

**DOCKET NO. 206-SE-0220**

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

v.

**LEANDER 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**

Petitioner, Student, by next friend Parent (“Petitioner” or “Student”) brings this action against the Leander Independent School District (“Respondent” or “School District”) under the Individuals with Disabilities Act, 20 U.S.C. §§1400-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the School District denied Student a free, appropriate public education (FAPE). The Hearing Officer concludes the School District provided Student a FAPE during the 2018-2019 school year.

**II. PROCEDURAL HISTORY**

**A. Legal Representation**

Student was represented throughout this litigation by Student’s legal counsel, Sonja D. Kerr and her co-counsel Dorene Philpot. The School District was represented throughout this litigation by its legal counsel, Kelly Janes and Jamie Turner.

**III. DUE PROCESS HEARING**

The due process hearing was conducted October 27-29, 2020, via the Zoom teleconference platform. The hearing was recorded and transcribed by a certified court reporter. Petitioner

continued to be represented by Petitioner's legal counsel, Sonja D. Kerr and Dorene Philpot. In addition, \*\*\*, Student's parent, also attended the due process hearing.

Respondent continued to be represented by its legal counsel, Kelly Janes and Jamie Turner. In addition, \*\*\*, the Executive Director of Special Programs and Services for the School District, attended the hearing as the party representative. Both parties filed written closing briefs in a timely manner. The Decision in this case is due January 13, 2021.

#### IV. ISSUES

##### A. Petitioner's Issues

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

1. FAPE: Whether the School District failed to provide Student with a FAPE during the school year, including:
  - a. Whether the School District failed to provide a FAPE during the relevant time periods of November \*\*\*, 2018 through May 2019.
  - b. Whether the School District denied Student a FAPE by failing to address Student's dyslexia.
2. EVALUATION: Whether the School District failed to evaluate Student in all areas of suspected disability and need by failing to conduct dyslexia evaluations.

##### B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Student's Complaint. The School District contends it provided Student with a FAPE during the relevant time period and that Petitioner is not entitled to any of the requested relief.

The School District raises the following additional issues:

1. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to resolve claims arising under any laws other than the IDEA, and whether such claims should be dismissed.
2. STATUTE OF LIMITATIONS: Whether any of Student's IDEA claims should be dismissed as outside the one-year statute of limitations rule as applied in Texas, i.e.: specifically, any claims that arose prior to February 28, 2019.

## V. REQUESTED RELIEF

### A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. Order the School District to reimburse Student's parent, or pay directly, the full cost of Student's placement at \*\*\* in the amount of \$\*\*\* during the 2019-2020 school year, or as a compensatory education award.
2. Order the School District to place Student at \*\*\* for the 2020 Extended School Year (ESY) services and pay those services as compensatory education award.
3. Order the School District to place Student at \*\*\* as Student's prospective placement for the 2020-2021 school year and pay for those services or as a compensatory education award and/or as Student's stay-put placement.
4. Order the School district to reimburse the family for out-of-pocket expenses related to Student's education.
5. Order the School District to reimburse the family for transportation costs to \*\*\* at the rate of \$\*\*\* per day.

## VI. FINDINGS OF FACT

### \*\*\* through \*\*\* Grade school years

1. Student was enrolled in the School District in 2013 as a \*\*\* student at \*\*\*.<sup>1</sup> Student was initially found to be eligible for special education services as a student with a Specific

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<sup>1</sup> Transcript (TR) Vol. I at 363.

Learning Disability and Other Health Impairment (OHI)-Attention Deficit Hyperactive Disorder (ADHD).<sup>2</sup>

2. Student lives with Student's mother \*\*\*. Student enjoys \*\*\*. Student is described as well-behaved at home and gets along with family members and \*\*\*. Student also participates in the \*\*\* program, \*\*\*<sup>3</sup>
3. Student was diagnosed with ADHD and low phonemic awareness while in \*\*\* and \*\*\* while in the \*\*\* grade. Student was evaluated for dyslexia in 2015. Student qualified for services under Section 504 of the Rehabilitation Act of 1973 (Section 504) based on the results of the evaluation.<sup>4</sup> Student was referred for a special education evaluation by the 504 committee due to concerns with a lack of progress despite accommodations for attention and dyslexia in 2017.<sup>5</sup>
4. Dyslexia is a term used to describe a learning disability in basic reading skills and/or reading fluency. Characteristics of dyslexia include difficulties with identifying and recalling the names of alphabet letters, numbers, and familiar objects; mapping sounds to letters; auditory memory for rhymes, songs, and chants; blending, segmenting, and manipulating sounds in words; reading words in isolation or reading unknown words; reading fluency; spelling; vocabulary acquisition due to reduced independent reading; reading comprehension; and written production.<sup>6</sup>
5. The School District conducted a Full and Individual Evaluation (FIE) on Student in January 2018. Student's overall cognitive abilities were in the average range, but Student has significant needs that need to be addressed in order to be successful in the academic setting. The areas in which Student tested below average were cognitive processing speed, auditory processing, and long-term retrieval.<sup>7</sup> Student was in the low to below average range on the academic achievement tests. The evaluation indicates Student has a Specific Learning Disability in the areas of Basic Reading Skills and Reading Fluency.<sup>8</sup>
6. The FIE recommended that school staff provide overlearning and review/repetition; immediate feedback; list steps that will help organize behavior and facilitate recall; teach memory aids (verbal mediation or rehearsal), mnemonic strategies; multisensory learning (visual, kinesthetic, vocal, and auditory channels); context and meaning-based instruction; and limit the number of new facts, words, concepts in one session for long-term retrieval. Recommendations for processing speed included: more time to complete assignments;

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<sup>2</sup> Respondent's Exhibit (RE) 1 at 1; RE 2 at 3.

<sup>3</sup> RE 2 at 6-8; TR Vol III. at 1065.

<sup>4</sup> RE 2 at 12.

<sup>5</sup> Joint Exhibit (JE) 1 at 1; RE 1 at 1.

<sup>6</sup> Petitioner's Exhibit (PE) 83 at 3.

<sup>7</sup> RE 2 at 9-11.

<sup>8</sup> RE 2 at 13-15.

quantity of work in favor of quality; limit or structure copying activities; provide activities to increase rate and fluency (flash cards, speed drills, educational software). Recommendations for Auditory Processing involved: phonological awareness activities (rhyming alliteration, imitation, songs); specific training in sound discrimination, blending, and segmentation; emphasize sound/symbol associations in decoding and spelling; study guides for listening activities; assistance with note taking; and accompany oral information with visual materials.<sup>9</sup>

7. As part of the 2018 FIE, an Occupational Therapy (OT) evaluation was conducted to determine eligibility for related services. Student's handwriting, visual, and perceptual motor skills were within normal limits. OT was not recommended for Student in order to make academic progress in special education.<sup>10</sup>
8. The Admission, Review, and Dismissal (ARD) Committee met on January \*\*\*, 2018, to develop Student's initial IEP. The committee developed a fluency goal for Student to \*\*\*, a reading goal for Student to \*\*\*, a writing goal to \*\*\*, a behavior goal for maintaining focus in the classroom during independent activities, and a behavior goal to complete and turn in classroom assignments.<sup>11</sup>
9. The ARD Committee developed a program for Student with \*\*\*-minute per week social skills sessions, \*\*\*-minute per week sessions of \*\*\*, \*\*\* minutes per day of check-in/out in the special education setting, \*\*\*-minute per week sessions of inclusion support in math, \*\*\*-minute per week sessions of inclusion support in \*\*\*, dyslexia services and \*\*\*. \*\*\* is a program for \*\*\* students in the general education setting where they participate in \*\*\*.<sup>12</sup>
10. Student's accommodations from the January 2018 IEP included: check for understanding, encouragement for classroom participation, frequent and immediate feedback, scaffolded steps in a process, shortened instructions, access to audio books, copy of class notes, graph paper, math manipulatives, supplemental aids for math, extra time for written response and testing, oral administration of tests in a small-group, preferential seating near instructor with frequent breaks, and reminders to stay on task. Student used Assistive Technology (AT) for \*\*\* assistance, including \*\*\*. Student was allowed these same accommodations for State of Texas Assessments of Academic Readiness (STAAR) testing in \*\*\*.<sup>13</sup>
11. During the January 2018 ARD Committee meeting, Student's parent expressed concern with Student being pulled from the general education classroom to receive specialized

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<sup>9</sup> RE 2 at 20.

<sup>10</sup> RE 3 at 1-2; JE 1 at 3.

<sup>11</sup> RE 5 at 6-8.

<sup>12</sup> RE 5 at 13-14; TR Vol. I at 363.

<sup>13</sup> RE 5 at 9-13.

instruction in the special education setting, but agreed to implement the services as recommended by the School District.<sup>14</sup>

12. On May \*\*\*, 2018, the ARD Committee met at the request of Parent to review Student's schedule of services, specifically check in/check out and social skills. Student's parent was concerned with Student \*\*\* by the check in/check out and a lack of interaction with members of the social skills group. The ARD Committee agreed to move Student to a different social skills group, with Student's parent approval.<sup>15</sup>
13. On May \*\*\*, 2018, the ARD Committee met again at Student's parent's request for a revision ARD to remove special education services in the areas of check in/check out and social skills. Student's parent was accompanied by an advocate who requested that Student receive dyslexia services in a one-on-one setting instead of in a group setting with an educator trained in an evidence-based program that is effective in addressing the needs of students with dyslexia. The ARD committee did not recommend one-on-one dyslexia services, but agreed to continue with inclusion and pull-out support. The School District also agreed to immediately discontinue social skills and check-in/check-out because Student's parent was concerned \*\*\*.<sup>16</sup>
14. Student's parent and advocate requested an AT evaluation, a Functional Behavior Assessment (FBA) to address underlying causes of Student's difficulty with work completion, and interventions to assist in work completion. The parent and advocate also requested an Independent Educational Evaluation (IEE) for dyslexia because they disagreed with Student's eligibility, believing that Student's behavioral and attention difficulties were more related to a dyslexia diagnosis than ADHD.<sup>17</sup>
15. The ARD Committee reconvened on June \*\*\*, 2018, to address areas of disagreement from the May \*\*\*, 2018 ARD meeting that ended with Parent agreeing to everything but the dyslexia services. The ARD Committee agreed to defer the one-on-one dyslexia services discussion until the next ARD meeting. An agreement was reached for the School District to complete an AT evaluation, FBA, and an IEE of Student across all areas of suspected disability by September \*\*\*, 2018. The ARD Committee and Parent agreed to reconvene once the evaluations were complete and to defer the decision on whether to implement one-on-one dyslexia services.<sup>18</sup>

**\*\*\* Grade School Year**

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<sup>14</sup> RE 5 at 20.

<sup>15</sup> RE 7 at 2.

<sup>16</sup> RE 9 at 2-3.

<sup>17</sup> RE 9 at 2-3.

<sup>18</sup> RE 12 at 3.

16. In August 2018, an IEE was performed on Student. It was completed on October \*\*\*, 2018, by a private licensed specialist school psychologist (LSSP) and neuropsychologist.<sup>19</sup> The private evaluator found Student's intellectual abilities to be in the average range. Student demonstrated several strengths in the cognitive profile: fluid reasoning, visual spatial skills, expressive and receptive language skills, visual-motor integration, verbal learning and recall, and nonverbal memory. The areas of cognitive weaknesses included: attention, working memory, and processing speed. This indicated a continued diagnosis of ADHD-Predominately Inattentive Presentation (ADHD-PI).<sup>20</sup>
17. Student's academic achievement testing placed Student in the below average to extremely low range for word reading and pseudo word decoding, oral reading fluency, phonological awareness, rapid naming, numerical operations, math fluency, spelling, and sentence building.<sup>21</sup>
18. The evaluator assessed Student's social, emotional, and behavioral functioning using various measures, including observations, rating scales, parent and teacher information forms, and a self-report assessment from Student. The Behavioral Assessment System for Children, Third Edition (BASC-3) was used to evaluate Student's emotional and behavioral functioning. On the BASC-3 self-report, Student scored in the clinically significant range for attitude toward school and teachers, \*\*\*, and interpersonal relations. Student's parent rated Student in the clinically significant range for somatization and withdrawal. Student's general education teacher rated Student in the clinically significant range for somatization, attention problems, learning problems, atypicality, withdrawal, social skills, and study skills.<sup>22</sup> Individual counseling was recommended for Student to better identify and manage Student's emotions.<sup>23</sup>
19. The IEE recommended that the ARD Committee continue to provide Student with services as a student with an SLD in reading and consider an SLD in writing, while also addressing Student's \*\*\* for inclusion and group services. Additionally, the IEE called for Student to work with a reading specialist \*\*\*, with a consideration of one-to-one services, while acknowledging that dyslexia intervention can be provided in a variety of formats such as inclusion or in a group.<sup>24</sup> The ARD Committee considered the recommendation of one-to-one dyslexia services, but determined that it was not necessary for Student to make academic progress.<sup>25</sup>

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<sup>19</sup> JE 1; TR Vol. I at 60.

<sup>20</sup> JE 1 at 10; TR Vol. I at 62.

<sup>21</sup> JE 1 at 11.

<sup>22</sup> JE 1 at 10.

<sup>23</sup> JE 1 at 14.

<sup>24</sup> JE 1 at 11; TR Vol. 1 at 63-64, 78.

<sup>25</sup> JE 7 at 34-35.

20. On September \*\*\*, 2018, an amendment was added to Student's IEP to include a \*\*\* accommodation. Student's parent was in agreement.<sup>26</sup> The ARD Committee sent out invitations to convene an ARD meeting to review the IEE, FBA, and AT Evaluations on October \*\*\*, November \*\*\*, and November \*\*\*, 2018.<sup>27</sup>
21. On January \*\*\*, 2019, Student's ARD Committee reconvened the June 2018 ARD Committee meeting to review Student's progress, discuss the completed IEE, FBA, and AT evaluations, and develop an IEP for Student's annual ARD. The ARD Committee proposed revisiting the issue of Student's eligibility for Written Expression as an area of SLD because there was not a consensus.<sup>28</sup>
22. The ARD Committee initially requested the FBA to discern whether ADHD or dyslexia was the reason for Student's off-task behaviors, inattentiveness, and difficulty completing work. The results of the FBA indicated that it was difficult to identify dyslexia or ADHD as the definitive cause. In addition, Student's parent expressed concern about \*\*\* toward the end of 2018. A full emotional/behavioral evaluation of Student was proposed to address Student's parent concerns with Student's \*\*\* of receiving inclusion support, but Student's parent did not provide consent.<sup>29</sup>
23. The evaluator who conducted the FBA reached out to Student's individual therapist as part of the evaluation with the consent of Student's parent to discuss areas of concern and what they were currently working on in therapy.<sup>30</sup> Student's level of \*\*\* is reported to be severe to moderate and is related to Student's dyslexia; school, particularly the upcoming \*\*\* grade STAAR test; and \*\*\*. Student's therapist recommended weekly individual therapy, cognitive behavior therapy, and exposure therapy. Failure to provide these services could lead to a significant risk of an increase in symptoms and decrease in functioning. Student did not attend weekly individual therapy.<sup>31</sup>
24. The AT evaluation indicated that Student needs to continue to work on keyboarding skills. Student also requires \*\*\* to make progress in the classroom. Student uses \*\*\*. \*\*\* is most beneficial to Student, but Student \*\*\*. The ARD Committee reported the use of AT is on-going and they will continue to try new or different AT devices.<sup>32</sup>
25. The ARD Committee reviewed Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP) for reading, written expression, and behavior at the January \*\*\*, 2019 ARD meeting. Student's fluency was below grade level at \*\*\* \*\*\*,

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<sup>26</sup> RE 13 at 1.

<sup>27</sup> JE 4, 5, 6.

<sup>28</sup> JE 7 at 24-25.

<sup>29</sup> JE 7 at 25, 31; TR Vol. II at 724.

<sup>30</sup> TR Vol. III at 785.

<sup>31</sup> PE 69 at 17, 24; TR Vol. I. at 128.

<sup>32</sup> JE 7 at 24- 25.

- which is an unfamiliar grade-level passage. Student was also able to provide a \*\*\*.<sup>33</sup> Student's IEP reading goals for the school year were to read \*\*\*.<sup>34</sup>
26. Student's writing goal was to \*\*. Student was able to \*\*\*.<sup>35</sup>
27. Student did not meet Student's behavioral goals of \*\*. The ARD Committee recommended revising Student's goals.<sup>36</sup>
28. Student began the \*\* grade reading at an independent level of \*\*, which is equivalent to \*\*grade. By the second \*\* weeks, Student moved up to an independent level \*\*, and by the end of the year Student was at an independent level \*\*. This was measured by a Developmental Reading Assessment (DRA), which is a leveling system that measures comprehension and fluency.<sup>37</sup> This indicates that Student was reading a little slower than grade-level peers but Student was comprehending the information in the text. Student enjoyed reading by the end of the year more so than at the start of the school year.<sup>38</sup>
29. The District used other tools to assess the reading levels of Student, such as running records, leveled books, curriculum-based assessments, and iStation, which is a computer based program used to measure comprehension, fluency, spelling, and vocabulary. Student was tested monthly. In September 2018, Student's score in reading was \*\* on a Tier \*\* level, indicating a need for a lot of support. By May 2019, Student's score in reading was \*\* on a Tier \*\* level, indicating progress was being made but support was still needed.<sup>39</sup> Student's comprehension and fluency scores fluctuate on the iStation because speed and attention are factors. Vocabulary was a strength for Student. Student's score in September 2018 was \*\*. By May 2019, Student's score in vocabulary was \*\* on a Tier \*\*, indicating that Student did not need much support for vocabulary.<sup>40</sup>
30. During the discussions of Student's PLAAFP's at the January \*\*, 2019 ARD meeting, Student's parent expressed skepticism that Student is reading on grade level and feels that Student's fluency and decoding skills have regressed based upon a Gray Oral Reading Test (GORT), an oral reading fluency test that was administered by Student's private tutor on January \*\*, 2019. Student's tutor administered the GORT-4, which is not appropriately normed for validity purposes like the GORT-5, which has been used since 2011. The

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<sup>33</sup> JE 7 at 3.

<sup>34</sup> RE 5 at 6; RE 19 at 1-2.

<sup>35</sup> RE 5 at 7; RE at 3.

<sup>36</sup> RE 19 at 3-4.

<sup>37</sup> TR Vol. II at 624; RE 26 at 1; RE 30 at 14.

<sup>38</sup> TR Vol. II at 629-630.

<sup>39</sup> RE 28 at 1; TR Vol. II at 651-653.

<sup>40</sup> TR Vol. II at 654.

District agreed to provide Student's parent the reading levels on the progress report, copies of mastery checks, and overall progress in the dyslexia program.<sup>41</sup>

31. On January \*\*\*, 2019, Student's dyslexia instructor reached out to Student's private tutor in an effort to collaborate and discuss what was being covered in the dyslexia class.<sup>42</sup> Additionally, Student's dyslexia instructor provided training on strategies to use for teaching students with dyslexia to Student's \*\*\* teacher. They would also consult throughout the school year about Student's progress, supports, and overall needs.<sup>43</sup>
32. At the January \*\*\*, 2019 ARD meeting, the ARD Committee proposed eight measurable annual goals, which were shared with Student's parent prior to the ARD meeting: a fluency goal for Student to \*\*\*, a reading goal for Student to \*\*\*, a \*\*\* goal for Student to \*\*\*, a reading goal for Student to \*\*\*, a writing goal for Student to \*\*\*, an academic behavior goal for Student to maintain focus in the classroom setting, an academic behavior goal for Student to independently organize and turn in assignments, and a behavior goal for Student to indicate a need for assistance in class, which was developed after Student's parent and advocate expressed concern about Student's self-advocacy skills.<sup>44</sup>
33. The ARD Committee proposed an increase in the schedule of services for Student with \*\*\*-minute per week sessions of \*\*\* in the special education setting. In an effort to compromise with Student's parent, the ARD Committee later reduced it to \*\*\*-minute sessions per week. The committee also proposed \*\*\*-minute per week sessions of inclusion support in \*\*\*, \*\*\*-minute per week sessions of inclusion support in math, and continued dyslexia services and \*\*\*. All services were to be provided in the general education setting. Psychological services were proposed for \*\*\* per grading period. Multiple accommodations were proposed in the following categories: adaptations to classroom instruction, adapted or additional materials, altering of assignments or tests, behavior management, and required equipment/AT.<sup>45</sup>
34. The January \*\*\*, 2019 ARD meeting ended in non-consensus. Student's parent was not in agreement with increased time in the special education setting for \*\*\*. She was in agreement with Student being pulled out of the general education setting but only by the dyslexia teacher, because she stated "Student did not particularly like the pull-out \*\*\* teacher".<sup>46</sup> The School District explained the increase in schedule of services addressed Student's need for specialized instruction to address Student's reading goals.<sup>47</sup>

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<sup>41</sup> JE 7 at 26; TR Vol. I at 206; TR Vol. III at 978.

<sup>42</sup> RE 30 at 4; TR Vol. III at 879.

<sup>43</sup> TR Vol II at 610,632.

<sup>44</sup> JE 7 at 7-11; TR Vol. II at 792.

<sup>45</sup> RE 5 at 9-10; JE 7 at 13-14.

<sup>46</sup> JE 7 at 27; Vol. II at 407-408.

<sup>47</sup> JE 7 at 27.

35. On January \*\*\*, 2019, the ARD Committee reconvened. The ARD Committee added an addendum to Student's FIE based upon the IEE's recommendation that the ARD Committee consider a diagnosis of SLD with impairment in written expression. Student qualifies as a student with an SLD in the areas of Written Expression, Reading Fluency, Basic Reading, and OHI-ADHD. \*\*\* was removed from Student's accommodations because Student does not use it due to \*\*\*.<sup>48</sup> Student often typed Student's essays on Student's School District issued Chromebook, as Student's typing skills were commensurate with other students in class. Student would often \*\*\* to make it easier for Student to read.<sup>49</sup>
36. Student began the 2018-2019 school year \*\*\* and by the end of the year Student was able to write three-fourths to a full page of an expository essay with detailed elaboration, vocabulary, and a conclusion. Student's essays had a beginning, middle, and ending. Student received assistance from Student's \*\*\* teacher for revisions and edits, but was not counted off for incorrect spelling, per Student's IEP.<sup>50</sup> Student's \*\*\* class was comprised of one general education teacher for \*\*\* students and one inclusion teacher for \*\*\* students. The class was structured into \*\*\*. The inclusion teacher was available to help any student in the classroom.<sup>51</sup>
37. The ARD Committee revisited the proposed goals from the January \*\*\*, 2019 ARD meeting and proposed to add "enrolled grade level" and increase the number of correct words per minute on Goal 1, remove \*\*\* from Goal 2, and reduce the on-task percentage to 70% based on data from previous goals. Student's parent and advocate requested the following goals: a spelling goal, a reading comprehension goal, and a goal that includes both fluency and comprehension. The School District was in agreement with these goals, but proposed to separate the fluency and comprehension goals due to the difficulty of measuring two concepts in one goal.<sup>52</sup>
38. Student's parent did not believe the accuracy of the School District's data on Student's ability to decode and requested more intensive specialized dyslexia intervention with the dyslexia teacher. The ARD Committee proposed more time in the special education setting based on Student not making progress on previous goals. Student's parent was not in agreement with more time in the special education setting. The ARD Committee meeting concluded without an agreement, but the parties agreed to reconvene to review the proposed goal changes, finalize ESY services, and review the Wechsler Individual Achievement Test-Third Edition (WIAT-3) and GORT-5 assessments administered by the School District in April 2019.<sup>53</sup>

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<sup>48</sup> JE 7 at 28-29.

<sup>49</sup> TR Vol. II at 617-618.

<sup>50</sup> RE 37; TR Vol II at 642-649.

<sup>51</sup> TR Vol II. at 614-615, 692.

<sup>52</sup> JE 7 at 29.

<sup>53</sup> JE 7 at 30; PE 30 at 61.

39. The ARD Committee proposed multiple dates to Student's parent for the continuation of the ARD meeting. Student's parent was unable to attend due to work obligations.<sup>54</sup> Revisions to Student's proposed goals were still being discussed between Student's parent and the ARD Committee via email.<sup>55</sup>
40. On March \*\*\*, 2019, the ARD Committee proposed changes to Student's IEP accommodations for the classroom and STAAR testing by removing \*\*\* and adding small group, extra time, reminders to stay on task, basic transcribing where the testing administrator bubbles in Student's responses, \*\*\*. Student's parent was in agreement.<sup>56</sup>
41. On May \*\*\*, 2019, an addendum was added to Student's FIE with the results of the WIAT-3, which measures listening, speaking, reading, writing, and mathematic skills and GORT-5 assessments administered by the School District at the request of Student's parent. Student scored in the low and below average range for listening comprehension, reading composites, reading comprehension, fluency composites, and written expression composites. Student scored in the average range for oral language composites, math composites and math fluency composites. Student's overall score on the GORT-5 fell in the poor range. Student's standard score was \*\*\*, which fell into the \*\*\* percentile.<sup>57</sup>
42. The ARD Committee reconvened to continue the annual ARD from January 2019 on May \*\*\*, 2019. Student's parent participated via telephone. A final draft of the proposed IEP was sent to Student's parent on April \*\*\*, 2019, with the duration of services scheduled from May \*\*\*, 2019 to January \*\*\*, 2020. Although the School District felt its ESY services could be tailored to meet Student's needs, the ARD Committee agreed to pay for ESY Services at \*\*\*, a private school that specializes in serving students with dyslexia, as a good faith effort toward an agreement. Student's schedule of services remained a point of disagreement because Student's parent did not want an increase in specialized instruction to be implemented. Student's parent did not think it would help with Student's fluency.<sup>58</sup>
43. The School District's LSSP explained that Student's lack of effort to read better has prevented Student from accessing the full program. Student's parent disagreed, instead contending that the District doesn't cater to students with dyslexia.<sup>59</sup> The School District doesn't have a separate full day program for students with dyslexia, but it does provide full dyslexia services in the general education setting. Additionally, Student received

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<sup>54</sup> PE 30 at 13-14, 27, TR Vol. II at 706-707.

<sup>55</sup> PE 30 at 42; RE 31 at 29-30.

<sup>56</sup> RE 15 at 1.

<sup>57</sup> JE 3 at 12-16.

<sup>58</sup> JE 7 at 12, 31; PE 35.

<sup>59</sup> PE 30 at 64; JE 7 at 31.

specialized instruction and inclusion support in \*\*\* along with various accommodations. The Student's needs determine placement, not the disability.<sup>60</sup>

44. The School District's area of concern is Student's willingness to do the work and accept help in order to improve Student's reading. Student is constantly distracted and \*\*\*, which requires frequent reminders to get back on task.<sup>61</sup> An offer was again made to update Student's FBA and conduct a full emotional/behavioral evaluation to explore reported \*\*\*. It was again declined by Student's parent.<sup>62</sup>
45. At the May \*\*\*, 2019 ARD Committee meeting, Student's parent requested the School District to pay for Student to attend \*\*\* during the 2019-2020 school year. The School District declined. The ARD meeting ended without a mutual agreement to implement the IEP, however, the School District did agree to pay for ESY services at \*\*\* from June \*\*\*- July \*\*\*, 2019.<sup>63</sup>
46. On August \*\*\*, 2019, Student's parent sent notice to the School District that Student would be attending \*\*\* for the 2019-2020 school year. The School District responded that it was still proposing an IEP that would meet all of Student's needs per the Prior Written Notice sent on May \*\*\*, 2019. A copy of the proposed IEP and Procedural Safeguards were attached.<sup>64</sup>
47. Student's teachers reported that they did not notice any outward signs of \*\*\* from Student. Student's dyslexia teacher reported that Student had a positive reaction to other Students in class and did not display any noticeable behavior outside of the ordinary while administering the STAAR test to Student.<sup>65</sup> Student's \*\*\* teacher described Student as a happy, curious, creative, and innovative child, who felt safe and confident to share Student's writings in front of the classroom. Student made connections that no other student was making. This was shared with Student's parent via email, as it was common for Student's parent and teachers to share supports and strategies for Student.<sup>66</sup>
48. Student participated in social/emotional learning during the \*\*\* grade in general education, to give students the tools needed to handle different situations. The lesson topics changed weekly: understanding different perspectives, empathy and respect, and managing \*\*\*. Student also participated in \*\*\* which was a reward system for a small group of students

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<sup>60</sup> JE 5 at 13; TR Vol. III at 1074.

<sup>61</sup> PE 30 at 63-64.

<sup>62</sup> JE 7 at 31.

<sup>63</sup> JE 7 at 31, 39.

<sup>64</sup> PE 30 at 88-9; RE 32.

<sup>65</sup> TR Vol. III at 885-88.

<sup>66</sup> TR Vol. II at 612, 629-630; RE 30 at 7, 10, 15, 16, 30.

who were doing an exceptional job to \*\*\*. The students were allowed to \*\*\*. Student had a group of about \*\*\* students that Student often \*\*\*.<sup>67</sup>

49. The \*\*\* program teachers reported that Student does very well in the program with Student's \*\*\*. Student is very passionate and excited to share Student's research with other creative peers. Student's parent reports that Student loves attending \*\*\*. Student's parent stated that Student's teachers have made a huge difference this school year.<sup>68</sup>
50. Student received passing grades on Student's \*\*\* grade year report card, with mostly \*\*\* across all subjects.<sup>69</sup> Student did not meet grade level on STAAR testing in \*\*\*.<sup>70</sup>

### **Dyslexia Instruction**

51. Student received dyslexia instruction through the Basic Language Skills (BLS) curriculum from a certified teacher trained in dyslexia instruction, as required by the Texas dyslexia handbook. The class was comprised of \*\*\* students, with whom Student had a shared \*\*\*. The class met \*\*\*, as recommended in the BLS manual<sup>71</sup> Student was not a disruptive student but Student struggled with fully engaging in the lessons, which were multisensory and had seven or eight components that ran in three-to-ten minute chunks. Student required more than a typical number of redirections, but was not resistant to redirection.<sup>72</sup>
52. Student's dyslexia instructor was completing a two year process through \*\*\* to become a Certified Academic Language Therapist during Student's \*\*\* grade year.<sup>73</sup>
53. The components of Student's dyslexia instruction were structured into required components such as: automatic instant retrieval ("AIR") time, alphabetizing, morphology, phonological awareness, rapid naming, sound symbol connections, spelling, handwriting, reading practice, and oral language.<sup>74</sup>
54. Student spent the entire \*\*\* grade year on Book \*\*\*, which is the most substantive of all three books.<sup>75</sup> In December 2018, mastery checks were used to evaluate Student's progress in dyslexia concepts 77-91: reading words; reading sentences; spelling words; rapid

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<sup>67</sup> TR Vol. II at 666, 669, 686.

<sup>68</sup> JE 7 at 26, TR Vol. II at 638.

<sup>69</sup> JE 17 at 1.

<sup>70</sup> RE 18 at 4.

<sup>71</sup> TR Vol. III at 851- 852, 1052.

<sup>72</sup> TR Vol. III at 851-852.

<sup>73</sup> TR Vol. III at 849.

<sup>74</sup> TR Vol. III at 853-855.

<sup>75</sup> TR Vol. III at 860.

naming; and comprehension. In March 2019, mastery checks were used to evaluate Student's progress in dyslexia concepts 92-105: reading words; reading sentences; spelling words; spelling sentences; rapid naming; and comprehension.<sup>76</sup>

55. Student's weaknesses in fluency, spelling, rapid naming, and phonetical processing are typical of a student with dyslexia, but Student made progress in the BLS curriculum using David Kirkpatrick's PAST assessment of phonological awareness. This is an informal, diagnostic, individually administered assessment tool to help determine progress on selected instruction. Student went from not being able to \*\*\*.<sup>77</sup> Student's struggles with attention have an impact on Student's ability to make progress.<sup>78</sup>

## VII. DISCUSSION

### A. Statute of Limitations

A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2).

The two-year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. 20 U.S.C. §1415 (f)(3)(C); 34 C.F.R. § 300.507 (a)(2). Texas has an explicit statute of limitations rule. In Texas, a parent must file a request for a due process hearing within one year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request. 19 Tex. Admin. Code § 89.1151 (c).

In this case, Petitioner alleges no claims outside the limitations period.

### B. Duty to Provide FAPE

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<sup>76</sup> RE 29a at 1.

<sup>77</sup> TR Vol. III at 893-895.

<sup>78</sup> TR Vol. III at 992.

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 school district has a duty to provide FAPE to all children with disabilities ages 3-21 who are enrolled in the school district. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 29.003(b)(2).

The school 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).

### **C. Burden of Proof**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.<sup>79</sup> *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case, the School District was obligated to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. The burden of proof in this case is on Petitioner to show the School District did not do so. *Id.*

### **D. FAPE**

#### **The Four Factors Test**

The Fifth Circuit has articulated a four-factor test to determine whether a Texas school district's program meets IDEA requirements. Those factors are:

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<sup>79</sup> 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).

1. Whether the program is individualized on the basis of the student's assessment and performance;
2. Whether the program is administered in the least restrictive environment;
3. Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
4. 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 a FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include 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 a child to make progress appropriate in light of the child's circumstances.” *Endrew F.* 137 S. Ct. at 999.

A school district's obligation when developing Student's IEP is to consider Student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R. § 300.320(a)(1)(i).

Student's program was individualized on the basis of assessment and performance. A school district must conduct an FIE that meets certain requirements, determines whether the student has a disability, and identifies his or her educational needs. 20 U.S.C. §§ 1414(a)(1)(A); 1414(a)(1)(C)(i)(I)-(II); (b)(2)(A-C). Assessments and other evaluations must assess the student in all areas of suspected disability. 20 U.S.C. § 1414(b)(3)(B).

Student's initial FIE was completed and adopted by a unanimous ARD Committee in January 2018. The ARD Committee reviewed the 2018 FIE, teacher observations and reports, Parent concerns, and District Level Assessments to develop Student's IEP goals. Student struggled with basic reading, reading fluency, spelling, written expression, organization, remaining focused/on task, and completing work on time. Student's IEP included two reading goals for fluency and comprehension, one writing goal, and two behavioral goals for maintaining focus and completing work assignments. The IEP incorporated suggestions of the FIE and provided the recommended accommodations and services. In May 2018, the ARD Committee removed social skills and check-in/check-out due to Student's parent concerns of \*\*\*. This IEP was in place from January 2018 and was scheduled to continue through January 2019.

The ARD Committee convened on January \*\*\*, January \*\*\*, and May \*\*\*, 2019, for Student's annual ARD Committee meeting to develop Student's 2019 IEP. The proposed IEP considered Student's PLAAFPs, using them as the basis for Student's IEP goals and objectives. To create the PLAAFPs and the IEP, the District relied on assessments, progress reports, standardized tests, teacher input, as well as observations and parental and advocate input. Student's proposed IEP included three reading goals for fluency, decoding, and comprehension. Three behavioral goals addressed maintaining focus in the classroom, completing assignments, and self-advocating for help. The IEP included accommodations to meet Student's individual needs including: encouragement for classroom participation, access to audio books, graph paper, extra

time for completing assignments, no penalty for spelling errors, encourage the use of self-advocacy strategies, and access to a word processor.

After reviewing the 2018 IEE, the ARD Committee proposed adding Written Expression as a Specific Learning Disability to Student's eligibility to address Student's struggles with grammar, spelling, and punctuation. To address Student's parent's concerns regarding Student's anxiety, the proposed IEP recommended psychological services. Parental consent was requested to conduct an updated FBA or a full emotional/behavioral evaluation. Consent, however, was not given. Increased supports from special education were proposed to address Student's parent's concern with Student's lack of progress in reading fluency, but Student's parent did not want those supports out of fear it might stigmatize Student.

## **2. Least Restrictive Environment**

Student was educated in the least restrictive environment. The IDEA requires that a student with a disability shall be educated with non-disabled peers 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). State regulations require a school district's continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.63(c).

To determine whether a school district is educating a student with a disability in the LRE, 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 Educ.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.* This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting;
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting; and
- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

*Daniel R.R. v. El Paso Indep. Sch. Dist.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

The nature and severity of Student's disabilities impact Student's ability to be educated entirely in the general education classroom. Student requires specially designed below grade level instruction in \*\*\* and reading, in a resource classroom. Additionally, Student's IEP called for inclusion support for math and \*\*\*. Student is otherwise included in the general education classroom with Student's peers, including for math, \*\*\*. 34 C.F.R. §300.114.

Student's parent expressed that Student was \*\*\*. However, the evidence shows that Student was not the only student receiving inclusion support in the general education setting, so Student wasn't singled out and support was available from both the general education teacher and the special education teacher. Student had not mastered Student's IEP goals for reading, so the District proposed increasing Student's time in the special education setting for \*\*\* from \*\*\* days to \*\*\* days per week. Student's parent rejected the proposal. However, Student's parent did not appear to have the same level of concern for Student's \*\*\* when it came to increased dyslexia

services in the special education setting even if it meant Student being pulled out of the general education setting.

The School District doesn't have a program in a separate placement for specific disabilities because the Student's needs determine placement, not the disability. However, the School District does have a dyslexia program in the general education setting. The School District proposed a program consistent with addressing Student's needs in relation to Student's specific learning disabilities as well as Student's attentional and emotional issues in the least restrictive environment. The placement of Student at \*\*\*, a private self-contained school designed for students with dyslexia, is a more restrictive placement.

### **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. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, \*27 (S.D. Tex. 2017), *aff'd* 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to 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.*

The evidence showed Student's services were provided in a coordinated, collaborative manner by key stakeholders. Student's parent attended all ARD meetings, including by telephone when necessary, and her concerns were addressed by the School District in multiple revisions of the proposed IEP. When Student's parent and advocate had suggestions for IEP goals and Student's progress, the School District discussed and added the suggestions. For example, when Student's parent wanted Student to advocate for \*\*\*self, the School District added a behavior goal

for Student to indicate a need for assistance before a teacher checks in on Student. When Student's parent and advocate requested grade-level instruction for a fluency goal, a spelling goal, and a reading comprehension goal, the School District added those to Student's proposed IEP. Teachers, the School District's LSSP, and Student's parent were in frequent communication regarding Student's progress, \*\*\*, and engagement in school. Data collected was then put in Student's progress reports and provided to Student's parent for review. The School District offered psychological services and a full emotional/behavioral evaluation to address Student's parent concerns and Student's parent declined. The School District also made efforts to reach out to Student's private tutor and private counselor to coordinate how to best serve the Student's areas of need.

#### **4. Academic and Non-Academic Benefits**

Student's program was reasonably calculated to provide meaningful educational benefit. *Rowley*, 458 U.S. at 206-207. The program was appropriately ambitious in light of Student's unique circumstances. *Andrew F.*, 137 S. Ct. at 992.

The evidence showed Student received academic and non-academic benefit. Student was able to successfully complete Student's \*\*\* grade year with \*\*\* with Student's accommodations. Although Student did not meet grade level on the STAAR test for \*\*\*, it doesn't negate the overall progress made by Student during the 2018-2019 school year. Student began the \*\*\* grade reading at a \*\*\* DRA level and by the end of the year Student was reading at a \*\*\* DRA level. Student's fluency was below grade level, but Student could comprehend the text. Student began the school year only able to \*\*\*. By the end of the year, Student was able to compose a detailed, elaborate essay with a beginning, middle, and ending. Difficulty with reading fluency is a characteristic of dyslexia.

Student received dyslexia instruction in a small instructional group of \*\*\* students, most of whom Student knew from \*\*\*, \*\*\*. The instructor met all qualifications as required by the dyslexia manual to teach Student the concepts of the BLS curriculum laid out in Book \*\*\*. Student

made progress by demonstrating the ability to \*\*\*. Student developed the ability to \*\*\*. Student's progress was monitored by mastery checks.

Student received non-academic benefit as well. Student is described as a very intelligent, happy, curious, creative, and innovative child, who felt safe and confident to share Student's writings in front of the classroom. Student brought a unique perspective to classroom discussions, and other students learned from Student. Student participated in \*\*\* which gave Student the opportunity to build relationships with others outside of school. Student also had a core group of friends at school that Student often \*\*\*. Student's parent complained of \*\*\*; but Student's teachers did not notice any display of \*\*\* outside of the normal \*\*\*. Student also participated in social/emotional learning where different topics aimed at helping students cope with various areas that may arise, including \*\*\*.

## **5. Conclusion**

The basic floor of opportunity standard set forth in *Rowley* does not require a district to remediate a student's disability. When the four requirements set forth in *Cypress-Fairbanks v. Michael F.*, are met, a District satisfies its FAPE obligation. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 247 (5th Cir. 1997). The weight of the credible evidence shows Student's program for the 2018-19 school year was individualized on the basis of assessment and performance, was delivered in the least restrictive environment, services were provided in a coordinated, collaborative manner by the key stakeholders, and Student made academic and non-academic progress. When Student's program is considered as a whole, Student was provided a FAPE by the District. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012).

### **E. IEP during the 2019-2020 School Year**

Petitioner contends that Petitioner is entitled to tuition reimbursement because the School District did not make an appropriate offer of FAPE for the 2019-2020 school year.

Under the IDEA, a school district is not required to pay the cost of education, including special education and related services, of a child with a disability at a private school or facility if a FAPE is made available to the child and the parent elects to place the child in a private school or facility. Disagreements between the parent and the school district regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures of the IDEA and its regulations. 34 C.F.R. §300.148(a)(b).

The evidence showed the School District held three ARD Committee meetings during the 2018-2019 school year to implement an IEP for the 2019-2020 school year. The School District allowed multiple reconvene ARD Committee meetings when agreement was not reached, instead of the one required by state regulations. Tex. Admin. Code. §89.1050(g)(1). At the May \*\*\*, 2019 ARD meeting, Parent requested that the School District pay for Student to attend \*\*\* for the 2019-2020 school year, the School District declined, and the meeting ended without a consensus. The School District mailed a Prior Written Notice to Parent on May \*\*\*, 2019, indicating the proposed IEP would be implemented for the 2019-2020 school year. Student's parent gave notice to the School District on August \*\*\*, 2019, that Student would be placed at \*\*\* for the 2019-2020 school year.

Petitioner did not meet Petitioner's burden on this issue. The School District did not violate Student's parents' procedural rights and did offer an appropriate IEP for the 2019-2020 school year.

#### **F. Evaluation**

Petitioner alleges that the School District failed to evaluate Student for dyslexia.

The evidence shows that the School District evaluated Student for dyslexia in 2015. Student qualified for dyslexia services under Section 504 based on the results of the evaluation. Student's parent and advocate disagreed with Student's eligibility and requested an IEE. The 2018 IEE conducted another dyslexia evaluation of Student. Petitioner thus did not meet Petitioner's burden on this claim.

**G. Private Placement Test****1. Two-part Test**

Student must meet a two-part test in order to secure continued placement at \*\*\* at school district expense. First, Student must prove the school district's proposed program was not appropriate under the IDEA. Second, Student must prove continued placement at \*\*\* is appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370(1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993).

**2. Test Applied to the Facts**

The School District's program was appropriate and Student received a FAPE; therefore, the Hearing Officer need not address whether or not continued placement at \*\*\* is appropriate.

Petitioner did not meet Petitioner's burden in proving the School District's program was not appropriate under the IDEA. Therefore, the Hearing Officer will not address private placement at School District expense.

**VIII. CONCLUSIONS OF LAW**

1. The School District provided Student a 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. 176; *Andrew F.*, 137 S. Ct. 988 (2017).
2. All of Petitioner's claims arising under any laws other than IDEA are outside the jurisdiction of a special education hearing officer in Texas. 34 C.F.R. §§ 300.507, 19 Tex. Admin. Code § 89.1151(a).
3. Petitioner is not entitled to private placement at School District expense. *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cty. v. Carter*, 510 U.S. 7 (1993).

4. The District assessed Student in all areas of suspected disability in determining whether Student qualifies for special education. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).

### IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.
2. Petitioner's claims arising under any law other than the Individuals with Disabilities Education Act are **DISMISSED** as outside the jurisdiction of the hearing officer.
3. Petitioner's request for attorneys' fees and litigation costs are **DISMISSED** as outside the jurisdiction of the hearing officer

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

**SIGNED January 13, 2021.**



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Yvonne Patton  
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).