evaluation of Student due to lack of parental consent, but Student had a private neuropsychological evaluation in September 2020. This evaluation consisted of numerous standardized tests and explored Student's clinical presentation. Dr. \*\*\* diagnosed Student with \*\*\*. Student was also diagnosed with a Specific Learning Disability in Math, though the evaluation and report did not adequately support this conclusion or otherwise fulfill the required components of a specific learning disability evaluation for IDEA purposes. The District's experts, the lead diagnostician and lead Licensed Specialist in School Psychology, concurred regarding a global concern the evaluation lacked needed educational context because Student's school-based experiences were derived from parent and student reports only, and the evaluator did not consider educational records or any information from current or former educators. Without this context, a full picture of Student's educational needs does not emerge. Overall, the evaluation does not provide a comprehensive picture of Student's educational needs and did not establish Student's eligibility as either a student with an emotional disturbance or specific learning disability under the IDEA.

In addition to failing to address Student's eligibility under a particular classification under the IDEA, the evaluation did not recommend special education at all—instead recommending accommodations under Section 504 if and when Student returns to public school. The Hearing Officer concludes the September 2020 neuropsychological evaluation did not establish Student's eligibility for special education and related services under the IDEA.

#### **E. Conclusion**

The weight of the credible evidence showed that, though the District had reason to suspect Student had a disability beginning in November 2019 due to parental disclosure of recent, significant emotional challenges, Petitioner did not prove by a preponderance of the evidence the District had reason to suspect Student may need special education. Further, the District's reasonable efforts to evaluate Student after receiving Petitioner's hearing request support the conclusion that any Child Find obligation that arose at the time was met. Finally, the Hearing Officer concludes the sole evaluation of Student in the record did not establish Student's eligibility for services under the IDEA.


### **VI. CONCLUSIONS OF LAW**

1. As the challenging party, Petitioner has the burden of proof to establish a violation of the IDEA. *Schaffer v. Weast*, 546 U.S. 49 (2005).
2. Petitioner did not meet the burden of proving the District violated its Child Find obligation. 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.111(a).
3. Petitioner did not meet the burden of proving Student is a child with a disability eligible for special education and related services. 34 C.F.R. §§ 300.8(a)(1); 19 Tex. Admin. Code § 89.1040.

## VII. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

**SIGNED May 17, 2021.**

  
\_\_\_\_\_  
**Kathryn Lewis**  
**Special Education Hearing Officer**  
**For the State of Texas**

## VIII. NOTICE TO PARTIES

The Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20. U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516(a); 19 Tex. Admin. Code § 89.1185(n).