

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 21-3501E

BAY COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held on May 16 through 18, 2022, by Zoom conference, before Todd P. Resavage, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Stephanie Langer, Esquire
Disability Independence Group, Inc.
2990 Southwest 35th Avenue
Miami, Florida 33133

For Respondent: Heather Kennedy Hudson, Esquire
Julia K. Maddalena, Esquire
Hand Arendall Harrison Sale LLC
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STATEMENT OF THE ISSUE

Whether Respondent failed in its obligation under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et. seq.*, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, to appropriately identify, locate, and evaluate Petitioner to determine whether Petitioner is a student with a disability in need of special education and related services.

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Due Process Hearing (Complaint) on November 16, 2021. Respondent forwarded the Complaint to DOAH on November 17, 2021, and the matter was assigned to the undersigned.

On November 19, 2021, Petitioner filed an unopposed request for leave to amend the Complaint, which was granted by Order on November 22, 2021. Petitioner's Amended Request for Due Process Hearing was filed on November 24, 2021. Following a telephonic status conference conducted on December 1, 2021, the due process hearing was scheduled, at the parties' request, for February 2 and 3, 2022.

On January 18, 2022, Petitioner filed an unopposed motion for continuance of the due process hearing. The undersigned's Order Granting Continuance, Rescheduling Hearing by Zoom Conference, and Extending the Time for Final Order was issued on January 20, 2022. Pursuant to this order, the due process hearing was rescheduled to be conducted on April 11 through 15, 2022.

On March 28, 2022, Petitioner's Second Unopposed Motion for Continuance was filed. The motion was granted on March 29, 2022. A telephonic scheduling conference was conducted on April 4, 2022, and, on April 8, 2022, the parties filed a Joint Notice to the Court Re: Hearing Dates, wherein the parties set forth several mutually agreeable dates in May 2022 to conduct the due process hearing. On April 11, 2022, the due process hearing was rescheduled for May 16 through 19, 2022.

On May 13, 2022, the parties filed a Joint Prehearing Stipulation. This stipulation included a joint statement of undisputed facts. The same are set forth below in the Findings of Fact.

The hearing proceeded, as scheduled, on May 16 through 18, 2022. At the beginning of the final hearing, the following motions and responses were heard: Respondent's Motion in Limine and Trial Memorandum; Petitioner's Objection and Response to Respondent's Motion in Limine; Petitioner's Motion to Compel; Petitioner's Motion for Clarification; the parties' Joint Request to Consolidate; and Petitioner's Motion to Strike Respondent's Witnesses and Exhibits. Respondent's Motion in Limine was denied, without prejudice, to raise the same arguments during hearing. Petitioner's Motion to Compel was denied. Petitioner's Motion for Clarification and the parties' Joint Request to Consolidate were granted. Petitioner's Motion to Strike Respondent's Witnesses and Exhibits was denied.

Upon the conclusion of the hearing, the parties agreed to the submission of proposed final orders on or before ten days from the filing of the hearing transcript and to the issuance of the undersigned's final order on or before 20 days from the filing of the hearing transcript.

The hearing Transcript was filed on June 8, 2022. Thereafter, Petitioner filed two separate and unopposed requests for an extension of time to file proposed final orders. On June 24, 2022, the undersigned's Order Granting Extension of Time for Proposed Final Orders and a Specific Extension of Time for Final Order was issued which extended the time for submission of proposed final orders to July 1, 2022, and to the issuance of the final order to July 12, 2022.

The identity of the witnesses and exhibits and rulings regarding each are as set forth in the Transcript. Both parties timely filed proposed final orders, which have been considered in the preparation of this Final Order. Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations.

For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

The facts set forth in paragraphs 1 through 11, as in the parties' Joint Prehearing Stipulation, filed May 13, 2022, are undisputed.

1. Petitioner is a [REDACTED]-year-old African American student.
2. Petitioner has a date of birth of ** and a student ID No. of **.
3. Petitioner resides in Bay County, Florida, within the boundaries of Bay County Public Schools.
4. Petitioner was expelled from the public school system on [REDACTED] [REDACTED].
5. Petitioner is currently repeating the [REDACTED] grade, having failed the [REDACTED] grade in the 2020-2021 school year.
6. Petitioner is currently attending School D, a [REDACTED] school, in Bay County, Florida.
7. The School Board of Bay County, Florida (District) is a corporate body and governmental agency, duly empowered by the Constitution and statutes of the State of Florida to administer, manage, and operate the public schools of Bay County, Florida.

8. The District receives state and federal funding for the education of children with disabilities. The District meets the definition of a public entity under 42 U.S.C. § 12131.

9. The District formally evaluated Petitioner for the first time on November 12, [REDACTED].

10. Petitioner has never had an individualized education program (IEP) or Section 504 plan.

11. In part, Petitioner qualified for expulsion because of his long disciplinary history.

12. In the 2017-2018 school year, Petitioner attended School A, a public middle school in Respondent's school district, as a [REDACTED]-grade student. At that time, he was receiving Tier 3 interventions for reading¹ and met his goals. He was also placed in an [REDACTED] class, another form of intervention. Overall, he ended the year with two Bs, three Cs, and one D. His conduct was marked satisfactory, although two teachers included comments such as "excessively absent," "making steady progress," and "low assessment scores." He was placed in Language Arts and [REDACTED] Reading. He received a [REDACTED] percent C in [REDACTED] Reading for the year and a [REDACTED] percent C in Language Arts. He received various disciplinary actions throughout the year including parent/student conferences, detention, In-School-Suspension (ISS), and one Out-of-School-Suspension (OSS). School A conference notes from January 2018 indicate that "Mom is working with outside sources to improve student behavior. Recommendation of the team to continue Tier 1 at this time."

13. Petitioner began the 2018-2019 school year at School A as a [REDACTED]-grader. At the beginning of the school year, on August 23, 2018, Petitioner's

¹ Pursuant to Florida Administrative Code Rule 6A-6.0331(1), it is the local school district's responsibility to develop and implement a multi-tiered system of support (MTSS) which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment. An MTSS organizes instruction and intervention into tiers, or levels of support. The tiers progress in the level of support from Tier 1 through Tier 3.

mother was contacted by one of his teachers by phone to advise of a behavioral incident. Pursuant to a log maintained by Respondent, the following comments were documented:

Poked student with a pencil and dropped [his] shorts as [he] walked out of the class to [REDACTED] room. Talked with Mom and she doesn't know what to do with a [boy] who is behaving a [sic] [boy]. She requested a behavior analysis.

14. During her direct examination, Petitioner's mother testified that, during the above-referenced discussion, she asked for a behavior analysis for an IEP. On cross-examination, Petitioner's mother engaged in the following discussion:

Q. Okay. And in August of 2018, when you made the request for behavioral analysis, were you aware of what an IEP was at that time?

A. I knew it to be -- I didn't know the whole -- the whole process of getting it. My first time hearing about it was from a co-worker who had it. Her grandson had a lot of behaviors. And then I inquired how did that -- what does that do? And she said, "Well, you have to ask for a behavioral evaluation to get that." And that was my only time, 'cause I didn't know how to get it, other than to ask. I didn't know the whole details of an IEP. No.

Q. Okay. But at that time, you knew -- you knew the term "IEP," or you had become familiar about it through that conversation with your co-worker; is that right?

A. The -- that it was tied to behavior management? Yep.

15. Thirty-five days after the request for a behavioral analysis (a parent request for evaluation), on September 27, [REDACTED], a meeting was held with Petitioner's mother, grandparents, and five teachers "to discuss [Petitioner's] Tier 3 reading, grades and behavior." Pursuant to the conference notes from

the meeting, the teachers noted that he was showing improvement in the classroom, and he had moved himself to the front of the room. The notes further document that Petitioner had not been completing all of his homework, and that his NWEA Measures of Academic Progress assessment (MAP) scores showed an upward trend but he still required Tier 3 reading support.

16. Petitioner's mother credibly testified that, during the September 27, [REDACTED], meeting, Respondent did not provide her with a copy of the IDEA procedural safeguards. Petitioner's mother further credibly testified that at no time prior to the filing of Petitioner's Complaint, had she refused to provide consent to Respondent for any evaluation for Petitioner. Respondent presented no evidence to the contrary.

17. Petitioner remained at School A until Hurricane Michael devastated Bay County on October 10, 2018. He completed one quarter prior to the storm and was placed in both Language Arts and [REDACTED] Reading. In the first quarter, he received [REDACTED] percent Bs in both courses. He was also placed in Tier 3 intervention for reading. His early benchmarks showed progress well above his goal line, but no further data was collected after he left. For discipline, Petitioner had sporadic issues, including one verbal reprimand, one parent conference and one ISS.

18. As a result of the storm, Petitioner transferred to School B, a middle school outside of Respondent's district. When he transferred, School B requested educational records from School A, including "Tier 3 paperwork" and "paperwork for the beginnings of an IEP." School A faxed records back to School B, as requested. School B never evaluated Petitioner to determine whether he may be a student with a disability. Petitioner's mother reported that he liked School B and did well there.

19. Petitioner completed [REDACTED] grade at School B and remained there for the first half of the 2019-2020 school year as an [REDACTED]-grade student. Over the 2019 winter break, he transferred back into Respondent's district to

attend School C, which had become, as a result of Hurricane Michael, a combined middle and high school. He had taken Language Arts and [REDACTED] Reading at School B, receiving in his first quarter of [REDACTED] grade an [REDACTED] percent B in [REDACTED] Reading and [REDACTED] percent D in Language Arts. In the second quarter, prior to transferring, he improved to an [REDACTED] percent B in [REDACTED] Reading and an [REDACTED] percent B in Language Arts. When he transferred back to Respondent's district, his mother completed a pre-registration form confirming that he did not have an IEP.

20. Petitioner completed the second half of [REDACTED] grade at School C. He completed one quarter in-person scoring an [REDACTED] percent B in Language Arts and [REDACTED] percent C in [REDACTED] Reading. The COVID-19 pandemic shut down schools for the last quarter of the 2019-2020 school year, and students completed the year on home instruction. Petitioner maintained an [REDACTED] percent B in Language Arts and improved his [REDACTED] Reading score to an [REDACTED] percent B. He completed [REDACTED] grade with three As, three Bs, and one C. With respect to discipline, he had one OSS for fighting and one ISS for being tardy and getting out of his seat to sharpen a pencil.

21. Petitioner returned to School C for [REDACTED] grade for in-person instruction for the 2020-2021 school year. He attended School C for three quarters; however, his mother removed him from school, and Petitioner moved with his father to Pensacola, in Escambia County, for the last quarter due to behavioral issues. In the first quarter of [REDACTED] grade, Petitioner was performing well and received a [REDACTED] percent A in English Honors and [REDACTED] percent B in [REDACTED], which is the intervention course at the high school level. He did not have any disciplinary issues.

22. His grades dropped during the second quarter in various classes, including a decline to [REDACTED] percent F in English Honors. He had one ISS in December before the winter break for skipping his [REDACTED] period class. His grades began to pick up in the third quarter, but he continued getting ISS in late January and February for skipping classes. Petitioner was frequently

found skipping in the gym playing basketball with his peers.² On February 24, [REDACTED], Petitioner's mother decided to remove him from School C.

23. Petitioner then attended school out of Respondent's district for the balance of the 2020-2021 school year. Unfortunately, during this period of time, his grades plummeted. Ultimately, he failed all of his classes and was not promoted to [REDACTED] grade.

24. Petitioner returned to School C for the 2021-2022 school year as a repeating [REDACTED] grader. When he transferred back, his mother completed a pre-registration form confirming that Petitioner did not have an "IEP." He received an OSS in late [REDACTED] for [REDACTED]. On September [REDACTED], [REDACTED], he signed a Student Behavior Contract with administrator [REDACTED] [REDACTED] as an informal behavior intervention. He then received an OSS again on September 17, [REDACTED], for trying to fight a student and cursing at a teacher. He was referred to anger management for counseling and attended four sessions.

25. On September [REDACTED], [REDACTED], Petitioner was involved in a fight on campus. The principal's report documents the fight as follows:

Students involved in major fight in courtyard after lunch. Additional law enforcement had to be called: Springfield Police, Bay County Sheriff's Office, and Panama City Police Department came into campus to restore peace and detain students involved. Event was a major disruption to the school campus. One officer was injured in the altercation and two staff members sustained hit from students.

26. Petitioner received a ten-day OSS. On November [REDACTED], [REDACTED], Petitioner was expelled for the balance of the 2021-2022 and the 2022-2023 school year. At the time of his expulsion, Petitioner had earned a [REDACTED] grade point average for the first quarter. He had earned two Fs, one B, and three classes

² One disciplinary referral, dated February [REDACTED], [REDACTED], for which Petitioner received an ISS, documented that he had missed 131 classes to date.

that could not issue grades. Cumulatively, he had a [REDACTED] weighted grade point average.

27. Petitioner presented the testimony of [REDACTED], Ph.D., in support of the claim that Respondent failed to properly identify and evaluate Petitioner to determine whether he is a student with a disability in need of exceptional student education (ESE) services. [REDACTED] opined that grades, attendance, and behavior are potential red flags that may trigger the “Child Find” obligation. He opined that based on the records he reviewed, there were obviously some academic deficits, attendance issues, and behavioral concerns. His overall opinion was that there was a Child Find violation based on Petitioner’s overall performance, attendance, and disciplinary record.

28. Petitioner also presented the testimony of his mother and current teacher at School D. While his current teacher provided credible testimony concerning his current [REDACTED] school placement, the same is of limited value to the issue pending in this matter.

29. [REDACTED] is employed by Respondent as [REDACTED]. [REDACTED] testified that poor grades and disciplinary infractions are red flags that warrant follow-up, but do not necessarily mean a child has a disability. [REDACTED] described informal interventions that teachers employ in classrooms and formal interventions like MTSS Tiers. In considering whether a student may be a student with a disability, Respondent considers historical data, behavior, attendance, intelligence quotient testing, and input from a team of professionals and interested parties, including teachers, psychologists, the child’s MTSS team, parents, and any medical information the parents may provide.

30. [REDACTED] further testified that when a student has left the school district, upon return, the student’s placement and needs are considered in the context of their recent performance outside the school district because children can change and grow dramatically in relatively short periods of time. [REDACTED] confirmed that Respondent’s teachers, administrators and others are

trained to identify children with potential disabilities for evaluation.

██████████ testified that there were no medical records or reports received from medical professionals diagnosing Petitioner with a disability.

31. ██████████ was Petitioner's ██████████-grade ██████████ teacher. ██████████ testified that Petitioner was a model student when he first transferred from School B; however, he started to become disruptive and tardy. ██████████ spoke with Petitioner's mother who subsequently came to sit in on a class. His behavior improved that day and moving forward. ██████████ opined that Petitioner was capable, could focus, and could behave when he wanted. ██████████ never thought that Petitioner was a child with a disability and never referred him for an evaluation.

32. ██████████ was Petitioner's ██████████-grade ██████████ teacher. ██████████ is certified in ESE, and ██████████ class is ██████████. Approximately one third of ██████████ class has an IEP or a Section 504 plan. ██████████ did not have a specific recollection of Petitioner; however, ██████████ noted that his grades in ██████████ class were good. ██████████ had no record of referring him for an evaluation for an IEP or Section 504 plan.

33. ██████████ taught Petitioner World History in ██████████ grade. ██████████ testified that if Petitioner did not understand something, he was not afraid to ask for clarification. According to ██████████, he was social with his peers and with ██████████. He was capable, completed his work, and did not skip ██████████ class. He would even volunteer to read in class sometimes.

34. ██████████ taught Petitioner for ██████████-grade physical education in 2020-2021. He did fine in the class; however, later in the year he started showing up in the gym when he was not supposed to be there. ██████████ told him to leave often and would walk him back to the class he was skipping. There were times when Petitioner and his friends refused to leave and administration had to be called. ██████████ remembers it was the same students skipping class regularly and showing up at the basketball court, including Petitioner.

35. ██████ taught Petitioner when he returned to School C and repeated the ██████ grade in 2021-2022. In the limited time he was there, he was late to class but when present he participated and seemed to be making progress. ██████ met with Petitioner and Administrator ██████ about Petitioner's behavior. ██████ received a copy of the behavior contract from September ██████, ██████, and was encouraging him.

36. ██████ was the ██████ at School C. ██████ testified that upon discovering that Petitioner had been inadvertently not assigned a ██████ period class in the 2021-2022 school year, ██████ advised Petitioner that a ██████ period was necessary. Upon receiving this information, he got angry and stormed out. ██████, Petitioner, and his mother also discussed placing him on an 18-credit track for graduating high school. This would have doubled up his academics, so he could catch up from failing the ██████ grade.

37. ██████, an ██████ for Respondent, presented testimony that the class designation, "personal development," on Petitioner's transcript indicated intervention courses at the high school level prior to his expulsion.

38. It is undisputed that at no point prior to the initiation of this proceeding was Petitioner ever identified and evaluated by Respondent to determine whether he was a student with a disability in need of special education and related services.

CONCLUSIONS OF LAW

39. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to section 1003.57(1)(c), Florida Statutes, Florida Administrative Code Rule 6A-6.03311(9)(u), and section 120.65(5), Florida Statutes.

40. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

41. The gravamen of Petitioner’s Complaint is that Respondent breached its so-called “Child Find” duty under the IDEA. Child Find “refers to a school’s obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting around for a child’s parents to confront them with evidence of this need.” *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018).

42. The IDEA sets forth the Child Find obligation as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).

43. Section 504 contains its own Child Find requirement that is similar, but not identical, to the Child Find requirement of IDEA. Section 504 requires school districts to:

[C]onduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

34 C.F.R. § 104.35

44. In compliance with the Child Find mandate, rule 6A-6.0331 sets forth the school districts responsibilities regarding students suspected of having a disability. This rule provides that school districts have the responsibility to

ensure that students suspected of having a disability are subject to general education intervention procedures. Additionally, they must ensure that all students with disabilities and who are in need of ESE are identified, located, and evaluated, and a free appropriate public education (FAPE) is made available to them if it is determined that the student meets the eligibility criteria.

45. As an initial matter, the school district has the “responsibility to develop and implement a [MTSS], which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment.” Fla. Admin. Code R. 6A-6.0331(1).

46. The general education intervention requirements include parental involvement, observations of the student, review of existing data, vision and hearing screenings, and evidence-based interventions. Fla. Admin. Code R. 6A-6.0331(1)(a)-(e). Rule 6A-6.0331(1)(f) cautions, however, that nothing in this section should be construed to either limit or create a right to FAPE or to delay appropriate evaluations of a student suspected of having a disability.

47. Rule 6A-6.0331(3)(a) then sets forth a non-exhaustive set of circumstances, which would indicate to a school district that a student may be a student with a disability who needs special education and related services. As applicable to this case, those circumstances include the following:

1. When a school-based team determines that the kindergarten through grade 12 student's response to intervention data indicate that intensive interventions implemented in accordance with subsection (1) of this rule are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources; or

2. When a school-based team determines that the kindergarten through grade 12 student's response to interventions implemented in accordance with

subsection (1) of this rule indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions; or

* * *

4. When a parent requests an evaluation and there is documentation or evidence that the kindergarten through grade 12 student or child age three (3) to kindergarten entry age who is enrolled in a school district operated preschool program may be a student with a disability and needs special education and related services.

48. Here, the undersigned concludes, based on the Findings of Fact above, that, on August 23, 2018, Petitioner's mother made a request for an evaluation consistent with rule 6A-6.0331(3)(a)4.

49. Rule 6A-6.0331(3)(c) then provides, in pertinent part, as follows:

[I]f a parent requests that the school conduct an evaluation to determine whether their child is a child with a disability in need of special education and related services, the school district must within thirty (30) days, unless the parent and school agree otherwise in writing:

1. Obtain consent for the evaluation; or
2. Provide the parent with written notice in accordance with Rule 6A-6.03311, F.A.C., explaining its refusal to conduct the evaluation.

50. Here, it is undisputed that upon receiving the parental request for an evaluation, Respondent did not, within 30 days, or anytime thereafter prior to filing of Petitioner's Complaint, obtain consent from Petitioner's parent to conduct the evaluation or provide written notice explaining the refusal to conduct the evaluation. Accordingly, Petitioner has met his burden of establishing that Respondent failed to comply with its Child Find obligation.

51. Respondent contends that the August 23, 2018, parental request is barred by the IDEA's statute of limitations as set forth in 20 U.S.C.

§ 1415(f)(3)(C). This section provides as follows:

(C) Timeline for requesting hearing.

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

52. Respondent contends that Petitioner's mother is a nurse and was aware that no evaluations occurred. Respondent further argues that because she was therefore aware of a potential violation in 2018 and took no action within two years, her claim relating to the request for an evaluation in August 2018 is time-barred.

53. The IDEA does, however, allow a narrow set of exceptions to its time limitations. First, the statute of limitations shall not apply if a parent was prevented from requesting a due process hearing due to "specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint." 20 U.S.C. § 1415(f)(3)(D)(i); 34 C.F.R. § 300.511(f)(1). In addition, the statute of limitations shall not apply where a parent failed to exercise their right to a due process hearing on account of "the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent." 20 U.S.C. § 1415(f)(3)(D)(ii); 34 C.F.R. § 300.511(f)(2).

54. The second exception addresses the IDEA requirement that school districts provide parents with "a copy of procedural safeguards" at least once a year, or upon the occurrence of one of the following events:

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

55. Following any one of these events, local education agencies, such as Respondent, have the affirmative duty to transmit to parents a complete explanation of the IDEA procedural safeguards, written in the parents' native language, and written in an easily understood manner. *Id.* § 1415(d)(2). The procedural safeguards must include a full explanation of, among other things, prior written notice and parental consent. *Id.*

56. As outlined by the IDEA, "prior written notice" includes the following:

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

20 U.S.C. § 1415(c)(1).

57. In *El Paso Independent School District v. Richard R.*, 567 F. Supp. 2d 918 (W.D. Tex. 2008), the court addressed a similar fact pattern and concluded that the failure to provide the procedural safeguards following a parental request for evaluation operated to bar the statute of limitations. In reaching that conclusion, the court noted as follows:

When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations for IDEA violations commence without disturbance. Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA. Conversely, in the absence of some other source of IDEA information, a local educational agency's withholding of procedural safeguards would act to prevent parents from requesting a due process hearing to administratively contest IDEA violations until such time as an intervening source apprised them of their rights.

Id. at 945.

58. Against this backdrop, the undersigned concludes that Respondent's failure to provide Petitioner's parent with a copy of the procedural safeguards, including prior written notice, upon the parental request for evaluation in August 2018, triggered the exception to the two-year limitation, and, therefore, the claim is not time-barred.

59. In summary, it is concluded that Petitioner met his burden of proof that Respondent failed to comply with its Child Find obligation under the IDEA. The undersigned has not made any Findings of Fact nor reached any Conclusions of Law regarding whether Petitioner is a student with a disability who is eligible for exceptional student education or related services as that issue was not raised in this proceeding.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Respondent failed in its obligation under the IDEA, 20 U.S.C. § 1400, *et. seq.*, to appropriately identify, locate, and evaluate Petitioner to determine whether Petitioner is a student with a disability in need of special education and related services.

2. The parties shall convene a meeting within 30 days of the date of this Order.

3. Respondent shall consider Petitioner's request for evaluation(s) and either obtain Petitioner's parent's consent for the requested evaluation(s) or provide Petitioner's parent with written notice in accordance with rule 6A-6.03311, explaining its refusal to conduct the evaluation(s).

4. Petitioner's remaining requests for relief are DENIED.

DONE AND ORDERED this 12th day of July, 2022, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of July, 2022.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).

NOTICE OF RIGHT TO REVIEW PROCEDURE

This Final Order is subject to review procedures pursuant to 34 C.F.R. § 104.36.