

Before the  
Administrative Hearing Commission  
State of Missouri



, in the interest of )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 18-1217  
 )  
 SPRINGFIELD R-XII SCHOOL DISTRICT, )  
 )  
 Respondent. )  
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 )

**DECISION**

(Parent) filed a due process complaint against the Springfield R-XII School District (District) alleging that the District failed to provide (Student) with a free appropriate public education (FAPE) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., because the District failed to identify Student as a child with a disability in need of special education. We disagree and find that the District took the required steps to identify and determine whether Student was entitled to special education services under the IDEA.

**Procedure**

On November 9, 2018, Parent filed her due process complaint against the District. On November 19, 2018, the District filed a response to the complaint. We held a prehearing conference by phone on November 29, 2018. On November 29, 2018, we issued an order dismissing Count II of the complaint.

On December 11, 2018, we held a hearing. Attorney Benjamin Brockert of Brockert Legal Services represented Parent. Attorney Ransom A. Ellis, III of Ellis, Ellis, Hammons & Johnson, P.C. represented the District. This case became ready for decision on December 21, 2018, when the last briefs were filed.

### **Findings of Fact**

1. At the time of the hearing, Student was \_\_\_\_\_ years old and in kindergarten as a regular education student at Truman Elementary School. He had a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) from his pediatrician and a referral to Burrell Health for additional evaluation and assessment, with an appointment scheduled for January 2019.

2. Student previously attended preschool and attended kindergarten from August 16, 2018 to October 1, 2018 at the Ozark R-VI School District (Ozark). In preschool, Ozark identified Student as a child with a developmental delay in the areas of physical and social emotional behavioral, and he received early childhood special education services. In May 2018, Ozark evaluated Student and concluded that he was not a child with a disability and, thus did not meet the eligibility requirements under the IDEA. Student then attended Ozark in the fall of 2018 as a regular education student.

3. On October 2, 2018, Student enrolled in the District as a regular education student and attended Truman Elementary School in full day kindergarten from 8:30 a.m. to 3:30 p.m.

4. Jocelyn Travis is the principal of Truman. Travis received her Bachelor's and Master's degrees from Missouri State University, and a Doctorate degree in education administration from Lindenwood University. Travis is also a certified teacher for preschool through 8<sup>th</sup> grade. Travis has been working in the District for 6 years, has been a principal for 10 years, and has 24 years of experience in education.

5. Before Student enrolled at the District, Parent called and told Travis about Student's difficulties at Ozark with inattention, transitioning to other activities, and that he had been sent home from Ozark multiple times. Other reported concerns of Parent involved behaviors such as lack of calming, frustration in lines, and inability to calm and focus. Although Parent's goal was to have the District re-evaluate Student at the time of the transfer, she did not specifically request that the District conduct an evaluation during her conversation with Travis.

6. Travis did not form an impression about Student at that time because she had not seen Student's prior IEP or the evaluation by Ozark. Travis frequently has conversations with Parents about their children's transitions to kindergarten, so this conversation was not out of the ordinary.

7. Breann Darnell is Student's kindergarten teacher. Darnell has been employed as a kindergarten teacher for ten out of the fourteen years she has been with the District.

8. Darnell observed that Student struggled with the transition to Truman because "he missed out on some procedures and normal routines that all kindergartners go through" during the first few weeks of school since he had switched schools. As a result, Darnell kept detailed notes about Student in order to document where he was having difficulties.

9. On October 3, 2018, Darnell sent Parent an e-mail about Student's conduct that day. Darnell's e-mail stated, in pertinent part:

I would like to know exactly how much detail you would like on his day. I am keeping detailed notes so I can bring that to the Teacher Support Team meeting. ...[Student] did punch a friend in the arm today after the friend wasn't being careful and ran into him. (Hit him several minutes later as we were talking about it.) He also struggled with his math work and needed one on one time working with the number 8. I am going to start problem solving giving directions to the class, he does not yet remain quiet during that time and is loudly talking over me during each group time and when it is time for directions. ...[S]ome stamps should be arriving soon for a reward. I have also submitted his name to spend a few minutes in the Discovery Room we talked about. He will be able to do some activities that might help with his energy and sensory seeking needs.

I just wanted you to know how some of these behaviors are impacting his own learning and the learning of others.

Pet. Ex. B.

10. In response to Darnell's e-mail, Parent indicated that she would be working toward getting Student an Individualized Education Plan (IEP) or 504 plan if Student continued to struggle, and she requested detailed notes. Parent did not request an evaluation of Student at that time.

11. On October 4, 2018, Darnell sent Parent an e-mail stating that Student was very distracted throughout the day, and asked whether Parent wanted Student to complete his unfinished work at home. Student refused to read to Darnell in class and failed to complete his math lesson.

12. On October 5, 2018, the District received Student's educational records from Ozark, including a Student Information Report showing that Student had attended school with only one absence and that Student was sent home early on two days due to disciplinary reasons. Ozark also forwarded the May 17, 2018 evaluation report and the Notice of Action that confirmed Ozark had notified Parent that Student was not eligible for special education services.

13. Student continued to have transition difficulties at Truman during his second week of school. Travis continued to seek additional information regarding Student from Ozark and made several attempts to contact the special education office at Ozark to see if they had any intervention data on Student that she could use; however, Ozark was not able to provide Travis with additional information.

14. On October 8, 2018 Travis sent an e-mail to Parent that stated, in pertinent part:

I just wanted to let you know that I took [Student] to the recovery room today. Currently, he is spinning in circles and yelling at me. This is how we ended up in the recovery room:

He threw his fidget block at Mrs. Darnell and then ran out of the room, up the hallway to the office. When I took [Student] back to talk with her, he kept

walking away and refused to talk about his behavior, so that's when I took him to the recovery room. He refused to walk on his own, so I escorted him. I didn't get to discuss all of the details of the fidget block with Mrs. Darnell, but from my understanding, this is something he showed up with today and said, [Parent] told me that I can have this today." Mrs. Darnell gave him that opportunity this afternoon and it sounds like the block created a problem. He also told students in the class that he didn't have to work today and all he had to do is play with the block. ...While in the recovery room, he kicked walls, hummed loudly, screamed, ran in circles, and was clearly uncomfortable with the silence and boredom of the space. I've reminded him that the grown ups are in charge at school. He continues to tell me that he says it's time to leave so he is leaving.

15. Travis also spoke with a District coordinator about Student and was advised to collect observational data on Student. Travis spoke with Parent on October 17, 2018 regarding her attempts to obtain additional information from Ozark and the lack of information.

16. In Travis' communications with Parent on October 17, 2018, (including e-mails Exhibit A), Travis specifically requested notes from Student's Ozark teachers, any behavior log, and any information to document the scope of issues and struggles Student had while at Ozark in order to assist the District in determining Student's needs. Parent indicated an understanding of the need to obtain additional information in her e-mail, specifically stating, "I understand that the outbursts are frustrating for everyone involved but we must work together to find out why they are happening and what the triggers are. Please continue to keep the information documented so that he can get the help he needs as soon as possible." Ex. A. Parent also indicated that she would attempt to obtain additional information from Student's Ozark teacher.

17. Travis specifically told Parent in her e-mail on October 17, 2018 that: "As the parent, you have the right to request testing for [Student] as Ozark was proceeding with. As the administrator, I will continue asking for documentation for 4-5 more weeks and I will present that information to our special education team to get input from them." Ex. A.

18. On October 17, 2018, Student was sent home at noon for disorderly conduct. During the incident, Student refused to do his work, yelled at his teacher, scratched a window with a pencil, refused to sit, and hit Travis.

19. On October 17, 2018, Travis believed that Student was not in need of special education services because the District did not know Student well enough or have enough information to try some general interventions. At this point in time, Student had been at Truman for only about 10 days after having moved residences and schools.

20. From October 22-26, 2018, Student was suspended for assaulting school personnel and for hitting and bumping other students. During Student's suspension, Travis made an alternative school available that she referred to as "Study."

21. On October 23, 2018, the District instituted responses to intervention that included shortening Student's school day to half days so that when Student returned to school after the suspension, he attended kindergarten from 8:50 a.m. to 11:30 a.m.

22. Replacement behaviors or interventions are used to deescalate situations with students and to help students calm down and regain control of themselves. Between October 2 and November 7, 2018, the District implemented several types of replacement behaviors with Student, including providing Student with positive verbal feedback, using stamps as a reward for positive behavior, using breathing techniques, and using a safe spot. These interventions were generally available for all students.

23. A safe spot is a place in most of the classrooms at Truman where there is a box that contained fidgets that students could use, a mat that students could lie or sit on, toys, and items that students can chew on.

24. Truman also used a recovery room, which is a quiet space used to help students calm down.

25. Travis continued to believe that Student was not in need of special education services and that the interventions that were available, in addition to shortening Student's day, would help Student be successful with his transition to kindergarten.

26. Darnell believed that Student was more successful with the half day schedule and the interventions that were in place. Darnell observed Student to be more positive, happy to be coming to school in the morning, and enjoying his time while at school without the agitation and frustration. With the interventions and half day schedule, Darnell observed Student to be generally successful.

27. Darnell has a classroom of 16 students, and Student is the only child that has been suspended and was the only child placed on a half day schedule at the time of the hearing.

28. On October 24, 2018, Parent requested an evaluation of Student under the IDEA.

29. Lori Sheets is a school psychologist at the District and has held that position for 17 years. Her duties include serving students in general and special education, conducting social emotional evaluations, and assisting teams in determining students' needs and services. She received her Master's degree from the University of Central Missouri, and her Doctorate degree from the Forest Institute. Sheets is licensed as a psychologist by the state of Missouri. Sheets spends most of her time working in Kindergarten classrooms.

30. Sheets reviewed Student's Ozark evaluation. Sheets observed Student on October 30, 2018 in the classroom and did not observe any behaviors at that time that would cause her to refer Student to special education. Sheets concluded that Student exhibited typical behavior for a kindergarten student.

31. Brady Quirk is the Director of Special Services for the District. He has been employed for 14 years and in his current position at the District for 2 years. He has a Bachelor's degree in education, a Master's degree in Administration from Missouri State, and a Doctorate

degree in Educational Leadership from Lindenwood University. Quirk's duties at the District include serving as a liaison for the Missouri Department of Elementary and Secondary Education, Office of Special Education (DESE).

32. Quirk also observed Student in the classroom on October 30, 2018 and reviewed the May 2018 Ozark re-evaluation report.

33. On November 7, 2018, the District created a transition plan for Student with various options. It was designed to make Student successful with a shortened day, and to transition to a full day of school. Many of the replacement behaviors were suggested to be continued under the transition plan. Some additional replacement behaviors were the use of noise cancelling headphones and a weighted lap object.

34. On November 7, 2018, Parent provided the District with a copy of an undated letter from Student's pediatrician stating that Student has been diagnosed with ADHD and that they were pursuing non-pharmacologic treatment at this time.

35. On November 9, 2018, the District provided Parent with a procedural safeguards notice and began the screening process of Student.

36. Caroline Ames has been a process coordinator for the District for the past four years and has been employed by the District for nine years. Some of her duties include overseeing the special education process from the referral stage to identification, implementing IEPs and making sure students are identified correctly and placed according to state and federal guidelines under the IDEA.

37. Ames participated in Student's review, and she determined that Student's behavior was not out of the ordinary when compared to other kindergartners adjusting to a new environment.



38. Student was performing academically at an expected level at the time of the District's review. This means that his academic progress was in correlation with the grade level standards of the other students in the classroom.

39. Parent filed this due process complaint on November 9, 2018. The due process complaint asked for the following relief:

1. Requiring the District to immediately perform a comprehensive evaluation of [Student] to determine eligibility for special education services.
2. Requiring the District to immediately return [Student] to a full day of school.
3. Requiring the District to expunge reference to all disciplinary actions that are relevant this claim from [Student's] school record.
4. Requiring the district to obtain the services of a behavior specialist, that is approved by the plaintiff, to evaluate [Student] in the school environment.
5. Requiring that the Defendant provide training to all district administrators and staff on how to provide appropriate school-wide and classroom supports to create a school climate and culture that limits the occurrence of problematic and explosive behaviors. The training will be provided by an individual or agency with relevant expertise that is unaffiliated with the Springfield School District. The individual or agency will be selected by the Defendant and must be approved by the Plaintiff.
6. Requiring that the Defendant provide training to all district administrators and staff on the Child Find requirements under both IDEA ...The training must be conducted by a lawyer with expertise in the area of special education and must be unaffiliated with the Springfield School District.
7. Awarding Plaintiffs their costs, including attorney's fees, court costs, and other costs necessary for the prosecution of this action and such further, different, or additional relief as may be lawful and appropriate.

40. The District determined that Student was not in need of special education services and on November 16, 2018, issued a Notice of Action-Refused. The District's decision not to conduct a re-evaluation was largely based on the Ozark re-evaluation, in addition to parent and teacher records and reports.

41. On November 20, 2018, the District and Parent met in a resolution meeting. Parent again renewed her request for evaluation and provided additional information in the meeting to the District.

42. On the morning of November 28, 2018, Darnell e-mailed Parent (copying Travis, Sheets, and Ames) with the following information regarding Student:

Here are the details from this morning, 11/28. [Student] had directions to color a sheet for tomorrow night's Truman Culver night. A friend reported that [Student] was snapping his scissors at her, cutting up his eraser and crayons. I approached [Student] as he was cutting something and reminded him that crayons were the only tools he needed for this job. He put the scissors and glue back in his box. He screamed "NO!" at me several times and stomped his feet, trying to hide his scissors. He then picked up his glue stick again, pulled the lid off and started showing his friend how he was going to glue something. I let him know that I would need to take those tools until we were ready to use them, and reached into his box to retrieve them. [Student] grabbed my arm, yanked several times while screaming, squeezed and pulled my arm down to his table. He let go when I asked him to. He continued to scream loudly, kick and pound the table for about 5 minutes and then recovered. Another teacher came in to discuss the situation with [Student] and a plan for the future. We agreed that [Student] would receive a squish toy to utilize when he was starting to feel angry. [Student] was disrespectful during his encounter with Dr. Travis, Mrs. Ammerman and I. He shouted, grunted, stomped feet and had to be redirected to listen numerous times. Mrs. Ammerman went to collect a chart and squish toy for [Student]. [Student] understood his next job was to work in our pocket chart center, which he agreed to easily. I tried to help him get started, and was reminding him how to sort the cards in the chart with him standing beside me. He started huffing and puffing and said he was angry. I asked him why he was feeling angry (as he had recovered well, and this was no more than 5 minutes later) he took a deep breath and blew it out his nose on my arms in anger, which included mucus. He said, "She said I could have a toy, and I want it now, I'm angry!" and started stomping feet and screaming. I let him know that she was finding the things he might need, but for now he could go to our safe place (comfy spot with pillows), he refused and Mrs. Ammerman took him on a walk up the hallway.

Ex. I.

43. On the afternoon of November 28, 2018, the District e-mailed Parent a Notice of Action approving the request for an initial evaluation and notifying Parent of the review of existing data (RED) meeting to be held on November 30, 2018.

44. The RED meeting was held, and it was determined that Student would be evaluated by the District in the following areas: Motor, Fine; Social Emotional; Adaptive Behavior; Academic; and Observation. Parent consented to have Student evaluated.

45. At the time of the hearing, the evaluation had not been completed. According to Darnell, Student was on grade level in reading and math. Student was below grade level in writing and social emotional competencies. Student had continued to attend half days successfully.

46. There were 30 days from the time of Parent's initial request for a re-evaluation until the District agreed to re-evaluate Student, taking into consideration the District's Thanksgiving holiday.

47. The State Plan for Education, Regulation III, states in pertinent part:

Parents may request an evaluation for their child. If the public agency receives such a request, the district shall:

- (1) Accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in this section, or
- (2) Refuse the request and provide the parent with Notice of Action Refused

The parent may also request re-evaluations pursuant to 34 CFR 300.343; however, a re-evaluation may not occur more than once a year unless the parent and District agree otherwise.

48. With regard to the timelines required for evaluation or re-evaluation, the State Plan for Education, Regulation III, provides in pertinent part:

The public agency shall provide the parent with a Notice of Intent to Evaluate as soon as possible, but within thirty (30) calendar days of the date of referral for evaluation. Delays beyond this time may be permitted for just cause (school breaks for summer or holidays, student illness, etc.) and documented in the student's record.

The evaluation shall be completed and a decision regarding eligibility rendered within sixty (60) calendar days following parent consent or notice, as the case may be. ... This timeline does not apply if ... there is just cause (school breaks for summer or holidays, student illness, etc.) documented in the student's record.

### **Conclusions of Law**

This Commission has jurisdiction over this case. Section 162.961.<sup>1</sup> The burden of proof is on the party seeking relief, in this case Parent. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

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<sup>1</sup> Statutory references are to RSMo 2016 unless otherwise noted.

Parent must prove her case by a preponderance of the evidence. *Tate v. Dept. of Social Services*, 18 S.W.3d 3, 8 (Mo. App., E.D. 2000). A preponderance of the evidence is “evidence which as a whole shows the fact to be proved [is] more probable than not.” *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D., 2000).

We must judge the credibility of witnesses, as well as the weight and value of the evidence. *Faenger v. Petty*, 441 S.W.3d 199, 204 (Mo. App., W.D., 2014). We have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D., 2001).

#### Issues of the Case

Parent argues that the District denied Student FAPE by failing to seek out and identify Student as a child with an educational disability who is in need of special education and related services based upon Student’s need including his behaviors. Parent also asserts that Student should have been identified and evaluated as a student with an educational disability soon after his enrollment with the District and that the delay in identification is a child find issue.

The District argues that it did not violate its child find obligations because it agreed to conduct a re-evaluation of Student within the 30 days of the parental request for re-evaluation as required by the State Plan. Further, the District argues that Student was enrolled as a general education student and that the evaluation by Ozark five months before Student’s enrollment in the District found that Student did not meet the eligibility requirements for the IDEA and that Student was not a child with a disability. Finally, the District argues that Student’s behaviors were not unusual adjustment issues for a kindergartner attending a new school and that the interventions being used were successful in that Student was performing at grade level in math and reading. Therefore, the District did not have a reasonable suspicion that Student was in need of special education.

### Child Find

The IDEA requires each state's department of education to actively identify, locate, and evaluate children with disabilities. 20 U.S.C. § 1412(a)(3)(A); *Bd. of Educ. of Wappingers Cent. Sch. Dist. v. M.N. on Behalf of J.N.*, No. 16-CV-09448(TPG), 2017 WL 4641219, at \*6 (S.D.N.Y. Oct. 13, 2017). This "child find" requirement extends to students who are suspected of having a disability, despite progressing from grade to grade. 34 C.F.R. § 300.111(c)(1). The IDEA requires the District to conduct an initial evaluation in which it assesses "all areas of suspected disability." 21 U.S.C. §§ 1414(a)(1)(A), (b)(3)(B). This assessment must consider available diagnoses, health history, and specific health needs necessary to assist a child in school. *See L.J. by & through Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1008 (9th Cir. 2017). A failure to diagnose a disability does not constitute a FAPE violation per se – especially in the case of ailments that are difficult to diagnose. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3<sup>rd</sup> Cir. 2012). However, there is an inferred requirement that schools identify disabled children within a reasonable time after notice of behavior that likely indicates a disability. *Todd by Todd v. Elkins Sch. Dist. No. 10*, 105 F.3d 663 (8th Cir. 1997), *citing W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir.1995). There is no specific time at which a school's failure to identify a disability becomes unreasonable, but if it fails to do so, it necessarily denies FAPE. *Bd. of Educ. of Wappingers Cent. Sch. Dist.* at \*7.

In this case, Parent is essentially arguing that the District should be found to have violated its child find obligation because the District took no action to evaluate the Student prior to Parent's request for re-evaluation that occurred when Student transferred to the District and had been in the kindergarten classroom for basically 14 school days (this does not include his

suspension of five days).<sup>2</sup> We believe the testimony of the District's witnesses who found Student's behaviors, while troubling, to be an indication that Student needed additional support as a general education student at that time. Travis testified that she believed that students entering Kindergarten may need extra support, but that this does not necessarily mean that they are in need of special education services, even with Student's volatile outbursts. She also testified that she believed that the interventions that were being implemented with Student were generally helpful and that more time was needed to get to know Student and to see what issues Student had with interventions in place. Similarly, Ames and Sheets found the types of behaviors exhibited by Student to be common with some kindergartners. Finally, Darnell testified that while Student's behaviors interfered with his learning and the learning of others, the interventions seemed to be generally working and Student was performing at grade level.

Our examination of other child find cases indicates that the District was not unreasonable in engaging in some observations and other interventions, especially given the timing in this case. *See, e.g., M.G. v. Williamson County Schs.*, 71 IDELR 102 (6th Cir. 2018, *unpublished*) (The fact that a kindergartner with speech and motor difficulties had been found ineligible for IDEA services less than a year earlier justified a Tennessee district's decision to address her ongoing deficits in a response to intervention process.); *Montgomery County Bd. of Educ.*, 51 IDELR 259 (SEA AL 2008) (Noting that Alabama law required a district to attempt pre-referral interventions for at least eight weeks before referring a student for an assessment under the IDEA); *M.P. v. Arkansas Pass Indep. Sch. Dist.*, 67 IDELR 58 (S.D. Tex. 2016) (The fact that a district was able to manage a sixth-grader's disruptions, threats, and other behavioral challenges

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<sup>2</sup> Parent also requests compensatory education in her brief, even though this request was not part of the relief requested in the due process complaint. While we do not reach this issue, we note that compensatory education may be unavailable if not requested at the initiation of an IDEA action. *See J.T. v. Newark Bd. of Educ.*, 63 IDELR 92 (3d Cir. 2014, *unpublished*) (ruling that a student was not entitled to compensatory education because she waived her right to claim such relief and because she never raised the claim during the administrative and District Court proceedings).

using the same interventions it would have attempted with any other student undercut the parents' claim that the student required special education). We believe that the District acted reasonably under the circumstances.

Furthermore, the District ultimately made a determination that Student was in need of a re-evaluation, accepted Parent's request and is currently undertaking an evaluation within the time periods allowed for under the Missouri State Plan—which is the exact relief sought by Parent. Therefore, we find that the District did not fail to provide Student with FAPE and that the District has timely identified Student and met its child find obligations under the IDEA. Parent has not shown by a preponderance of the evidence that the District violated its child find duty, including the duty to evaluate. It was reasonable under the circumstances for the District to rely upon a determination made by Ozark that Student was a general education student based upon an evaluation conducted and agreed to by Parent only five months prior.

We decline to rule on the issue of whether Student is a child with a disability in need of special education and related services, and even if so inclined, we do not have sufficient evidence upon which to make such a ruling. The District is undertaking an evaluation of Student and further, Parent has indicated that additional medical information from the Burrell Health referrals may be forthcoming. The current treatment for Student's ADHD is non-pharmacologic, and if Student's health care team determines that a treatment change is necessary, this could also potentially impact Student at school. All of this information needs to be carefully examined in order to determine whether Student is a child with a disability. As part of the evaluation, the District and Parent have identified that classroom observations will occur. We believe that this will provide information for Student's behavior with regard to his learning to be adequately evaluated. While we find Student's behaviors to be troubling and potentially related to his

medical diagnosis of ADHD, we do not decide in this case the issue of whether Student is indeed a child with an educational disability. We leave that to the District and Parent.

We also deny all of the other relief requested by Parent. We do not have the authority to address and expunge references to any disciplinary action in Student's school records because Student is not yet a child with a disability. Our authority under the IDEA is limited in disciplinary matters to review of a manifestation determination where a student with a disability is disciplined resulting in a change of placement for more than 10 consecutive days or a series of removal constituting 10 days. 34 CFR 300.530. Further, we lack authority to require blanket training in IDEA and the area of special education because our authority is limited to matters relating to identification, evaluation, educational placement or the provision of FAPE to the specific Student involved in the case. Section 162.961. As to attorney fees and costs, under the IDEA, a court, in its discretion, may award reasonable attorney fees to the prevailing party, 20 U.S.C. § 1415 (i)(3)(B)(i), but an administrative tribunal may not.

### **Summary**

The District did not violate the child find provisions of the IDEA. 20 U.S.C. § 1412(a)(3)(A).

SO ORDERED on January 10, 2019.

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AUDREY HANSON MCINTOSH  
Commissioner



## **Appeal Procedure**

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per §162.962, when a review of this decision is sought, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
  - (a) Receive the records of the administrative proceedings;
  - (b) Hear additional evidence at the request of a party; and
  - (c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence;
- (2) Appeals may be taken from the judgment of the court as in other civil cases;
- (3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;
- (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same;
- (5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal is also addressed in 34 C.F.R. §300.516.