

**SOAH DOCKET NO. 701-21-1442.IDEA
TEA DOCKET NO. 108-SE-0221**

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

v.

**PEARLAND INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by next friend Parent. (Student or, collectively, Petitioner), brings this action against the Pearland Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issues in this case are whether the District failed to meet its Child Find duty to Student and whether the District denied Student a free, appropriate, public education (FAPE) during the relevant time period. The Hearing Officer concludes the District met its Child Find duty to Student and provided Student with a FAPE at all relevant times.

II. PROCEDURAL HISTORY

A. Legal Representation

Petitioner was represented throughout this litigation by non-attorney advocate Karen Mayer Cunningham. Respondent was initially represented in this litigation by Tanya Dawson with the District's Office of General Counsel. On April 26, 2021, Rebecca Bailey and Ashley Addo from the law firm of Thompson & Horton LLP. began representing Respondent.

III. DUE PROCESS HEARING

The due process hearing was conducted via the Zoom videoconferencing platform on July 27 and 28, 2021. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by advocate Karen Mayer Cunningham. In addition, *** and ***, Student's parents, attended the due process hearing.

Respondent was represented by its legal counsel, Rebecca Bailey and Ashley Addo from Thompson & Horton LLP. In addition, ***, District Director of Special Programs, and Tanya Dawson, District General Counsel, attended the hearing as party representatives. Both parties filed written closing briefs in a timely manner. The Decision in this case is due on September 27, 2021.

IV. ISSUES

A. Petitioner's Issues

Petitioner raises the following IDEA issues for decision in this case:

Child Find

- Whether Respondent failed to identify Student in a timely manner as a student with a disability in need of special education services.

FAPE

- Whether Respondent denied Student a FAPE by failing to develop an appropriate IEP for Student.
- Whether Respondent denied Student a FAPE during the relevant time period.
- Whether Respondent denied Student a FAPE by predetermining Student's program.
- Whether Respondent denied Student's Parent the right to participate meaningfully in the decision-making for Student's education program.
- Whether Respondent violated Student's Parent's procedural rights under the IDEA.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Student's Complaint. Respondent also contends it provided Student with FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

V. REQUESTED RELIEF

Petitioner's Requested Relief

Petitioner requests the following items of relief:

- Any relief deemed appropriate by the hearing officer.

VI. FINDINGS OF FACT

1. Student is ***-year-old child who attends *** in the District. Student is eligible for special education services as a student with a specific learning disability in basic reading with the condition of dyslexia and a specific learning disability in math problem solving. Student struggles with basic reading, reading fluency, reading comprehension, spelling, and solving math word problems.¹
2. Student attended a private school for *** during the 2016-17 school year. Student enrolled in the District for *** at the beginning of the 2017-18 school year.²
3. On May ***, 2019, Student's Mother requested the District conduct dyslexia testing for Student. On May ***, 2019, the District granted the request for dyslexia testing, issuing procedural safeguards under Section 504 of the Rehabilitation Act (Section 504).³
4. In *** Grade for the 2018-19 school year, Student performed in the average range for reading, math, written expression, and ***. Student performed above average in classroom work, tests, following oral and written directions, and organizational skills. Student was reading on grade level at the end of *** Grade and earned a ***. Student was also above average in the areas of cooperating and complying with teacher requests, adapting to new situations without getting upset, accepting responsibility for Student's actions, making and

¹ Joint Exhibit (JE) 20 at 1.

² Joint Stipulations of Fact (JSF); JE 1; JE 2.

³ JSF; JE 4; JE 5.

keeping friends at school, working cooperatively with others, having an even/happy disposition, completing assignments on time, staying on task, taking turns, and having all of Student's materials.⁴

5. On September ***, 2019, the District issued a dyslexia evaluation report. On the evaluation, Student scored below average in word identification and word attack and in the poor range in ***. Student scored below average on one measure of reading fluency and average on a second measurement tool. Student displayed average reading comprehension, average math abilities, and Student's written expression was measured to be declining and not improving as expected. Student scored slightly below average in phonological awareness and rapid naming, and poor in orthographic processing. Student scored in the poor range for phonological memory, slightly below average for processing speed, and Student struggled with verbal working memory.⁵
6. On November ***, 2019, Student's Section 504 committee convened to review the dyslexia evaluation. The Section 504 committee determined Student qualified for dyslexia services under Section 504 and provided Student with two hours a week of dyslexia instruction and accommodations to address Student's dyslexia.⁶
7. On March 9, 2020, the District closed for its spring break. The District was closed for in-person instruction for the remainder of the 2019-20 school year due to the COVID-19 global pandemic.⁷
8. In *** Grade for the 2019-20 school year, Student's scores on the District's benchmark testing measure, which tracks a student's progress on grade level expectations, were a ***, which meets grade level. Student's grades were ***. On the *** Grade STAAR simulation test, Student scored a ***, which approaches grade level, and a ***, which approaches grade level. Both are considered passing scores.⁸
9. On September ***, 2020, Student's Mother requested the District conduct a Full Initial and Individual Evaluation (FIE) of Student.⁹
10. On September ***, 2020, the District convened Student's Section 504 committee and proposed conducting an FIE of Student. Student's Mother consented to the FIE on the same day. The committee also developed a 504 service plan for Student which included

⁴ JE 9; Transcript (TR) at 121.

⁵ JE 9.

⁶ JSF; JE 10.

⁷ JSF; JE 54.

⁸ JE 14 at 2.

⁹ JSF.

counseling one time per week for twenty-minutes, two hours per week of standard protocol dyslexia services, and classroom accommodations.¹⁰

11. On December ***, 2021, the District issued an FIE report for Student. The District evaluators found Student had cognitive processing strengths in the areas of comprehension, knowledge, long-term memory, short-term memory, visual processing, and processing speed. The evaluators found Student had deficits in auditory processing and fluid reasoning. The evaluators found Student had achievement area strengths in word recall, formulating and composing sentences, and solving simple math facts. Student had achievement area deficits in basic reading skills, reading fluently, reading comprehension, ***, and math problem-solving. Student was found not to perform academically in the classroom in a manner that is commensurate with current academic standards in reading, ***, and solving math word problems. Student's processing disorder in auditory processing and fluid reasoning was determined to negatively impact Student's academic achievement in basic reading and math problem-solving. The evaluators concluded Student met the eligibility criteria for a specific learning disability in basic reading with the condition of dyslexia and a specific learning disability in math problem-solving. The evaluators also recommended Student receive counseling services to address how Student perceives Student's academic performance.¹¹
12. On December ***, 2021, District staff met to discuss Student's FIE and proposals for addressing Student's identified needs. The District made no decisions about Student's eligibility, services, or plan during this meeting.¹²
13. Prior to convening an Admission, Review, and Dismissal (ARD) committee meeting for Student, the District sent Student's Parents and their advocate copies of the FIE report and Student's proposed IEP. Student's Parents and their advocate responded to the District with feedback on the proposed IEP.¹³
14. On January ***, 2021, the District convened an ARD committee to review the FIE and determine Student's eligibility for special education services. The District reconvened the ARD committee on January ***, 2021, and January ***, 2021. Student's Parents and their advocate attended and participated in all of the ARD committee meetings.¹⁴
15. The ARD committee determined Student was eligible for special education services as a student with a specific learning disability in basic reading with the condition of dyslexia and a specific learning disability in math problem-solving. The ARD committee concluded

¹⁰ JSF; JE 14 at 8-9; JE 16.

¹¹ JE 17 at 23 and 26.

¹² TR at 245, 268, and 326.

¹³ Respondent's Exhibit (RE) 7.

¹⁴ JSF; JE 18; JE 19; JE 20.

- Student required counseling to address Student's anxiety over Student's academic performance. The ARD committee was unable to reach consensus on Student's IEP and program because Student's Parents objected to Student receiving dyslexia instruction from a general education teacher and because they objected to the IEP goals proposed by the District. However, Student's Parents consented to the initiation of special education services for Student.¹⁵
16. Student's IEP included *** of special education reading instruction provided in a small group and *** of special education support in Student's Math class. Student's IEP also provided Student with dyslexia services *** and counseling services ***. Student's reading IEP goal focused on ***. Student's Math goal focused on ***. Student has a counseling IEP goal for self-regulation that utilizes coping strategies to handle stressful and anxiety producing academic demands.¹⁶
 17. At Student's Parent's request, the District modified the proposed IEP goals to make the specially designed instruction in the goals more explicit. The reading goal was modified to include the strategies of guided reading and repeated review, and the math goal was scaffolded and given more detail related to progress.¹⁷
 18. Student's dyslexia teacher and Student's special education teacher collaborated on the delivery of reading instruction to Student, sharing strategies to address word attack, decoding, and fluency. Student's special education teacher and Student's Math teacher also collaborated, sharing strategies to assist Student with math problem-solving. The special education teacher worked with Student on guided reading in a small group and on identifying the important information and proper operation in math word problems.¹⁸
 19. Student scored a *** on the *** STAAR in February of 2021, which is categorized as approaching expectations and is a passing score. During ***, Student made one year's progress in Student's reading level, made progress on Student's reading IEP goal, and passed the *** STAAR simulation.¹⁹
 20. During the 2020-21 school year, Student made passing grades in Math and progress on Student's Math IEP goal, mastering identifying the important information for solving word problems. Student's final grades for the year were ***.²⁰

¹⁵ JSF; JE 18; JE 19; JE 20.

¹⁶ JE 20; TR at 194.

¹⁷ TR at 176, 401, and 500.

¹⁸ TR at 101-105, 172-175, and 304-305.

¹⁹ JE 24 at 24; JE 27; RE 3; TR at 159, 206-207, 211, and 267.

²⁰ JE 26 at 4; TR at 212 and 322.

21. Student made steady, appropriate progress in reading while receiving dyslexia and special education services in the District.²¹
22. Student does not have emotional or behavioral problems that impact Student in a school setting. However, Student does have emotional and behavioral issues in the home setting, displaying frustration when presented with difficult academic demands. Student needs counseling as a related service to address stressful situations and anxiety-producing academic demands.²²
23. During the 2019-20 and the 2020-21 school years, the District provided Student's Parents with periodic updates on Student's progress in the dyslexia program. The District also provided them with copies of the IDEA procedural safeguards on September ***, 2020, December ***, 2020, January ***, 2021, January ***, 2021, and January ***, 2021.²³

VII. DISCUSSION

Petitioner contends the District violated the IDEA by failing to timely identify Student as a child in need of special education services and by failing to develop an appropriate special education program for Student after Student began receiving services. Specifically, Petitioner alleges Student had significant struggles with reading in *** and the District failed to recognize these struggles. Petitioner further alleges that, once the District began providing special education services to Student, they did not provide appropriate reading services to Student and failed to consider Student's parent's input.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.²⁴ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District failed

²¹ RE 3; TR at 147-148.

²² JE 20.

²³ JSF; JE 19; JE 31; JE 32; JE 33; TR at 134-136.

²⁴ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir. 2009).

to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*

B. Child Find

A school district has an affirmative duty to identify, locate, and evaluate all children with disabilities residing within its jurisdiction who may need special education. 20 U.S.C. § 1412(a)(3); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp.2d 918, 949-50 (W.D. Tex. 2008). This affirmative duty is known as a school district's "Child-Find" obligation. 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.128, 300.220. Under Texas law, a special education referral is required as part of the school district's overall regular education referral or screening system for students experiencing difficulty in the regular classroom. 19 Tex. Admin. Code § 89.1011.

Petitioner alleges the District violated its Child Find duty by failing to timely evaluate and identify Student for special education services. The "Child Find" obligation is triggered when the school district has reason to suspect the student has a disability and reason to suspect the student is in need of special education services. 34 C.F.R. §§ 300.8 (a)(1); 300.111(a)(c)(1). *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp.3d 443, 467 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F. 3d. 303, 320 (5th Cir. 2017). The threshold for suspicion is relatively low. The inquiry is not whether the student actually qualifies for special education, but instead whether the student should be referred for a special education evaluation. *Woody*, 178 F. Supp.3d at 467.

Here, the District had no reason to suspect Student either had a disability or needed special education services during the 2018-19 school year. Student was reading on grade level at the end of the school year, earned a ***. As compared to Student's same-aged peers, Student performed in the average range for reading, math, written expression, and *** on district grade-level curriculum assessments. Student was above average in the areas of cooperating and complying with teacher requests, adapting to new situations without getting upset, accepting responsibility for Student's actions, making and keeping friends at school, working cooperatively with others, having an even

and happy disposition, completing assignments on time, staying on task, taking turns, and having all of Student's materials.

The District also had no reason to suspect Student needed special education services in the 2019-20 school year. Student's benchmark scores were a ***, which meets grade level. For ***, Student's grades were ***. On the *** STAAR simulation test, Student scored a ***, which approaches grade level; and ***, which approaches grade level. Both of those are passing scores. Based upon Student's grades and performance, the District had no duty to evaluate Student for special education services.

The next inquiry in a Child Find case is whether the school district evaluated the student within a reasonable time after having notice of the behavior likely to indicate a disability. *Woody*, 178 F. Supp. 3d at 468. The IDEA's implementing regulations address how quickly a school district must act after parental consent to evaluate is obtained, but neither the statute nor its implementing regulations establish a specific number of days in which a school district must evaluate a student between notice of a qualifying disability and referring the student for an evaluation. *Woody*, 865 F.3d at 319. In *Woody*, the court inferred a "reasonable-time standard" into the provision. *Id.* at 320. A school district must also "identify, locate, and evaluate students with suspected disabilities within a reasonable time after the school district is on notice of facts or behavior likely to indicate a disability." *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018); *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 790-91 (5th Cir. 2020).

Read together, *Krawietz* and *Woody* indicate the reasonableness of a delay is not defined by its length in weeks or months, but by the steps taken by a school district during the relevant period. A delay is reasonable when, throughout the period between notice and referral, a school district takes proactive steps to comply with its Child Find duty to identify, locate, and evaluate students with disabilities. Conversely, a time-period is unreasonable when the school district fails to take proactive steps throughout the period, or ceases to take such steps. *O.W.*, 961 F.3d at 793. Under the test set out in this jurisdiction, a finding of a Child Find violation due to the failure to

evaluate the child within a reasonable amount of time turns on three inquiries: (1) the date the Child Find requirement was triggered due to notice of a likely disability; (2) the date the Child Find duty was ultimately satisfied; and (3) the reasonableness of the delay between these two dates. *Krawietz*, 900 F.3d at 676.

In this case, the District ultimately conducted a FIE of Student in the fall of 2020, determining Student eligible for special education services with a specific learning disability in basic reading with the condition of dyslexia and a specific learning disability in math problem-solving. Prior to conducting the FIE, the District took the proactive step of conducting a dyslexia evaluation in fall of 2019 and providing Student with dyslexia services under Section 504. With these services, Student made progress in reading, received *** grades in ***, and scored *** STAAR simulation test in ***, which approaches grade level and is a passing score. Prior to conducting the FIE, the District had no reason to suspect Student had a disability and was in need of special education services. 34 C.F.R. §§ 300.8(a)(1), 300.111(a)(c)(1); *Woody*, 178 F. Supp.3d at 467. In this case, the District took reasonable steps to meet its Child Find obligation to Student. *Woody*, 178 F. Supp. 3d at 468.

C. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C. § 1400(d). The district has a duty to provide FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

Petitioner alleges the District violated its duty to provide Student a FAPE by failing to provide an appropriate reading program and by failing to consider Student's Parents' input into Student's program. The district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order

to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982). To determine whether the District has provided a program that meets Student's unique needs, a hearing officer must analyze:

- 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;
- Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
- Whether positive academic and non-academic benefits are demonstrated.

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

Even after the Supreme Court's 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018). These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Indep. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide FAPE, the school district must have in effect an IEP at the beginning of each school year that includes a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement.

Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P., 582 F.3d 576, 583 (5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district was reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

The evidence showed the School District developed an IEP to meet Student's identified needs. The District conducted a comprehensive FIE and based Student's program on the evaluation data gathered in the FIE. To address Student's reading deficits, the District provided both daily small group special education reading instruction and four, *** dyslexia reading interventions per ***. The District addressed Student's deficits in Math with daily special education support in Student's Math class. The District even provided weekly counseling sessions for Student to address academic anxiety which was only present at home and not in school. In sum, the IEP developed by the District in January of 2021 was reasonably calculated to allow Student to make progress appropriate in light of Student's identified needs. *Andrew F.*, 137 S. Ct. at 999.

2. Least Restrictive Environment

The IDEA requires that a student with a disability shall be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling, and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment requirement." 34 C.F.R. § 300.114(a)(2)(i)(ii).

To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and

- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Ed., 874 F. 2d 1036, 1048 (5th Cir. 1989).

Here, Student has a basic reading deficit that cannot solely be addressed in a general education class. Therefore, the District provided both pull-out dyslexia services and daily special education reading intervention. The District did, however, address Student's math problem-solving deficit through special education support in the mainstream class, minimizing the LRE impact of this particular disability. By only pulling Student out of the general education class to address Student's significant reading deficit, the District educated Student in Student's least restrictive environment. 34 C.F.R. § 300.114(a)(2)(i)(ii); *Daniel R.R.*, 874 F. 2d at 1048.

3. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), *aff'd*, 909 F.3d 754 (5th Cir. 2018). Here, Petitioner contends the District failed to consider the parents' input. More specifically, Petitioner alleges the District failed to honor the parent's request to have Student's dyslexia services delivered by a special education teacher and did not modify Student's IEP goals as requested by Student's Parents.

The IDEA does not require a school district, in collaborating with a student's parents, to accede to all of a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

In this case, the District was responsive to Student's Parents' requests and took into account their input. The District first honored Parent's request for a dyslexia evaluation and one year later also honored their request for an FIE. The District made significant changes to Student's IEP goals at the request of the parents. Even though Student had no emotional or anxiety problems at school, the District agreed to provide Student with counseling services to address a parental concern. In addition, the District regularly communicated with Student's Parents about Student's progress in school and in the dyslexia program.

Petitioner argues that the District predetermined Student's program because the District held a staffing meeting without the parent to discuss Student's evaluation and program. Predetermination occurs when a school district makes educational decisions so early in the planning process that it deprives the parents of a meaningful opportunity to fully participate as equal members of the ARD committee. *E.R.*, 909 F.3d at 769. Petitioner failed to present evidence of predetermination. While the District did hold a staffing in advance of the ARD committee meeting, the District did not make any decisions about Student's eligibility, program, services, or placement at this meeting.

The District not only ensured collaboration with the parent as a key stake holder, it developed a program utilizing collaboration amongst key District stake holders. The dyslexia teacher and special education teacher worked together on reading strategies for Student and the special education teacher and the Math teacher shared ideas for addressing Student's math deficits. The evidence showed Student's program was developed in collaboration with the key stake holders.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 812-13 (5th Cir. 2012). The evidence showed Student made regular and steady progress in reading while a Student in the District. During the 2020-21

school year, while receiving special education services, Student made passing grades in Math and mastered Student's Math IEP goal which required Student to identify important information for ***. Student also made one year's progress in Student's reading level, made progress on Student's reading IEP goal, and passed the reading STAAR simulation.

In conclusion, the District provided Student a FAPE by providing a program that met Student's unique needs in Student's least restrictive environment and in collaboration with key stakeholders.

D. Procedural Requirements

Petitioner alleges the District violated Student's procedural rights under the IDEA. Liability for a procedural violation only arises if the procedural deficiency impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

Petitioner alleges that the District failed to meet its procedural obligations under the IDEA. The evidence showed, however, that the District provided both prior written notice (PWN) and Notice of Procedural Safeguards to Student's Mother upon all occasions required under the IDEA during the relevant time period. 34 C.F.R. §§ 300.503(a), 300.504(a). As such, the Hearing Officer concludes that the District did not commit a procedural violation of the notice requirements under the IDEA as alleged by Petitioner.

VIII. CONCLUSIONS OF LAW

1. Student was provided FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188, 203-04; *Endrew F.*, 137 S. Ct. at 999.
2. Petitioner did not meet Petitioner's burden of proving that Respondent failed to timely evaluate and identify Student as a student with a specific learning disability. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.8

(a)(1); 300.111(a)(c)(1).

3. Petitioner did not meet Petitioner's burden of proving that Respondent failed to include Student's Parent as a key stake holder or predetermined Student's program. *Schaffer*, 546 U.S. at 62; 34 C.F.R. §§ 300.503(a); 300.504(a).
4. Petitioner did not meet Petitioner's burden of proving that Respondent failed to comply with student and parental procedural rights under the IDEA related to the provision of PWN or Notice of Procedural Safeguards. *Schaffer*, 546 U.S. at 62; 34 C.F.R. §§ 300.503(a); 300.504(a).

IX. ORDERS

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

All other relief not specifically stated herein is **DENIED**.

SIGNED September 27, 2021.



Steve Elliot
Special Education Hearing Officer
For the State of Texas

X. 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. 19 Tex. Admin. Code § 89.1185(p); Tex. Gov't Code, Sec. 2001.144(a) (b).