

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

**FINAL DECISION OF THE
SPECIAL EDUCATION HEARING OFFICER IN NON-EXPEDITED CASE**

**I.
STATEMENT OF THE CASE**

On March 10, 2023, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Universal Academy, *** (“Respondent” or “**” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On March 10, 2023, TEA assigned this matter to me as the impartial Special Education Hearing Officer (“SEHO”) and sent a copy of the Complaint and Notice of Filing to Respondent. Petitioner alleged child-find claims against Respondent during school year 2022-23: Respondent denied Petitioner a Free Appropriate Public Education (“FAPE”) in the following particulars:

1. Respondent failed to evaluate Petitioner, in a timely manner, in all areas of suspected need;
2. Respondent failed to find that Petitioner qualifies for special education and related services;
3. Respondent failed to develop an appropriate Individualized Education Program (“IEP”) to address Petitioner’s unique needs.

Petitioner asked the SEHO to enter an order finding the following:

1. Respondent denied Petitioner FAPE; Respondent failed to identify and evaluate Petitioner for special education and related services;
2. Petitioner is the prevailing party; and

3. Any relief that the SEHO deems appropriate or that is recommended by Petitioner's experts and evaluators, or otherwise revealed by the facts of this case, including, but not limited to: (a) a third-party evaluation of Petitioner in all areas of suspected need; (b) reimbursement for out-of-pocket educational expenses incurred by Petitioner's Parent; (c) District training; and (d) compensatory educational services.

II. PROCEDURAL HISTORY

Student filed Student's Complaint with TEA on March 10, 2024. On March 14, 2023, the undersigned issued Order No. 1: Initial Scheduling Order, which set the non-expedited case for hearing pursuant to the IDEA timelines: April 17, 2023: Prehearing Conference ("PHC"); May 1, 2023: Disclosure Deadline; May 8, 2023: Due Process Hearing; and May 24, 2023: Decision Deadline.

On March 16, 2023, Respondent filed its Notice of Counsel. On March 20, 2023, Respondent filed its Response to Petitioner's Original Complaint and Request for Due Process Hearing. Respondent presented a general denial and the following affirmative defenses: Failure to Mitigate and Lack of Subject Matter Jurisdiction, referring to any claims under non-IDEA statutes.

On April 17, 2023, the Parties convened the PHC. In attendance were the following: (1) Ms. Andrea Koch, Petitioner's counsel; (2) Ms. Janet Bubert, Respondent's counsel; (3) the undersigned SEHO; and (4) the court reporter, who made a record of the PHC. The Parties discussed the issues and jointly agreed to continue the Due Process Hearing and attendant deadlines.

On May 7, 2023, the undersigned issued Order No. 2, which rescheduled the hearing dates as follows: (1) September 13, 2023: Disclosure Deadline; (2) September 20-21, 2023: Due Process Hearing; and (3) October 7, 2023: Decision Deadline.

On September 1, 2023, Respondent filed an Unopposed Motion for Continuance of the Due Process Hearing. The basis for the continuance was the illness and hospitalization of Respondent's attorney, who was also in trial in federal court at the time. That trial was reset for September 5, 2023, which meant Counsel would not be able to participate in depositions scheduled during the week of September 5, 2023. Finding good cause for the requested and unopposed continuance request, the undersigned granted the request.

On September 5, 2023, the undersigned issued Order No. 3, which rescheduled the hearing and attendant deadlines as follows: October 26, 2023: Disclosures; November 2-3, 2023: Due Process Hearing; and November 19, 2023: Decision Deadline.

On October 18, 2023, Petitioner requested a Subpoena *Duces Tecum* ("SDT"). On October 25, 2023, Respondent filed a Motion for Protective Order and Objections to the SDT. On October 26, 2023, Petitioner filed an unopposed continuance motion based upon the illness of counsel's mother and the need to be in attendance with her during her hospitalization. Respondent did not object to this requested continuance. Finding good cause for the requested and unopposed continuance request, the undersigned granted the request.

On October 31, 2023, the undersigned issued Order No. 4, which rescheduled the hearing and attendant deadlines as follows: January 17, 2024: Disclosures; January 24-25, 2024: Due Process Hearing; and February 10, 2024: Decision Deadline.

III. DUE PROCESS HEARING

Both Parties made their Disclosures timely. On, or about, January 22, 2024, both Parties filed their written objections to the opposition's Disclosures. Rulings on these objections were made during the Hearing.

The SEHO convened a ZOOM Due Process Hearing on January 24-25, 2024. The Parties' Exhibits were admitted; the Parties called witnesses, who presented direct testimony and were cross-examined by the opposition.

During the Hearing, Petitioner was represented by (1) Ms. Andrea Koch, Petitioner's attorney; (2) Respondent was represented by Ms. Janet Bubert and Mr. Slater Elza, Respondent's attorneys. In attendance some, or all, of the time were (3) ***, Petitioner's Parent; (4) Dr. ***, Respondent's Superintendent; (5) Dr. *** and (6) Dr. ***, Petitioner's experts. At the conclusion of the Hearing, the Parties agreed to file and serve their Closing Arguments on, or before, February 27, 2024, and extended the Decision Deadline to March 11, 2024. On January 29, 2024, the undersigned issued Order No. 5, which set the agreed post-hearing deadlines. However, both Parties requested, and obtained, a brief extension of time to file their Closing Arguments to March 4, 2024. Both Parties filed their Closing Arguments timely. The Decision Deadline remained March 11, 2024. The Decision is issued on March 11, 2024.

IV. RESOLUTION SESSION

The Parties waived the Resolution Session and convened mediation on May 18, 2023. The Parties did not settle.

V. FINDINGS OF FACT ¹

1. *** is a Charter School, located in ***, Texas. Student attended *** during the fall semester of school year 2022-23.
2. Student is ***-year-old *** who currently attends *** ("****"), also a Charter School, located in ***, Texas. Student has attended *** since the spring semester of school year 2022-23.

¹ 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 January 24-25, 2024, and the specific volume, page, and line numbers contained therein; "P#.#" refers to Petitioner's Exhibits by number and page; "R#.#" refers to Respondent's Exhibits by number and page.

***** ISD: School Years 2016-17 & 2017-18 (*** and *** Grades)**

3. While in the *** grade in *** ISD, the school district identified Student as a student with a disability under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended, 29 U.S.C. §794 [R2.3-7]. The Section 504 Committee identified Student’s disabling conditions as *** and *** [R2.3]. The Committee provided Student with accommodations, including a health plan created by the school nurse, extra time for tests contingent on health, and a nurse to provide Student’s teachers with protocols for responding to an *** [R2.2].
4. Student also attended *** grade in *** ISD; Student’s Section 504 Committee continued Student’s accommodations for an individual health plan and extra time for tests [R2.46-48].

*****: School Years 2018-19 & 2019-20 (*** and *** Grades)**

5. Student attended part of *** grade and all of *** grade in *** [T1.80.4-7]. During that time, Student had several negative interactions with other students; Student ***; and Student *** [T1.80.16-T1.81.10].

*****: School Years 2020-21 & 2021-22 (*** and *** Grades)**

6. Student’s family returned to Texas in July 2020 and enrolled Student in *** (“***”). Because the Covid Pandemic was in full force, Student was provided virtual instruction throughout *** grade [T1.83.6-14]. During this time Student experienced a decline in Student’s mental health, reporting that Student felt lonely, sad, and isolated [T1.84.8-11].
7. Student returned to on-campus instruction at the beginning of Student’s ***-grade year at *** [T1.83.15-17]. Student’s Section 504 Committee convened on September ***, 2021 [T1.84.15-17; R5.1-8]. Student continued to have the disabling conditions of *** and ***. The Committee addressed how these conditions impacted Student’s education. The Committee agreed upon a Section 504 Plan, which included extended time to complete tests and assignments due to missing class because of ***. The Committee also agreed to reconvene if there were any new developments [R5.6]. The Section 504 Committee did not reconvene during that school year.
8. By the end of the fall semester of 2021, Student was ***; Student *** and in the spring semester of 2022, Student was diagnosed with *** and returned to virtual learning [T1.85.20-22]. Student was experiencing severe *** [T1.85.25-86.2].
9. On March ***, 2022, Student’s Parent submitted a written request to *** to evaluate Student for special education and to develop an IEP rather than continuing the 504 Plan. *** staff met with the Parent and provided Parent with the requisite paperwork to complete in anticipation of an evaluation [J3-5].
10. Student’s Parent did not return the evaluation paperwork despite inquiries from *** [J4].

11. Student's Parent testified that on July ***, 2022, prior to enrolling at ***, Student's private therapist provided Student's Parent with resources to address mental health concerns. On July ***, 2022, Student's physician added ***. Student's Parent informed the private therapist that Student was struggling; Student was ***, and told Student's ***. On July ***, 2022, Student's therapist recommended that the Parent meet the school nurse and identify locations at school for Student to *** [J7.12-15]. This information was not shared with ***.

Universal Academy, *, Texas: School Year 2022-23 (*** Grade)**

12. In August 2022, Student's Parent enrolled Student in *** [J2]. At that time, Student's Parent informed *** that Student previously received Section 504 services [R6.1]; Student's sole health problem was *** [R6.11]; Student's only *** was for *** [R.6.10]; and Student needed an *** at home and school [R6.11].
13. Student's Parent also completed a Student Health and Emergency Information form for the school nurse, which identified the following health problems: ***, *** [J8]. Other than ***, no information provided that any of the health conditions required medication or other accommodations at school.
14. Prior to the first day of school, the school nurse and Parent met to discuss Student's *** for ***. The nurse informed Student's teacher that Student had permission to *** as needed [J9.17].
15. On August ***, 2022, *** convened a Section 504 meeting and reviewed Student's prior 504 Plan for *** and ***. Student's Parent reported that in addition to these conditions, Student was also diagnosed with ***, for which Student had been ***. The 504 Committee decided to meet again after it received additional information from Student's physician [T1.103.22-25; 104.1; P11.308].
16. On September ***, 2022, Student's 504 Committee reconvened to review additional medical information from Student's physician [R13.1-2]. Student's physician reported that Student had been diagnosed with ***, and that Student was on ***. Student's physician recommended several accommodations to address the ***: (1) allow Student to rest for fifteen or twenty minutes before returning Student to class; (2) allow Student to *** as needed; (3) dim the lights in the classroom if possible; and (4) provide Student with a break outside the classroom if Student's condition was causing anxiety [J10.18-22; T1.76.6-16].
17. On September ***, 2022, Student's Parent approved a Section 504 Amendment to Student's 504 Plan to revise the accommodation allowing Student to take a break outside the classroom *** [J11.23-24].
18. On September ***, 2022, Student's Parent informed *** that *** was bothering Student. Student was so upset by this *** that Student came home crying and begging not to return to school [P12.309]. These interactions occurred on, or about, August ***, September ***, and September ***, 2022. *** responded the same day to let the Parent know the school took the matter seriously and would investigate the incidents reported.

19. On September ***, 2022, Student's Parent contacted the school for an update on the investigation and to report another incident. Student's Parent requested immediate action to resolve the conflict [P12.310].
20. The campus principal and Student's cohort contacted Student's Parent that same day and set up a meeting for September ***, 2022. *** changed Student's *** class on September ***, 2022, with the Parent's approval [T2.456.5-24; 468.14-25; 469.1-24]. Student attended class the rest of the week without further incident [P95.591].
21. On September *** and ***, 2022, Student's Parent sent additional emails alleging violations of Student's rights under Section 504 as Student continued to be a victim of bullying [R19.29-30]. *** was conducting an additional investigation of Student's interactions with other students in response to a grievance filed by the Parent [P13; P18].
22. On October ***, 2022, the Educational Liaison ("Liaison") for *** ("****") contacted ***'s Superintendent to inform the school that on October ***, 2022, Student began participating in *** and would be in such setting for an estimated six to eight weeks. Student would have four hours per day of group therapy and two hours of school every day; accordingly, the Liaison requested that *** send Student's assignments and tests.
23. The Liaison attached a physician's note to *** to excuse any unexcused absences starting on Student's October ***, 2022, admission date [R16.4]. Also attached was a signed written consent from the Parent for *** to release Student's academic information to ***. The release was extremely limited, which precluded *** from sharing any information with *** other than school-related information. Any information related to Student's ***, evaluations, progress notes, treatment plans, *** were strictly excluded from disclosure to *** [R16.1-3].
24. On October ***, 2022, ***'s Superintendent informed the Liaison that *** wanted to partner with *** to support Student's educational needs and requested to schedule a Section 504 meeting for Student, due to Student's change in circumstances, for October ***, 2022. *** needed the prompt Section 504 Committee meeting to aid the Committee in educational planning for Student [R14.1-6; R15.2-3].
25. On that same day, the Superintendent sent two additional consent forms: (1) Authorization [for ***] to Release Educational Information [to ***]; and (2) *** to *** regarding Student's medical records. Both consent forms required the Parent's signature to be effective. *** committed to providing Student's assignments by October ***, 2022, once it received the Parent's executed authority to release educational information to *** [R15.2].
26. Two days later, on October ***, 2022, the Superintendent sent a follow up email to the Liaison and the Parent stating that *** had not received the executed authorization to share school-related information with *** or a response to the request to schedule a Section 504 meeting on October ***, 2022.
27. On October ***, 2022, Student's Parent returned a signed copy of the authorization for *** to provide assignments and tests to *** [R15.5]. This authorization had been signed on October ***, 2022.

28. Also on October ***, 2022, *** notified *** that the October ***, 2022, date for the Section 504 Committee meeting did not work [R15.1].
29. Neither *** nor Student's Parent provided additional times for convening the requested Section 504 Committee meeting.
30. *** never received an executed authorization for *** to release medical information to ***.
31. *** provided *** with Student's assignments and tests as authorized by the October ***, 2022, authorization [R11.1-103; J18.38, 42-46]. *** communicated with the Parent during this time regarding assignments, including offering assistance with assignments and responding to the Parent's concerns about grades [J21.50-52; J24.55; J25.56-58].

October *, 2022, Section 504 Committee Meeting at *****

32. On October ***, 2022, Student's Section 504 Committee met to review Student's 504 Plan. Student's Parent attended and participated in the meeting; Parent expressed concerns about Student's grades for *** classes while Student was at ***, *** assured Parent that Student would have sufficient time to complete assignments after Student returned to school.
33. The Parent also expressed concern about Student's *** reassignment effected on September ***, 2022, asking whether the *** could be changed again. *** stated that it was open to such change. The Parent asked to talk to Student first; the Parent never responded about the offered class change [J26.59-63; R9.1; T2.458.15-22].
34. Student's Parent requested additional accommodations to reduce the number of times Student called home related to Student's ***.
35. Student's teachers shared their observations from the time before Student left to attend *** *i.e.*, before September ***, 2022. During that six-week period before Student left *** Student appeared happy and ready to work in the morning but Student began to experience discomfort later in the day, during lunch, and during ***. Student was comfortable requesting accommodations when Student ***; and generally, no problems were observed during Student's *** classes.
36. All the Parent's concerns were addressed at this meeting. The Committee added accommodations to Student's 504 Plan, including Student's use of *** and reduced assignments [J26.59-63). Student's Parent agreed with the revised 504 Plan.

December *, 2022, *****

37. Student was successfully *** on December ***, 2022. The notice of Student's *** stated Student would be returning to the *** campus full time on December ***, 2022. The notice included no recommendations or restrictions related to Student's in-person attendance at school. [R1.18.1-3]. Likewise, Student's Parent did not provide *** with any information or recommendations from the *** related to school accommodations or services during, or after, Student's participation in the *** program.

38. On November ***, 2022, Student's Parent requested information from *** regarding Home Bound services [R17.1]. At the time, *** had no information as to when Student would return to school; Student's Parent never provided such information. Before *** responded to the Parent's question, *** received notice from *** of Student's release to return to campus effective December ***, 2022 [R18.1-3]. Neither ***, nor the Parent provided *** with any information about a need for Student to receive Home Bound services.
39. On November ***, 2022, Student's Parent obtained a private psychological evaluation from *** [J30]. The psychological evaluation stated that Student met the criteria for ***, and that Student warranted a diagnosis of Attention Deficit, Hyperactivity Disorder ("ADHD").
40. Student's Parent never shared the evaluation results with *** [J4].
41. On December ***, 2022, *** requested to schedule Student's Section 504 Committee meeting to discuss Student's return to campus and the Parent's request for Home Bound services. Due to the upcoming holiday break between December ***, 2022, and January ***, 2023, the school offered to meet on December *** or ***, 2022, or January ***, 2023 [J28.65; J31.109]. The Parent declined the meeting on any of the proffered days, stating that Parent was unavailable on the December dates and the January *** date was too far away. The Parent inquired about expediting a Home Bound placement without a Section 504 Committee meeting, to which *** responded that placement in Home Bound would be a change in educational placement, which had to be considered by Student's Section 504 Committee [J28.65-68].
42. The Parent never responded to ***'s request for the Section 504 Committee meeting.
43. Notwithstanding the plethora of absences during fall of 2022, Student maintained decent grades in the *** grading cycle [R4.18].
44. Student did not return to *** after being *** on December ***, 2022 [J1.2].
45. Student's Parent did not send *** any documented excuses for Student's absences after December ***, 2022.
46. On January ***, 2023, Student's Parent withdrew Student from *** [R12.1-2].
47. Student did not return to *** after September ***, 2022.
***, ***, **Texas: School Year 2022-23 (** Grade)**
48. Student's Parent enrolled Student in *** prior to the start of the spring semester in January 2023. *** then requested Student's records from ***.
49. In response to ***'s request for grades, *** had to calculate grades that were negatively impacted by Student's missing assignments from *** and Student's unexcused absences [J34]. While Student's initial grading cycle showed Student passed Student's courses but for a *** in ***, the *** grading

cycle showed all failing grades [J34]. This occurred because Student did not return many of Student's assignments while enrolled at ***.

50. On February ***, 2023, Student's Parent sent *** an email requesting an evaluation for special education [J33.111-115]. *** scheduled Student's Annual Review Section 504 Committee meeting for February ***, 2023 [R22.1].

February *, 2023, Section 504 Committee Meeting**

51. Student's Section 504 Committee reviewed Student's most recent Section 504 Plan from *** as well as the November ***, 2022, private psychological evaluation completed by ***. The Committee noted Student's absences during fall 2022 at ***. *** excused and *** unexcused. *** determined that these massive absences, coupled with failing grades in the *** grading cycle and the fall semester at *** required Student to repeat the *** grade in school year 2023-24 [J37.127].
52. The November ***, 2022, private psychological evaluation concluded that Student's academic achievement was average to high average. The 504 Committee agreed to adopt the accommodations recommended in the evaluation; determined that Student was making progress in the general education curriculum; and concluded there was no suspicion of a need for specialized instruction at that time. Student's Parent agreed with these decisions during the February ***, 2023, meeting [J37.122-128; R22.6]. However, after the meeting, the Parent reasserted Parent's request for a special education evaluation [P32.365].
53. *** conducted and concluded Student's Full and Individual Initial Evaluation ("FIIE") on May ***, 2023 [P36]. Because of the timing, Student's initial ARD meeting was held on August ***, 2023. It reconvened on August ***, 2023, and was completed on October ***, 2023. As of October ***, Student meets the special education criteria due to Emotional Disturbance ("ED") and Other Health Impairment ("OHI") for ADHD, although Student was not officially diagnosed with ADHD until January 2023 [P55.538]. This diagnosis was not shared with any school until *** received the doctor's report in February 2023 (J39).

*****'s Child-Find Obligation**

54. *** had no reason to suspect that Student had a qualifying disability, as defined by IDEA, when Student was enrolled in *** in fall 2022.
55. Even if *** suspected that Student had a qualifying disability, *** had no reason to suspect that because of this disability, Student required special education and related services.

VI. DISCUSSION

A. BURDEN OF PROOF

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir. 2009). The IDEA

creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. It is well-settled that a party challenging the district's eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 762-63 (5th Cir. 2018) (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010)).

B. CHILD FIND

This case concerns one basic tenet of IDEA: child find. Student alleges that *** violated its child-find obligation when it failed to evaluate *** timely, *i.e.*, during fall 2022; failed to convene an ARDC timely; failed to identify Student's special education needs; and failed to develop an appropriate IEP.

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

The child-find obligation is triggered when the school district has reason to suspect the student (i) has a disability; and (ii) needs special education services. 34 C.F.R. §§ 300.8 (a) (1); 300.111 (a) (c) (1); *Goliad Ind. Sch. Dist.*, 32 IDELR 134 (SEA Tex. 2000). Not every student who struggles in school requires an evaluation for special education. 34 C.F.R. §300.111 (a)(1); *Alvin Ind. Sch. Dist. v. A.D.*, 503 F. 3d 378, 384 (5th Cir. 2007); *Carrollton-Farmers Branch Ind. Sch. Dist.*, 113 LRP 14998 (SEA Tex. 2013). 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. Sch. Dist. v. Rowley*, 458 U.S. at 207.

Once the child-find obligation is triggered, the District must initiate the evaluation process within a reasonable time. *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018). A child-find violation turns on three inquiries: (1) the date the child-find requirement was triggered due to notice of a disability; (2) the date the child-find duty was satisfied; and (3) the reasonableness of the delay between these two dates. *Spring Branch Indep. Sch. Dist. v. O.W. ex rel. Hannah W.*, 961 F.3d 781, 793 (5th Cir.)

When evaluating a school's actions related to an alleged child-find violation, courts and hearing officers examine only the information and resources possessed by the school at a given point in time. *D.C. v. Klein Indep. Sch. Dist.*, 860 Fed. Appx. 894 (5th Cir. 2021). Accordingly, the pivotal question is this: What did *** know and when did *** know it?

1. ***** Had No Basis to Suspect Student Had a Disability, as Defined by IDEA, Based on Academic Decline, Absenteeism, ***, Frequent Visits to the Nurse, or Behavioral Interactions with Students.**

No single circumstance triggers a school's child-find obligation. *Yasiris v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268 (10th Cir. 2022) (the inquiry of whether a school should reasonably suspect a child has a disability under IDEA relies on several factors, of which hospitalization is but one). Further, courts have required evidence of otherwise unexplained academic decline before concluding that the school violated its child-find obligation. See *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d at 677 (hospitalization, academic decline, and incidents of theft, taken together, were sufficient to cause the district to suspect disabilities created a need for special education services).

Upon enrollment at ***, Student's Parent informed *** that Student received accommodations under a Section 504 Plan related solely to *** and an ***. The Parent also informed the school nurse that Student had multiple health conditions. Notwithstanding the fact of Student's ***, no information was provided at the time Student enrolled that these physical and mental health conditions required *** or specific accommodations in the school setting.

*** was aware that Student's medical conditions sometimes resulted in more absences than usual, and this was addressed in Student's 504 Plan. Beginning the second week of school, Student was absent for several days related to ***. Upon Student's return, Student's Parent provided information from Student's physician about accommodations Student needed during the school day, which *** implemented. Student's physician did not recommend Student's placement in special education. Despite missing numerous days during the first three weeks of school, Student made up Student's work and passed all Student's classes, but for ***, at the end of the *** grading cycle.

*** became aware of an alleged conflict between Student and another *** student in Student's *** class after Student's Parent reported some bullying incidents. *** immediately investigated but was unable to corroborate Student's allegations. Despite that fact, ***, with Parent's support, separated *** by moving Student to a different ***. No additional conflicts *** were reported.

Later in fall 2022, Student's Parent reported that Student had negative feelings about school and was engaging in ***. These reports were inconsistent with observations of Student at school. Teachers reported that Student was generally attentive and performed successfully with Student's 504 accommodations [R19.34-35; J26.61-62].

Student's Parent informed *** that Parent would be enrolling Student in *** [P20]. The Parent provided *** with a letter from Student's doctor's office noting Student was being *** [J14]. The letter did not include any school-related recommendations for services or accommodations [R19.29-32]. At the time Student left to attend ***, Student's grades did not reflect an academic decline.

Throughout the time Student was at ***, *** cooperated with the program's request to provide schoolwork for Student. *** recognized that Student was not completing all Student's assignments during Student's extended absence, but *** was ready and willing to develop a plan to allow Student to make up the work when Student returned. Student previously demonstrated ability to successfully make up instruction

following a lengthy absence in August 2022. *** had no reason to think that with sufficient time and support, Student would not make up all requested schoolwork.

Between August *** and September ***, 2022, Student visited the nurse's office *** times: *** [J2.3-4]. Based on the information provided to *** at the time Student enrolled and provided records from Student's prior schools, it was expected that Student's health conditions and 504 accommodations would result in a higher-than-average number of nurse visits. Parent testified this was the reason Parent wanted Student to meet the nurse, prior to the first day of school, so that Student would be comfortable coming to the nurse's office when needed. The nurse's records reflect the Student generally returned to class within about ten minutes. These visits to the nurse's office did not negatively impacted Student's ability to make academic progress or result in Student's academic decline.

2. * Had No Basis to Suspect Student Had a Disability, as Defined by IDEA, Because Parent Failed to Provide *** with Vital Information to Support Special Education Eligibilities.**

As stated previously, if a district has reason to suspect a student has a disability and requires special education, then the school does not meet its child-find obligation by waiting for a parent to request for evaluation. 34 C.F.R. 300.11. However, when a parent chooses to withhold information about Parent's child, it interferes with the district's ability to consider fully a student's circumstances and potential need for special education. In such a case, the district has no reason to suspect a disability until the parent makes the request for evaluation. *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 795 (5th Cir.).

Throughout Student's enrollment at ***, Student's Parent denied *** all consent to obtain information from the *** at ***. Student's Parent signed one of the two consents requested by ***: the authorization for *** to share school records with *** [R15.5]. The Parent never executed **** [R16.1-6]. *** had to rely on Student's Parent to provide information.

*** scheduled a Section 504 meeting for October ***, 2022, to discuss any concerns or changed circumstances Parent wanted to share. The Parent participated in this meeting, offered suggestions for Student's 504 Plan, and agreed to the Plan. There was no subsequent communication between the Parent and *** following the October ***, 2022, Section 504 meeting.

On November ***, 2022, and while at ***, Student's Parent obtained a private psychological evaluation from *** [J30]. The psychological evaluation stated that Student met the criteria for ***, and warranted a diagnosis of Attention Deficit, Hyperactivity Disorder ("ADHD"). The Parent never provided *** a copy of this private evaluation.

Eventually, *** informed *** that Student would be returning to campus full time on December ***, 2022. No documentation was provided by *** or Student's Parent about Student's progress, current condition, or recommendations for accommodations or services in the school setting.

The due process hearing record confirms *** considered and appropriately responded to all information available to the school about Student. During Student's extremely limited time at ***, Student was offered accommodations in the general education setting and through Section 504 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 student's needs and in

providing appropriate instruction and interventions "before rushing to special education identification"). *** was responsive to requests from Student's Parent and Student's private healthcare providers. During Student's enrollment Student did not exhibit any unexplained academic decline.

3. *'s Findings of ED and OHI (ADHD) in October 2023 Do Not Imbue *** With a Child-Find Violation.**

Student enrolled in *** in January 2023. While the *** Section 504 Committee did not find a need to evaluate Student for special education and related services, Student's Parent insisted on such evaluation. Based upon timing, *** did not evaluate Student until fall 2023; in October 2023, Student's ARDC determined that Student qualified for special education services for ED and OHI (ADHD).

a. Emotional Disturbance

In finding that Student qualified under the ED category, Student's ARDC had to find that Student exhibited one or more of the following delineated characteristics: (1) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances; (4) a general pervasive mood of unhappiness or depression; or (5) a tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8 (c)(4)(i). IDEA requires that before a student is found to have an ED, the student exhibits one or more of these characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance.

In determining that a student has an ED, the school must not focus solely upon the student's academic performance; it must base this determination on a holistic view of the student's behavior, academic performance, and other indications." *R.B. v. North East Ind. Sch. Dist.*, No. SA-20-CV-01441-JKP, 2022 WL 488500, at *10 (W.D. Tex. Feb. 16, 2022). A school's suspicion of emotional disturbance requires that the school has an opportunity to learn about the student and observe the student over a period sufficient to consider whether the characteristics of ED have been present for a significant amount of time and are impacting the student's education in a manner that is not explained by other circumstances. *Id.*; 34 C.F.R. § 300.8 (c)(4)(i).

When Student enrolled at ***, Parent reported Student ***, but provided no information of the severity or duration of these conditions. Student's prior Section 504 Plan did not mention, or provide for, any mental health disability. *** lacked information that any ED characteristics were present to a marked degree for a long period of time or had adversely affected Student's educational performance. It was only after the Parent sent Parent's September ***, 2022, email that *** noticed that Student's peer relationships were negatively impacting school attendance [P12.309]. At that time, school staff had not observed any unusual or significant issues at school.

Two weeks later, Student's Parent enrolled Student at ***. September ***, 2022, was the last day Student attended *** prior to Student's withdrawal from *** in January 2023.

b. OHI (ADHD)

In finding that Student qualified under the OHI category based upon Student's ADHD, the ARDC had to find that Student had "limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that result[ed] in limited alertness with respect to the educational environment, that: (1) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) adversely affects a child's educational performance." 34 CFR 300.8 (c)(9). "The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician, a physician assistant, or an advanced practice registered nurse... ." 19 TEX. ADMIN. CODE 89.1040(c)(8).

In October 2023, and more than a year after Student ceased attending ***, Student's ARDC at *** agreed that per Student's August 2023, FIIE, Student qualified for special education services for ADHD. This finding was based, in part, on information that *** never received: the private psychological evaluation completed on November ***, 2022; and information from Student's doctors.

When Student enrolled at *** and began attending classes during the *** grading cycle, Student's educational performance was good [J.34.116]. Despite absences early in the semester related to medical conditions, including ***, Student was able to complete assignments and earn passing grades in all classes but ***, which was just *** and a subject for which Student has always earned a lower grade [R4.18; R20].

Student's grades for the *** semester were negatively impacted because Student's Parent withdrew Student from *** before Student had an opportunity to make up assignments following Student's ***. Student's low grades during the fall 2022 semester did not result from Student's inability to complete the assignments or master the general education curriculum. This is further supported by Student's improved performance on the STAAR assessments during the same school year [R20].

Here, Student's Parent possessed substantial knowledge about the duration and severity of Student's mental health condition that was not shared with ***. Since the information provided to *** did not rise to a level that it would raise a suspicion that Student needed special education, ***'s child-find obligation could only be triggered by a request for evaluation from Student's Parent. *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th at 795 (5th Cir.). No such request for evaluation was made during the time Student was enrolled at ***. The record reveals that Student's Parent sent multiple written communications to ***. However, none of the communications included a request that *** evaluate Student for special education services.

During the Hearing, both Parties presented testimony regarding Student's educational needs. The respective evidence often conflicted. *** presented documentary evidence and testimony from school personnel, including Student's teachers who worked with Student and testified that initially, Student was performing well without accommodations. It is well settled that testimony of district personnel must be given deference. *Marshall Joint Sch. Dist. No. 2 v. C.D. ex rel. Brian D.*, 616 F.3d 632, 640-41 (7th Cir. 2010) (explaining that a physician's diagnosis bears on the decision, but the "physician cannot simply prescribe special education" because that decision belongs to the team of parents, teachers, and school administrators). *D. L. by & through J.L. v. Clear Creek Indep. Sch. Dist.*, 695 Fed. Appx. 733, 737 (5th Cir. 2017), as revised (July 31, 2017) (finding that the observations of teachers who spend time daily with the student in the educational setting are more reliable regarding educational need than those outside providers who base their opinions on isolated in-school observations and parent-provided information and documentation."). See also *Alvin Indep. Sch. Dist.*

v. A.D. ex rel. Patricia F., 503 F.3d 378, 384 (5th Cir. 2007) (finding that the testimony of teachers who observed the child's educational progress first-hand was more reliable than physician testimony); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253-54 (5th Cir. 1997) (crediting the opinions of "those individuals who had the most immediate knowledge of [the student's educational] performance" including "the teachers who worked with [the student] on a daily basis").

C. CONCLUSION

Student failed to establish that *** violated its child-find duty. Although Student was enrolled at *** for the entire fall semester of 2022, Student physically attended *** for a minute number of school days between Student's enrollment on August ***, 2022, and Student's withdrawal on January ***, 2023. While Student officially withdrew on January ***, 2023, Student never returned to *** after September ***, 2022. Student's scattered attendance resulted from Student's ***, Student's numerous absences for health problems and doctor's visits, Student's lengthy placement at ***, and Student's Parent's failure to return Student to school between Student's release from *** on December ***, 2022, and Student's withdrawal on January ***, 2023. This, coupled with the Parent's failure to provide *** with critical educational information, precludes a logical determination that Student had a qualifying disability that required special education services.

VII.
CONCLUSIONS OF LAW

1. *** is a Charter School, located in ***, Texas, and is responsible for providing FAPE under IDEA and its implementing rules and regulations to its students. 20 USC §1400 *et. seq.*
2. Student had the burden to prove the child-find issue raised under IDEA at the due process level. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 535-37 (2005).
3. IDEA creates a presumption that a district's decisions, made pursuant to IDEA, are appropriate and that the party challenging the decisions always bears the burden of proof. *Schaffer v. Weast*, 126 S.Ct. at 535-037; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 762-63 (5th Cir. 2018) (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).
4. Student failed to prove that *** violated its child-find duty in a timely manner under the IDEA. 34 C.F.R. §300.111; 19 TEX. ADMIN. CODE § 89.1151 (c).
5. Student failed to prove that *** denied Student a FAPE.

**VIII.
ORDER**

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

SIGNED this the 11th day of March 2024.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the Due Process Hearing in any state court of competent jurisdiction or in a District Court of the United States. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

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