DOCKET NO. 303-SE-0524

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

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioners, Student, b/n/f Parent (collectively, Petitioner), filed a request for an expedited impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA). The Complaint was received by the Texas Education Agency (TEA or Agency) on the 10th day of May 2024, and the Notice of Filing of Request for a Special Education Due Process Hearing was issued by TEA on May 10, 2024. The Respondent to the Complaint is the Celina Independent School District (hereinafter District or Respondent).

II. Issues

A. Petitioner's Issues

Petitioner alleges that the District has failed to comply with its Child Find obligations and further has denied Student a free appropriate public education (FAPE) as follows:

- Whether the District violated its Child Find obligations in failing to timely evaluate Student in all areas of suspected disability or need;
- Whether the District violated the IDEA by failing to develop an Individual Education Plan (IEP), including the provision of educational and related services, thereby denying the Student FAPE;
- Whether the District violated Child Find in failing to timely complete a Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP) for the Student;

- Whether the District through the Manifestation Determination Review (MDR) committee appropriately determined that the Student's conduct was not a manifestation of, or had a direct and substantial relationship to the student's disabilities, and was not the result of the District's failure to establish and implement an IEP; and
- Whether the District failed to comply with procedural obligations under the IDEA and related laws.

B. Petitioner's Requested Relief

Petitioner requested a number of remedies in the Petition as follows:

- Find that the Petitioner's rights under Child Find have been violated;
- Find that the Student's right to FAPE has been violated;
- Find that the conduct in question was a manifestation of the Student's disability or that it was the result of the District failing to implement the Student's 504 Plan;
- Order an Independent Educational Evaluation (IEE) be completed by the provider of Petitioner's choice, at public expense;
- Order a Functional Behavior Assessment (FBA) be conducted at public expense, and a Behavior Intervention Plan (BIP) be developed for the Student;
- Find that parent is entitled to reimbursement for those out-of-pocket expenses they have incurred; and
- Find that parent is entitled to attorneys' fees for representation in this matter.

C. Respondent's Issues and Legal Position

As this is an expedited matter, the Respondent District did not file a Response to the Complaint. Respondent's legal position was set forth in the Closing Brief submitted after the due process hearing. Respondent contends that Petitioner failed to meet the burden as to the Child Find claims, in that the claims were waived, and there is no evidence of a special education disability or need for specially designed instruction. Respondent also noted that it had sufficiently provided accommodations to the Student through Student's Section 504 plan beginning in November, 2022, and that the MDR was properly conducted with the evidence supporting the Disciplinary Alternative Education Program (DAEP) placement. Finally, Respondent asserts that since there was no evidence of disability or need, there is no denial of FAPE, and that the District complied with all IDEA procedural requirements to the extent no harm or deprivation to the Student occurred.

III. Procedural History

Upon filing of the Complaint, the Agency assigned the matter to this Hearing Officer, who then issued the Initial Expedited Procedural Scheduling Order on May 12, 2024. After the Pre-Hearing Conference (PHC), the due process hearing was scheduled and held on June 11, 2024.

A more detailed procedural history is set forth below in Section D, noting all the preliminary matters addressed by the parties and the hearing officer. Post-hearing orders are detailed in Section E.

A. Representatives

Petitioner was represented throughout the case by counsel, Ms. Janelle Davis of Janelle L. Davis Law, PLLC. The Respondent District was represented by Ms. Rebecca Bradley of Abernathy, Roeder, Boyd, & Hullett, P.C.

B. Mediation and Resolution

The parties participated in a Resolution Session on May 17, 2024, and no agreement or resolution was reached at that time. The parties declined to participate in mediation.

C. Continuances

As this case is an Expedited Case, there were no continuances requested or granted. Due however, to a scheduling issue, the due process hearing was moved from June 12, 2024 to June 11, 2024 by agreement.

D. Preliminary Matters

After the issuance of the Initial Scheduling Order on May 12, 2024, as this is an expedited case, the Respondent District did not file a Response to the Complaint. As noted, the PHC was held on May 30, 2024, and Order 2, the Order following the PHC and revising the hearing date was then issued on May 31, 2024.

Both Petitioner and Respondent timely made their respective Disclosures on June 3, 2024. Thereafter, Respondent, on June 6, 2024 filed its Objections to some of Petitioner's Exhibits, as well as objecting to the expert status of two witnesses listed in Petitioner's Witness List. Petitioner then filed a Response to the Objections on June 7, 2024. Order 3, ruling on the Objections was then issued on June 10, 2024.

E. Post-Hearing Matters

Upon the conclusion of the presentation of evidence, but prior to closure of the hearing, the parties discussed the requisite time for receipt of the transcript, filing closing briefs, and the final decision. And while this is an expedited case, as school is not in session, and thus the decision would be delayed, the parties and hearing officer agreed nonetheless to set dates within a short time after the hearing. The due date for the Closing Briefs was set as July 2, 2024, with a corresponding decision due date. Order No. 4 was then issued on June 12, 2024, setting forth the due dates for the Briefs, July 2, 2024 and the Decision Due Date as July 17, 2024. This Decision is now timely issued.

IV. Findings of Fact*

1. The Student resides with Student's Parent, and at all times relevant to this case, was within the boundaries of the Celina Independent School District [hereinafter CISD or District]. Student is *** years old.[1]

2. Student has attended school within the District since 2017 and had just completed Student's *** year at the time of the hearing.[2]

3. There was no evidence presented about any difficulties the Student had in school while in the District until ***. It appeared that during ***, the Student was permitted to go to a private place when completing Student's testing, as that would help Student focus. It also appeared from the testimony that Student's Parent was not aware of that until Student was in ***, and told Parent about it, as Student was told by the *** that Student needed to be on a plan in order to take tests in a different place.[3]

4. In October 2022, the Student's Parent sent an email to Student's assistant principal requesting that the Student be provided some help with Student's ***. Parent specifically requested assistance at that time and testified that the Student sometimes *** that Student was physically ill due to Student's ***.[4]

5. As noted, the Student was told that Student needed to be on a plan in order to receive accommodations. At some point, Student's Parent then informed the District that

[1] T.84; J2:13; J.10:
[2] T.84; J.12.
[3] T.85
[4] T.86, 94; P.10:17.

Parent had received a diagnosis from the Student's pediatrician of ***, and produced information and documents demonstrating such diagnosis in advance of the initial Section 504 meeting.[5]

6. As a result of these requests from the Student's Parent, the District proceeded with a Section 504 evaluation and scheduled the initial Section 504 meeting for November ***, 2022. The primary issue that Student's Parent listed difficulties with was testing and assignments, such that Student 'shuts down' due to Student's ***. The Student's physician noted that Student would be helped with alternative testing sites and extended deadlines.[6]

7. At that time, it was determined that the Student needed accommodations in place when Student was taking tests. Accommodations in the Section 504 Student Services Plan consisted of extra time for tests and quizzes, and access to the ***. [7]

8. The Student remained on the Section 504 plan throughout the remainder of Student's *** year, as well as into Student's *** year.[8] There apparently was no request for additional assistance or evidence of any further difficulties regarding the Section 504 Plan or accommodations until January 2024.

9. The Student's Parent testified that Student's struggles continued Student's *** year,[9] but the first documentation of any request from Student's Parent for a 504 meeting was in January of 2024. The record does not show any other requests or concerns with the accommodations during the Spring 2023 and Fall 2023 semesters. There is, however, some evidence of difficulties the Student was experiencing in Student's classes, specifically in *** and ***.[10] There are numerous emails between Student's Parent and the teachers for those classes. The documents show that most of the reason for the difficulties in the classes was that Student was not doing the required work.[11]

10. The Student testified that during Student's *** time, which is a *** type of class, Student was permitted to go anywhere during that time. Student noted that this year, the *** is 'like a lockdown' and you had to be quiet.[12] In other documents, it was noted that during the *** time that the teacher had to often redirect Student to do Student's work.[13]

[5] T.86; J.2.
[6] T.86 J.2.
[7] J.3:34-39.
[8] J. 3; J.5.
[9] T.97.
[10] J.22.
[11] J.21, J.22, J.23.
[12] T.96, 163.
[13] T.96.

11. The Student's Parent testified that Parent was told by someone during the February ***, 2024 Section 504 meeting that the Student was 'maxed out' on accommodations. While not knowing who specifically told Parent that, Parent did note that both Ms. *** and Ms. *** were present at the time.[14] Subsequent testimony from Ms. ***, the District 504 coordinator for the District at the time, demonstrated that there were several accommodations and approaches that may have been helpful for the Student, such as chunking assignments, frequent breaks and calming objects, that were not implemented or discussed during the meeting.[15]

12. The Student's Parent also stated that Ms. ***, a counselor at the ***, helped the Student calm down, throughout Student's *** year. Parent also noted that Ms. *** acted like a sounding board and worked very well with the Student.[16]

13. On January ***, 2024, the Student's Parent requested another Section 504 meeting, as Parent stated that the Student was still having difficulties with Student's classes and testing was 'awful'. The meeting was scheduled for February ***, 2024.[17]

14. The meeting was then held on February ***, 2024, and at that time the Student's accommodations included extra time on tests and quizzes, access to the *** for testing, access to the counselor, and an exchange of class notes.[18]

15. It appears that in advance of the scheduled meeting, the District obtained some input from the Student's teachers. One teacher noted that Student missed more classes than a 'typical' student. Others stated that Student rarely completed Student's work outside of class, appears not motivated, and does not do test corrections. Others noted that the Student needed help with organization and would benefit from an inclusion teacher.[19]

16. On March ***, 2024, the Student's parent referenced special education in an email to the District and noted Student's continuing struggles.[20] And on March ***, 2024, the Student's Parent made a formal request for a special education evaluation.[21]

17. The Student's Parent also stated that Student had been diagnosed by a physician with ADHD or ADD (Parent could not recall which), in April or May (but did not designate a year). No diagnosis or information had been provided to the District, although it appears that the Other Health Impairment (OHI) form for the physician to complete was

[14] T. 106-107.
[15] T.190-191.
[16] T. 93.
[17] J.4.
[18] J.5.
[19] J.5.
[20] T.101; P.9:6-8.
[21] T.100; J.26.

not provided by the District to the parent until May ***, 2024. [22] At the time of the hearing, no evidence of such a diagnosis was presented.

18. After the request for the evaluation, the District failed to send the requisite consent for evaluation form to the Student's Parent, but did send the family information form. Testimony showed that the Parent may have thought that the testing was in progress.[23]

19. Ms. ***, the CISD Section 504 specialist during the 2023-2024 school year, testified that the Student had some issues with ADHD and focus. She also testified that such a finding would not change accommodations, although later she said it could.[24]

20. Ms. *** also testified that she saw no need for special education for the Student, and specifically no need for specially designed instruction. She also noted that Student did acceptable on the STAAR, and that the District only heard about Student's struggles at the end of each grading period. She also noted that Student failed to go to tutorials that were offered.[25] The Student testified that the tutorials 'didn't work for Student', as Student was very busy outside of school.[26]

21. Ms. *** also noted that the Student did 'pretty well' on the STAAR exams, and maintained passing grades.[27]

22. On April ***, 2024, a notice of 504 meeting was sent to the Student's Parent setting the meeting for May ***, 2024.[28]

23. On April ***, 2024, an incident occurred at school that served as the subject of the Student's subsequent placement at the DAEP. The Student testified that on that day Student ***. Student noted that ***.[29]

24. The Student stated that Student did not like going to the counselor's office, as there were other people in there, despite Student's Parent's testimony that it worked well for Student the prior year.[30]

25. The student stated that on several prior occasions when Student ***. Student noted that doing so would help Student ***.[31]

[22] T.56, 110; P.7.
[23] T.101-102; P.4.
[24] T.173-175; 189-191.
[25] T.176, 183.
[26] T.163.
[27] T.58-60; J.12.
[28] J.6.
[29] T.152-153; 163.
[30] T.93, 144-145.
[31] T.146-147.

26. Testimony also demonstrated that on April ***, 2024, after the Student ***. Student testified that Student's ***.[32]

27. At some point ***. At that point, Ms. ***, an assistant principal, realized ***. At this time, ***. It also appears that the Student ***. [33]

28. After a few attempts to contact Student's Parent, the Student was able to reach Parent and Parent went to the school. Upon Parent's arrival at the ***, the Student ***. School staff then discussed the incident with the Student and Student's Parent.[34]

29. An initial determination of a 60-day placement at the DAEP was made, and on April ***, 2024 the Student's Parent was so notified.[35] This placement was the result of the finding that the Student ***. ***. The Student as well testified that ***. [36]

30. The *** was defined by the Student Code of Conduct, and ***, the Code of Conduct was violated.[37]

31. On April ***, 2024, the District sent notice of a scheduled MDR committee meeting set for May ***, 2024. As the parent had requested an evaluation for special education, the District held the MDR.[38]

32. Ms. ***, who was the families advocate, stated at the May ***, 2024 MDR meeting that the Student's 504 Plan was inadequate with regard to the procedures to follow when the Student was ***. She had begun working with the Student a few days prior to the meeting.[39]

33. While Ms. *** noted that the incident was the result of the District's failure to adequately provide accommodations under Student's 504 plan, she agreed that Student did have access to the counselor's office at the time.[40]

34. Ms. *** also discussed the Student's accommodation for note taking. Apparently, she had requested that the District change the policy with regard to the Student having to first take notes, and then exchange Student's in order to receive the teacher's notes.

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[32] T.153.
[33] T.112-113, 115-116.
[34] T.113; P.15:17:45-18:55.
[35] J.29.
[36] J.6:111; P.15: 2:55 – 4:10, 18:00-18:55.
[37] T.128-129; J.19; J.20
[38] J.6.
[39] T.42-47.
[40] T.61-62; P.15.

The change was made, and the Student no longer had to first take the notes. She noted that this change would allow Student to better focus on the teaching.[41]

35. At the manifestation determination committee meeting on May ***, 2024, it was determined by the committee members, (except for the Student's Parent and their advocate) that the conduct of *** was not a manifestation of the Student's disability or the result of the District's failure to implement Student's accommodations.[42]

36. No evidence was submitted demonstrating that the *** was a manifestation of the Student's disability or the result of the District's failure to implement Student's Section 504 accommodations.

37. The Student's Parent testified that due to Student's DAEP placement, the Student was unable to *** while Student was still placed at the DAEP. Student would also be unable to ***. It was noted that Student was also unable to do a number of other things, like ***. Ms. ***, the Director of Special Education for the District, confirmed that Student would not be able to participate in these activities.[43]

38. The district then, on May ***, 2024, provided the Student's Parent a consent form for the special education evaluation . The District also provided an updated consent form at the resolution session on May 17, 2024. The consent form had been revised to include additional areas of testing requested by Petitioner. [44]

39. ***, the District Special Education Director, testified that the District did miss the deadline to respond to the parent's request for a special education evaluation and noted that the referral packet had been misplaced. However, the District offered to expedite the evaluation in such a way that it would be completed at approximately the same time as if consent had been timely sent.[45]

40. As part of expedited the evaluation, the District offered to try to bring the Student back from the DAEP after 30 days so that the observations could be completed in Student's regular classrooms. The District also stated that it would do part of the evaluation over the summer break months.[46]

41. The Student's Parent testified that Parent was, and remains, unwilling to sign the consent for special education evaluation, as Parent does not trust the District to conduct

[41] T.68-69.
[42] T.181; J.6; P.15.
[43] T.137-138, 115-116, 216.
[44] J.9; J.28.
[45] T.208-209, 215.
[46] T.208, 217.

the evaluation correctly. Parent requested an independent evaluation (IEE) due to Parent's concerns about the District.[47]

42. The Student's Parent stated that the Student would not be available for the evaluation over the summer, as Student was committed to *** during the summer months.[48]

43. The Student's Parent testified and the evidence showed that the Student was withdrawn from Celina ISD, and will no longer be attending school in the District.[49]

V. Discussion

The following discussion now reviews those standards governing the specific considerations and issues brought forward in this case.

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party challenging the proposed IEP and placement. In essence, the burden of persuasion or proof falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). No distinction has been established between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009).

In terms of application of this approach, the Fifth Circuit went on to establish that a presumption exists "in favor of a school system's educational plan, placing the burden of proof on the party challenging it". *White ex Rel. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 377 (5th Cir. 2003); *Teague* at 132. Accordingly, Petitioner bears the burden of demonstrating that the District violated its Child Find obligation, failed to provide the Student FAPE, and violated procedures, and made faulty determinations in the MDR.

B. Child Find and Evaluation

Child Find under the IDEA is an affirmative obligation of school districts to have policies and procedures in place in order to locate, and timely evaluate, children with suspected disabilities in the district's jurisdiction. The Child Find duty is initiated when a school district has reason to

[47] T. 104-105, 126, 133, 229.
[48] T.137, 227-228,216.
[49] T.132, 134; P.9:6.

suspect a disability, along with reason to suspect that there is a need for special education and related services. In fact, a Texas court was clear in stating that Child Find is *"triggered when the local educational agency has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability."* See *El Paso Indep. Sch. Dist. v. Richard R.R.*, 567 F. Supp.2d 918, 950 (W.D. Tex. 2008). Thus, it is clear that the suspicion must be of both the disability, and the need for special education services.

While it is clear that school districts are required to evaluate when they suspect a disability exists, and a parent's request for an evaluation also suffices to deem that a school district has notice to suspect a disability. In those instances, the District is obligated to respond within fifteen school days as to their agreement to complete the evaluation or conversely deny the request. See 19 TEX. ADMIN. CODE §89.1011(b). Additionally, when conducting an evaluation, a school district must comply with the procedures set forth in 34 C.F.R. §§ 300.304-300.311. Once the evaluation is complete, the Admission, Review and Dismissal (ARD) committee has the responsibility to make determinations of eligibility, and if the student is found eligible, then design and implement educational as well as related services for the student. The student must meet the criteria under one or more of the enumerated disability classifications set forth in the IDEA. 34 C.F.R. §300.8(a). The disabilities are then specifically defined. 34 C.F.R. §300.8(c).

Even when a disability condition is identified, the second part of the eligibility determination requires a demonstrated need for specially designed instruction, or educational services, as a result of the disability. Consequently, a student who meets eligibility criteria but who does not show a need for special education services, that is, specially designed instruction, has not met the definition of a student with a disability under the IDEA.

> 34 C.F.R. §300.8 provides further clarification in saying that:
> " …*if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part."*

34 C.F.R. §300.8(2)(i).

Therefore, not every student who struggles in school requires special education. *Alvin Indep. Sch. Dist. v. A.D.*, 503 F.3d 378, 384 (5th Cir. 2007). See similarly, *Leigh Ann H. v. Riesel Indep. Sch. Dist.,* 18 F. 4th 788, 797 (5th Cir. 2021) noting that mixed academic performance and some behavior issues do not necessarily signify a disability.

Once the evaluation has begun, or consent from the parent received, then the timeline must be considered. The FIIE and its corresponding written report must be completed no later than 45 school days from the date the school district obtains written consent. Tex. Educ. Code § 29.004(a)(1). In terms of the actual evaluation under the IDEA, the school district must (1) use a

variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP; (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b).

Additionally, should a parent disagree with a district's evaluation, the parent may request an Independent Educational Evaluation (IEE) or private evaluation. The district then may grant the request, and allow the private evaluation at district expense, or alternatively file a due process proceeding to defend the evaluation. 34 C.F.R. § 502. Implied in this provision then, is a requirement that a school district first complete its evaluation before a parent's request can or should be considered.

C. Duty to Provide FAPE

A primary purpose of the IDEA is to ensure that all children with disabilities have available a free, appropriate public education (FAPE) as well as related services. It is essential that the educational and related services are designed to meet the unique needs of that particular student. 34 C.F.R. § 300.39 (b)(3). Under the IDEA, school districts have a duty to provide a FAPE to all children with disabilities between the ages of three and twenty-one who reside within the jurisdictional boundaries of the district. 34 C.F.R. §300.101(a). Therefore, If a child has been determined to meet the eligibility of special education, then the Local Education Agency, the school district, is obligated to provide that student a FAPE. In other words, no duty or obligation for FAPE exists if the student has not met the eligibility criteria for special education. Further, the IDEA notes that FAPE consists of specially designed instruction designed to meet the unique needs of a child with a disability and related services as may be required to assist a child with a disability. See 20 U.S.C. §1401(9).

Additionally, the United States Supreme Court has provided guidance as to the determination of whether a school district provided FAPE to a student, with both substantive and procedural considerations. Specifically, the school district must: comply with the procedural requirements of IDEA; and, design and implement a program that is reasonably calculated to enable the student to receive an educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176 (1982). Further, 'educational benefit' has been defined as that which is meaningful and provides a basic floor of opportunity or access to specialized instruction and related services individually designed to provide educational benefit. *Id*.

In order to meet its substantive obligation under the IDEA, the school district must offer an individualized education plan (IEP) that is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. The adequacy of a given IEP turns on unique circumstances of the student for whom it was created and the student's progress must be something more than mere de minimis progress. *Endrew F. v. Douglas Cnty. Sch. Dist.,* 137 S. Ct. 988, 1000-1001 (2017).

The Fifth Circuit has developed the elements or benchmark for the determination of FAPE. These four factors must be assessed in order to determine whether the IEP in issue and as developed and implemented was reasonably calculated to provide students with necessary educational benefit under the IDEA. These factors are as follows:

- Whether the program is individualized on the basis of the student's assessment and performance;
- Whether the program is administered in the least restrictive environment (LRE);
- Whether the services are provided in a coordinated and collaborative manner by key stakeholders; and
- Whether positive academic and nonacademic benefits are demonstrated as a result.

Cyprus – Fairbanks Indep. Sch.Dist. v. Michael F., 118 F.3d 245, 253 (5th Cir. 1997).

D. The Manifestation Determination Review

The IDEA provides that students with disabilities can be disciplined to the same extent and consistent with discipline imposed upon students without disabilities. This essentially entails that the district follow its code of student conduct; impose discipline consistent with that imposed on students without disabilities; first make a determination regarding whether the conduct was a manifestation of the student's disability; and provide educational services when the disciplinary removal results in a change of placement. 34 C.F.R. § 300.530.

Prior to imposing that discipline, a school district must conduct an MDR committee meeting to determine if the behavior in question was a manifestation of that student's disability or the result of the district's failure to implement the student's IEP. See 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b). When determining if the conduct is a manifestation, the members of the MDR committee must review relevant information from the student's educational file, including the student's IEP, teacher observations, and any relevant information provided by the parents. A parent who disagrees with an MDR finding may file a due process hearing request to challenge that determination. 34 C.F.R. § 300.532(a).

E. Procedural Considerations

With regard to issues of the failure to provide FAPE as a result of procedural violations of the IDEA, the law holds that a hearing officer may find that a child did not receive FAPE in limited circumstances. Specifically, if the procedural violations rise to the level of impeding a child's access to FAPE, significantly denying parents the opportunity or ability to participate in the child's education, or causing a deprivation of educational benefit, then those violations could be considered a denial of FAPE. 34 C.F.R. §300.513(a)(2); *Rowley*.

VI. Analysis

In this case, Petitioner brings forth issues alleging a violation of Child Find, a denial of FAPE, as well as the contention that the MDR committee erred in its findings. The following discussion examines these issues, considering the documentary evidence, testimony of the witnesses, issues and arguments presented, and the applicable law.

A. Child Find: Identification and Evaluation

In this instance, as the parent did request a special education evaluation, the District is deemed to have notice, and the Child Find obligation is triggered. The District admittedly made a mistake and did not provide the parent the consent form within the requisite 15 days. Once it realized the error, it provided the consent form. Petitioner apparently had concern about the timing for the evaluation or the delay. Thus, at the Resolution Session in this case, the District agreed to expedite the evaluation process so that it could be completed near the beginning of next school year. At that time, and again at the hearing, the Student's parent refused to sign the consent, stating that Parent does not trust the District to conduct a proper special education evaluation. As the consent form was never signed, the District cannot begin the evaluation, and the Child Find claim fails.

Additionally, the parent requested that the District fund a private evaluation. As noted earlier, the law is clear that a parent can request an Independent Educational Evaluation (IEE) after the school district has evaluated the student. 34 C.F.R. §300.502, subject to certain conditions. So in the event the parent does not agree with the results of the district's evaluation, the request can be made for an IEE, and then the District can grant the request or alternatively bring an action to defend its own evaluation. In the instant case, the District has not had the opportunity to do its own evaluation, and thus the request from the parent is not timely.

Although some evidence showed that the student exhibited characteristics of ADHD and the Student's Parent testified that the pediatrician diagnosed Student with ADD or ADHD, there was no other evidence of the diagnosis. No written statement was provided to the District by the

parent with the pediatrician documenting the diagnosis. It is clear that the completed OHI form is required in order to be eligible under the other health impairment (OHI) category under the IDEA. Thus, the Child Find claim fails, as does the request for an IEE.

B. Denial of FAPE

If a child has been determined to meet the eligibility of special education, then the LEA, or the District in this case, is obligated to provide that student a FAPE. In other words, no duty or obligation exists if the student has not met the eligibility criteria for special education. In this case, it is clear that the Student has not been evaluated for special education, and hence not demonstrated the first prong, the eligibility. There was also no evidence presented of the existence of a special education disability. Moreover, and importantly, is the fact that as noted in the prior discussion, even if one of the enumerated special education disabilities was established (which it was not), it must also be proven that due to that disability the Student needed special education and related services. In this case, evidence demonstrated that the District did not suspect any need for specially designed instruction, and no evidence was presented demonstrating any need.

Petitioner bears the burden to demonstrate both the eligibility and the need and was unable to establish either. Therefore, no need or requirement of FAPE exists, and Petitioner does not prevail on this issue. Petitioner has not established a denial of FAPE.

C. Manifestation Determination Review

In this case, Petitioner has also claimed that the District, specifically the Student's MDR committee, wrongly determined that the Student's conduct that resulted in the Student being placed in the DAEP was not a manifestation of Student's disability or the result of the District's failure to implement the Student's IEP. In order to have the entitlement to the MDR protection when not a special education student, the Petitioner must prove that the District was on notice or had reason to believe the student had a disability. A request for an evaluation is one way that the protections are activated, and as the parent had requested an evaluation, the protections of the MDR under IDEA were in effect. The District held the MDR committee meeting in accordance with the required procedures.

The goal of the MDR is generally not to determine the violation of the District Code of Student Conduct, but rather and specifically to determine: whether the conduct in question (in this case, ***) was either a manifestation of the student's disability or substantially related to that disability; or, if the conduct was the result of the district's failure to implement the Student's 504 Plan. The MDR committee (other the Student's Parent and the advocate) answered both prongs as no. The evidence demonstrated no nexus between the ***, and Student's ***.

D. Procedural Matters

While there was a delay in beginning the Student's requested evaluation, the District offered ways to counteract that delay, so that no harm would have resulted. The District was willing to expedite the evaluation so that, in the end, it would be completed at about the same time that it would have been if the consent form was timely provided. In both instances, the evaluation would have been completed in the very early part of the fall semester. But the parent then refused consent for the evaluation. Where a parent refuses consent, the timeline cannot begin, which is now the case we have here. Any delay in starting the evaluation, and hence an alleged procedural violation, was minimal, with corrective action offered, and hence did not rise to the level of denying FAPE. Further, where no evidence of the need for special education was presented, courts have stated that the IDEA does not penalize a school district for failing to timely evaluate a student who does not need special education. *D.G. v. Flour Bluff Indep. Sch. DIst.* 481 Fed. Appx. 887 (5th Cir. 2012).

It appears that Petitioner also alleged a procedural violation for the lack of parental participation in the Student's education. Certainly, one of the potential procedural violations under the IDEA that can rise to the level of denial of FAPE is the lack of parental participation. However, the record is full of evidence of how very involved the Student's Parent was. No evidence was even referenced that showed any denial or lack of parental participation. And, as Petitioner has not demonstrated an entitlement to FAPE, these claims fail on that ground as well.

VII. Conclusions of Law

1. The Celina Independent School District (CISD) is responsible for properly identifying, evaluating, and serving students under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.

2. Petitioner failed to carry the burden of proof to establish a that CISD violated its Child Find obligations. 34 C.F.R. §300.111. *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984).

3. Petitioner did not meet the burden to establish that the Student is a child with a disability and eligible for special education and related services, as the burden is on the party seeking relief. 34 C.F.R. §300.8; *Schaffer v. Weast,* 546 U.S. 49 (2005).

4. Petitioner did not meet the burden to prove that the District failed to provide Student a FAPE. Petitioner did not establish that the Student qualified as a student with a disability who is eligible for special education and related services under the IDEA. *Schaffer v. Weast,* 546 U.S. 49 (2005).

5. The District complied with IDEA's requirements when it disciplined Student for violating the Student Code of Conduct after holding an MDR. 34 C.F.R. § 300.530.

6. Petitioner did not establish that the conduct in question was a manifestation of, or had a substantial relationship to, the Student's disability. Tex. Educ. Code § 37.004(b); 34 C.F.R. § 300.530(e)(1); *Schaffer v. Weast*, 546 U.S. 49 (2005).

7. The evidence did not establish that Student's conduct was a direct result of the District's failure to implement the Student's 504 accommodations or any IEP. 34 C.F.R. 300.530(e)(1)(ii).

8. Petitioner did not meet the burden to prove any violation of IDEA by the District, including any procedural violation. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176 (1982). *Schaffer v. Weast,* 546 U.S. 49 (2005).

VIII. Order

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that all relief requested by Petitioner is DENIED, and that any and all claims of Petitioner be DISMISSED WITH PREJUDICE.

All other relief not specifically stated herein is DENIED

Signed this 17th day of July, 2024.

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Kimberlee Kovach

Special Education Hearing Officer for the State of Texas

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause 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. 19 Tex. Admin. Code §89.1185(n); Tex. Gov't Code, § 2001.144(a)-(b)(g).