

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	
	§	
v.	§	HEARING OFFICER FOR THE
	§	
PEARLAND INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

**DECISION OF HEARING OFFICER**

**Introduction**

Petitioner, \*\*\* (“Student”), by next friend \*\*\* (“Parent”), filed a request for due process hearing pursuant to the Individuals with Disabilities Education Improvement Act 2004 (“IDEA”) July 2, 2021. The Respondent is Pearland Independent School District (“District”). The Notice of Filing of Request for a Special Education /due process Hearing was sent to the parties July 6.

**Procedural History**

Following Petitioner’s request for due process hearing, Respondent moved for dismissal for lack of sufficient claims. The motion was granted, and Petitioner amended the complaint July 20, 2021. In keeping with the IDEA, the timeline began again.

On August 13, 2021, the parties participated in the initial prehearing conference at which time Petitioner clarified the issues and requests for relief. Petitioner affirmed that the one-year statute of limitation applies, no exceptions to that rule were pled, and the relevant time period began July 20, 2020. The parties jointly requested and were granted a continuance of the due process hearing and an extension of the decision due date. The hearing was scheduled for December 14 and 15 with a decision due date of February 11, 2022. The hearing officer dismissed for want of jurisdiction all claims outside the IDEA. Following the prehearing conference, the instant action was reassigned to this hearing officer December 7, 2021. The due process hearing convened December 14.

**Party Representatives**

On December 14, 2021, Karen Mayer Cunningham, Authorized Non-Attorney Representative, appeared as Petitioner’s representative. Student’s next friend/parents, \*\*\* and \*\*\*, were present at all times. Janet Horton and Rebecca Bailey, Attorneys with Thompson & Horton, LLP, appeared on behalf

of Respondent. Tanya Dawson, General Counsel for District, and Paige Martin, Attorney for District, were present on behalf of Respondent. \*\*\*, Director of Special Programs for District, was present as party representative for Respondent.

### **Issues for Hearing**

The following are Petitioner's confirmed and clarified issues for hearing:

1. Whether the school district failed to provide Student with a free, appropriate public education (FAPE) within the meaning of the IDEA; specifically: From July 20, 2020- present day.
  - a. Whether the District failed to timely evaluate Student in an appropriate and comprehensive manner.
  - b. Whether the District failed to provide special education services (both related and supplementary services).
  - c. Whether the District failed to propose and fully implement an appropriate IEP for Student.
2. Child Find
  - a. Whether the District failed to identify Student as a student with a disability in need of special education instruction and related services.
3. Parental Participation
  - a. Whether the District failed to allow the parents to meaningfully participate in the decision making process.

### **Requests for Relief**

Petitioner's requests for relief are as follows:

1. Determination that the District denied Student a FAPE.
2. The District to provide training to staff members who work with Student on the ARD Process.
3. The District to provide training to staff members who work with Student on the proper procedures to ensure that the parents are equal participants and equal stakeholders as outlined in IDEA, with the training delivered by an outside entity.
4. Any other relief that the hearing officer deems appropriate.

### **Preliminary Motion**

At the outset of the hearing, Respondent's previously filed Motion in Limine was considered. Respondent sought to prevent Petitioner from introducing irrelevant and inadmissible evidence at hearing. Specifically, Respondent objected to Petitioner's Exhibit 1 and 2 for the reason that the exhibits were

regarding the “Stay Put” provision of the IDEA<sup>1</sup>, an issue that Petitioner did not previously raise. The two exhibits contained email exchanges that took place after Petitioner filed the complaint.

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.<sup>2</sup> In the instant action, Respondent did not agree otherwise.

After consideration of the motion and arguments of the parties, this hearing officer determined that a “Stay Put” issue is not among those issues pled by Petitioner and granted the Motion in Limine. The only issues to be heard and considered are those issues that Petitioner confirmed at the August 13, 2021 prehearing conference.

### **Findings of Fact**

Based on the parties’ documentary evidence and testimony of witnesses before this hearing officer, below are the findings of fact in the instant action. Citations to Petitioner’s Exhibits, Joint Exhibits, and Respondent’s Exhibits are designated with a notation of “P,” “J,” or “R,” respectively, followed by exhibit number, and page numbers as appropriate. Citations to the transcript are designated with a notation of “T” followed by the page numbers.

1. At the time of hearing, Student, a \*\*\* grader, resided in the geographical boundaries of District.<sup>3</sup>
2. District’s Child Find efforts consist of training for staff and dissemination of information to parents regarding steps they should take if they suspect their child has a disability and needs special education supports. Parent received this information in the handbook in school years 2018-2019, 2019-2020, and 2020-2021. Parent accessed the handbooks online. Parent has \*\*\* who are or have been eligible for special education services. District provided Parent procedural safeguards every year since 2016 regarding \*\*\* of Student.<sup>4</sup>
3. District monitors students’ reading progress through the Developmental Reading Assessment (“DRA”) and the Benchmark Assessment System (“BAS”). It developed a “Text Level Correlations” chart that correlates DRA levels with BAS reading levels. The assessments are given in the fall and spring of each year through \*\*\* grade. BAS levels begin with \*\*\* level A, and go through the alphabet, ending with level Z. \*\*\* grade levels are D-H. Level I falls between \*\*\* grade. \*\*\* grade levels go from level J through L. Levels B-G indicate early stages of

---

<sup>1</sup> During the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing, must remain in his or her current educational placement. unless the State or District and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. 34 C. F. R. §300.518 (a) (commonly referred to as “Stay Put”).

<sup>2</sup> 34 C.F.R. §300.511(d).

<sup>3</sup> Petitioner’s Request for Due Process Hearing.

<sup>4</sup> J-25,26, 27, 28, 29; R-1; T-pgs. 64,107-113,155-157,165-166.

reading. Levels H-M indicated transitional stages of reading. Levels N-T are self –extending and U-Z are advanced stages of reading. <sup>5</sup>

4. Parent’s concerns about Student’s education, particularly reading abilities, began as early as \*\*\* grade. At parent request, Student was evaluated for dyslexia in \*\*\* grade and did not qualify. Student experienced a handful of behavioral outbursts described as nothing that was beyond other students. Academically, Student was progressing adequately. <sup>6</sup>
5. Parent requested a behavioral consultation while Student was in \*\*\* grade. District’s Licensed Specialist in School Psychology (“LSSP”) conducted the consultation and did not observe symptoms of a disability condition. The LSSP observed some behavior problems in Student, but the behaviors were comparable to other children in the classroom. <sup>7</sup>
6. In \*\*\* grade class, Student’s teacher experienced \*\*\* and ultimately went on \*\*\* leave. The class then had a series of short-term substitute teachers until District found a long-term substitute in January 2020. As a result, guided reading groups that are used to encourage reading growth (considered Tier I intervention) did not occur consistently. Students with and without disabilities struggled academically and behaviorally. District attempted to make up some of the reading learning-loss experienced in the fall semester. The school’s assistant principal worked with the long-term substitute to hold reading groups and implement Leveled Literacy Intervention (“LLI”). In January 2020, one-half of the students were reading between levels D and I. In March of \*\*\* grade, the COVID pandemic caused schools to close. Virtual learning began and continued to the end of the school year. During \*\*\* grade, Student’s reading level went from a level \*\*\* to level \*\*\*. <sup>8</sup>
7. District uses the Fontas Pinnell LLI program. It is considered Tier 2 instruction. The program is scripted, structured and designed to accelerate reading progress to close reading gaps. When implemented with fidelity, it can accelerate reading progress at twice the rate. Daily for 20-30 minutes, Students work in small groups with a classroom aide to build their reading skills. Student received LLI in \*\*\* grade until the pandemic when LLI was not offered. <sup>9</sup>
8. During the fall semester 2020 (\*\*\* grade year), parents were given an option to return to classroom learning or continue virtual learning. Parent elected to continue virtual learning for Student; thus, Student did not receive LLI during that time. District staff contacted Parent and

---

<sup>5</sup> J-24; T-pg. 315

<sup>6</sup> R-2; T-pgs.114-115,130, 134.

<sup>7</sup> T-pgs. 226-228

<sup>8</sup> T- pgs. 115-117, 168, 386-388, 390-393, 397-401,414.

<sup>9</sup> R-5, pgs.1-2; -7, pg.12; T-pgs. 84-89,116,392-395.

suggested in-person learning for Student in order to be able to work with Student. Student remained at home until January 2021. District resumed LLI at that time.<sup>10</sup>

9. In early to mid- October 2020, Parent gave District a copy of a June \*\*\*, 2020 outside clinical evaluation of Student and requested a dyslexia evaluation. The outside evaluation diagnosed Student with attention deficit hyperactivity disorder (“ADHD”), \*\*\* (“\*\*\*”), specific learning disability (“SLD”) with impairments in reading and written expression and \*\*\* (“\*\*\*”). District staff reviewed the information and determined to evaluate Student.<sup>11</sup>
10. Parent gave written consent for the initial evaluation October \*\*\*, 2020, and received a copy of procedural safeguards.<sup>12</sup>
11. District completed a Full Individual and Initial Evaluation (“FIIE”) January \*\*\*, 2021, based on a variety of sources of data including parental input. Respondent reviewed Student’s outside evaluation. Because they were recent and tests that District’s LSSP would have used, District used the scores of the Stanford-Binet Intelligence Scales (“SB-5”) and the Wechsler Individual Achievement Test (“WIAT-III”) from the outside evaluation. Student’s full scale IQ is within the high average range. Standard scores on the SB-5 fell within normal limits of functioning, as did scaled scores on individual subtests. Student’s scores on the WIAT-III fell within normal limits of functioning in comparison to same-age peers.<sup>13</sup>
12. District’s evaluation included observations of Student and direct input from Student’s teachers. The FIIE reflected significant educational/developmental deficits in the areas of basic reading skills and reading fluency. It reflected significant emotional/behavioral deficits in the area of attention/focus. Student did not meet the criteria for dyslexia or a related disorder because Student’s phonological processing was average. The evaluation did not show significant weaknesses in comprehension; thus Student did not meet criteria for SLD in Reading Comprehension.<sup>14</sup>
13. Intervention through LLI had been provided since referral at the end of Student’s \*\*\* year. The conclusion in the FIIE was that Student’s reading level had not progressed satisfactorily since \*\*\* grade according to the BAS, and that Student was at a reading level \*\*\*, approximately beginning \*\*\* grade level. Student met the criteria for SLD in basic reading skills, and reading fluency.<sup>15</sup>

---

<sup>10</sup> R-5, pg.7; R-7, pg.13; R-8, pgs. 4,7-8; T-pgs. 168-172

<sup>11</sup> J-1; T-pgs. 113-114, 135

<sup>12</sup> J-2.

<sup>13</sup> J-4.

<sup>14</sup> J-4; J-7, pg. 12; T-pgs. 38-39, 200-203.

<sup>15</sup> J-4, pgs.18-20.

14. With respect to written expression, the FIIE concluded that Student performed adequately on a norm-referenced measure of sentence composition, and below average on a measure of spelling.<sup>16</sup>
15. The FIIE did not find that Student met the criteria as a student with dyslexia.<sup>17</sup>
16. Student presented with symptoms consistent with ADHD predominantly related to inattention and difficulty focusing. Neither the examiner nor teachers report any significant concerns regarding Student's activity level at school. Student had an outside diagnosis of ADHD. Student met eligibility criteria under other health impairment ("OHI").<sup>18</sup>
17. At the completion of District's January 2021 FIIE, District staff sent a copy of the report to Parent. Prior to the ARDC meetings, District sent drafts of the proposed IEPs to Parent.<sup>19</sup>
18. Student's initial admission, review, and dismissal committee ("ARDC") was held March \*\*\*, 2021. Parent was present. Student met eligibility for special education under the classifications of OHI due to ADHD and SLD in the areas of basic reading and reading fluency. At that time, Student was reading on BAS level \*\*\*, at a rate of \*\*\*% accuracy.<sup>20</sup>
19. Student's PLAAFP identified Student's critical needs in the areas of reading fluency and basic reading skills. The ARDC developed two goals: reading fluency and decoding. It provided accommodations such as small group instruction, clear directions to Student, minimize distractions, clear and precise directions, reminders to stay on task, and preferential seating to support Student's OHI needs. Parent requested a behavior goal. The ARDC considered the request and determined that it was not required. Parent was in disagreement and waived 5-day notice to implement services. The parties agreed to a 10-day recess. District provided prior written notice of the ARDC's decisions. District began implementation of the IEP.<sup>21</sup>
20. Student's schedule of services included 45 minutes per day in \*\*\* class for \*\*\*), 30 minutes per day of math inclusion and 15 minutes per day of \*\*\* inclusion in the general education setting.<sup>22</sup>
21. The ARDC reconvened April \*\*\*, 2021. Parent was present. Student's teachers indicated that they provided accommodations in the classroom for Student's attention issues. The meeting ended in disagreement due to District members' position that a behavior goal was not necessary; rather, accommodations addressed Student's attention difficulties. Parent wanted a goal for

---

<sup>16</sup> J-4, pg 19.

<sup>17</sup> J-4, pg. 20.

<sup>18</sup> J-5, pg. 20.

<sup>19</sup> R-6; T-173-175

<sup>20</sup> J-7 pgs. 2, 12; J-24; T-pgs. 34-35, 96

<sup>21</sup> J-7 pgs. 10-15, 25, T-pgs. 45-56, 62-63.

<sup>22</sup> J-7, pg. 4

Student's OHI disability. District provided Notice of Decision Prior Written Notice. Parent waived the 5 days and Student began to receive support.<sup>23</sup>

22. At the end of April 2021, Student was reading \*\*\*% accuracy.<sup>24</sup>
23. In the fall 2021, after working with Student, the special education teacher observed that Student would stop reading to make connections in the text or give input between sentences. This impacted Student's fluency. The ARDC met October \*\*\*, 2021 and added a behavioral/fluency goal to Student's IEP.<sup>25</sup>
24. Student made \*\*\* in \*\*\* in \*\*\* grade. Student's reading grades were \*\*\*. Student's final grades in \*\*\* grade ranged from \*\*\*.<sup>26</sup>
25. In \*\*\* grade, Student's final grades were: \*\*\*.<sup>27</sup>
26. Student scored \*\*\* on the\*\*\* section of the State of Texas Assessments of Academic Readiness ("STAAR") \*\*\* grade assessment, considered as "performed satisfactorily." Student did not perform satisfactorily in the \*\*\* grade \*\*\* section of the STAAR, making a score of \*\*\*. As a result, Respondent placed Student in an Accelerated Learning plan for \*\*\*.<sup>28</sup>
27. In \*\*\*, Student made adequate progress.<sup>29</sup>
28. On the fall assessment in \*\*\* grade, Student's DRA reading level was \*\*\*. When correlated to BAS, it was level \*\*\*. The spring assessment indicated a reading level of \*\*\*. When correlated to BAS, it was level \*\*\*. Student made adequate progress in reading in \*\*\* grade.<sup>30</sup>
29. On the fall assessment of \*\*\* grade, Student's BAS reading level was \*\*\*. The spring assessment indicated a reading level of \*\*\*.<sup>31</sup>
30. Student returned to in-class learning in January 2021 (mid-\*\*\* grade) after virtual learning from the spring of 2020. Student was reading on BAS level \*\*\*.<sup>32</sup>
31. In October 2021, Student's independent reading level was Level \*\*\*.<sup>33</sup>
32. At the time of the hearing, Student performed at instructional level \*\*\*.<sup>34</sup>

---

<sup>23</sup> J-11 pgs. 11-13.

<sup>24</sup> R-20, pgs. 6-18

<sup>25</sup> J-13 pgs. 5, 11-15; J-24; T-pgs. 56-59, 63-64.

<sup>26</sup> J-16

<sup>27</sup> J-16

<sup>28</sup> J-17, 18

<sup>29</sup> R-13; T-pg. 385

<sup>30</sup> J-24; R-13; T-pg. 384

<sup>31</sup> J-24; R-13

<sup>32</sup> R-5.

<sup>33</sup> J-13, pg. 12

<sup>34</sup> T-pgs. 317-318

33. Student's case manager lesson plans each week with Student's teachers. They discuss any struggles that may be occurring, what is being worked on, and if there is anything either party needs to do. They collaborate on Student's grades.<sup>35</sup>
34. District pulls the needed parts of a child's IEP and provides them to a child's teachers. The parts are called a "teacher bundle." The bundle includes determination of services, schedule, accommodations, state assessment, and goals for the special education child.<sup>36</sup>

### **Burden of Proof**

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE.<sup>37</sup> The burden of proof is therefore on Petitioner to show the District violated its obligations under the IDEA and did not provide Student a FAPE.

### **Statute of Limitations**

Respondent asserts the statute of limitations as an affirmative defense and therefore has the burden to show evidence of the accrual of the action.<sup>38</sup>

The applicable federal law provides the following with regard to the statute of limitations: "A parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows."<sup>39</sup> The State of Texas has an explicit time limitation for requesting a hearing. "A parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request."<sup>40</sup>

In a due process hearing request under the IDEA, there are two explicit exceptions to the timeline for making the request. The timeline does not apply to a parent if the parent was prevented from requesting a due process hearing due to specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint, or the local education agency's withholding of information from the parent that was required under this part to be provided to the parent.<sup>41</sup>

---

<sup>35</sup> T-pgs. 320-321

<sup>36</sup> R-7; T-pg. 302.

<sup>37</sup> *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

<sup>38</sup> *G.I. v. Lewisville Indep. Sch. Dist.*, 2013 WL 4523581, \*8, Case No. 4:12cv385 (E.D. Tex. August 23, 2013).

<sup>39</sup> 34 C.F.R. §300.507; 20 U.S.C. §1415(f)(3)(C).

<sup>40</sup> 19 Texas Administrative Code § 89.1151(c).

<sup>41</sup> 3 C.F.R. §300.511(f); 20 U.S.C. §1415(f)(D).



Petitioner filed the amended request for due process hearing and complaint with the Texas Education Agency July 20, 2021, and agreed that the one-year limitations rule applied; thus only allegations of violations of the IDEA that occurred one year prior the date of the complaint would be considered.<sup>42</sup>

Respondent argues that Petitioner knew or should have known that Student may have had a disability and needed special education services from at least \*\*\* grade when Parent voiced concerns and requested a dyslexia evaluation, or at the latest, when she received the outside evaluation that diagnosed Student with disabilities in June 2020. Respondent argues that Parent was familiar with her rights under the IDEA and had detailed information regarding steps to take if she had concerns about Student's education. Further, it correctly argues that Petitioner failed to prove one of the two exceptions to the limitations rule. Thus, Respondent reasons that Petitioner failed to timely file the due process hearing request and complaint, and argues that it should be dismissed as time barred. Certainly, any claims that arose outside the one-year statute of limitations are time barred.

Petitioner claims that District violated its Child Find duty, an affirmative ongoing obligation. At least some of Petitioner's claims of violation of that duty may have accrued within the applicable statute of limitations.<sup>43</sup> The one-year statute of limitations applies in this case and Petitioner's claims are limited only to those that arose within one year of the filing of this request for a due process hearing. Thus, this decision will consider only those allegations of violations of the IDEA that may have occurred from July 24, 2020 to July 24, 2021 ("the relevant time period").

### **Child Find**

The Child Find duty imposes on each school district an affirmative obligation to have policies and procedures in place to locate and timely evaluate children with suspected disabilities in its jurisdiction. This includes children who are suspected of being a child with a disability and in need of special education, even though they may be advancing from grade to grade.<sup>44</sup> This continuing duty is triggered when a school district has reason to suspect a child has a disability and has reason to suspect the child needs special education services. When such suspicions arise, the school district must evaluate the child within a reasonable time after notice of behavior likely to indicate a disability.<sup>45</sup>

---

<sup>42</sup> Prehearing Conference Tr. Pg. 6.

<sup>43</sup> *Independent School District No. 283 v. E.M.D.H., a minor, by and through her parents and next friends, L.H. and S.D.*, 960 F.3d 1073 (8<sup>th</sup> Cir. 2020), *cert. denied*, \_\_\_ U.S. \_\_\_ (U.S. Oct. 4, 2021)(No. 20-905); 121 LRP 33986.

<sup>44</sup> 34 C.F.R. §§300.111(a) and (c) (1); *El Paso Indep. Sch. Dist. v. Richard R. R.*, 567 F. Supp. 2d 918, 950 (W. D. Tex. 2008).

<sup>45</sup> *Id.* at 950; *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 (5<sup>th</sup> Cir. 2017); *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5<sup>th</sup> Cir. 2018); *Spring Branch Indep. Sch. Dist. v. O. W. by Hannah W.*, 961 F.3d 781, 790-791 (5<sup>th</sup> Cir. 2020).

When a child is suspected of having a specific learning disability, a school must determine that underachievement is not due to lack of appropriate instruction in reading or math.<sup>46</sup> Respondent argues that Petitioner failed to show that Student's underachievement prior to October 2020 was caused by a qualifying condition, rather than a lack of appropriate instruction.

In discussing student performance, The Office of Special Education and Rehabilitative Services addressed limited instruction during the COVID pandemic:

“Levels of student performance primarily attributable to limited instruction do not mean the student requires special education and related services under IDEA. IDEA's Child Find and eligibility procedures are designed to identify, locate, and evaluate students with a suspected disability to determine whether, as a result of the disability, the student requires special education and related services. IDEA's regulations in 34 C.F.R. § 300.306(b) specifically state that a child must not be determined to be a child with a disability if the determinant factor is due to a lack of appropriate instruction in reading or math.”<sup>47</sup>

The evidence reflects that Student made adequate progress in \*\*\* grade. Regrettably, \*\*\* grade was fraught with disruption. In the fall 2019, Student's teacher had \*\*\* and ultimately went on \*\*\* leave. District was unable to find a long-term substitute teacher until toward the end of the first semester; thus, the class had a series of temporary teachers. During that time, instruction was inconsistent and limited. Guided reading groups were not provided. Students, both with and without disabilities, suffered academically.

Following the disruptive fall semester, District was forced to close due to the COVID pandemic. LLI intervention ceased to be offered, and virtual learning took place. Children did not return to campus for the remainder of the school year.

When the campus reopened in the fall 2020, Student continued learning at home through the end of the first semester of \*\*\* grade, totaling at least six months of virtual learning. In light of the limited instruction in the fall semester, followed by school closure due to the COVID pandemic, and Student's virtual learning in the fall of \*\*\* grade, it cannot be determined that District had reason to suspect that Student had a disability and needed special education services during that timeframe.

The outside evaluation report included diagnoses of ADHD, \*\*\*, \*\*\*, and SLD in reading and written expression. When Parent presented the June 2020 report to Respondent in October 2020, District had reason to suspect that Student had a disability and was in need of special education and related

---

<sup>46</sup> 34 C.F. R. §300.309(b); 19 Tex. Admin. Code §89.1040(c)(9)(A).

<sup>47</sup> *Return to School Roadmap: Child Find under Part B of the Individuals with Disabilities Education Act*, Office of Special Education and Rehabilitative Services, OSEP QA 21-05.

services. Rather than only evaluating Student for dyslexia as Parent requested, Respondent determined to conduct a full individual evaluation.

While Student was at home in the fall 2020, Student's teacher contacted Parent asking about the possibility of Student's return to campus in order for Student to receive more assistance. Once Student returned to in-class learning, District resumed intervention through the use of the LLI program. By the spring of \*\*\* grade, Student's reading level was \*\*\*. At the time of hearing, Student's reading had increased to level \*\*\*.

Petitioner failed to show that Student's levels of performance was not primarily attributable to limited instruction. Neither did Petitioner show that during the Respondent had reason to suspect that Student had a disability and needed special education services until it received a copy of the June 2020 outside evaluation. Due to the unusual circumstances during Student's \*\*\* grade, I do not find that District violated its Child Find duty from July 24, 2020 through October 2020.

#### **Issue: Parental Participation**

In Student's \*\*\* and \*\*\* grades, Parent was in communication with Student's teachers. Student's \*\*\* grade teacher obtained a behavioral consult. Student's \*\*\* grade teacher and Parent emailed each other regarding Student's behaviors. District's LSSP was in contact with Parent, as well. Student's case manager met regularly with Student's teachers and the group worked specifically on Student's program.

Following completion of the FIIE, District staff sent a copy of the report to Parent. Parent attended all ARDC meetings and was accompanied by a parent advocate. The evidence is clear that Parent felt free to talk during the meetings. Parent agreed that opportunities were provided for questions at the ARDC meetings. Parent testified, "Yes, I do believe I was able to speak and say my side and my concerns."

Prior to the ARDC meetings, District sent proposed goals and PLAAFPs to Parent and asked for her input regarding any changes. The evidence shows that changes were made to Student's proposed IEP based on parent/advocate input. Examples include revisions to Student's reading fluency and basic reading goals and agreement to provide hard copies of notes. When Parent disagreed with some decisions, she was offered a 10-day recess. While District members did not agree to every request of Parent, the evidence supports a finding that the committee encouraged Parent to provide her input and considered those requests.<sup>48</sup>

---

<sup>48</sup> *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003).  
Student v. Pearland ISD  
Docket No. 219-SE-0721  
Decision of Hearing Officer  
February 20, 2022  
Page 11 of 16

### **Issue: FAPE**

The IDEA guarantees a student with a disability must be provided with “a basic floor of opportunity” consisting of specialized instruction and related services which are individually designed to provide the student with an educational benefit.<sup>49</sup> However, the educational benefit must be more than a “mere modicum” and not “de minimis.” Instead, the IEP must be likely to produce progress and not regression or trivial advancement. The educational benefit the IEP is designed to achieve must be “meaningful.”<sup>50</sup> In this jurisdiction the Fifth Circuit has established a four factors test to determine whether the school district’s educational program meets this standard in providing the student with a free, appropriate public education under the IDEA.<sup>51</sup> Those four factors are:

- (1) Was the program individualized on the basis of the student’s assessment and performance?<sup>[L] [SEP]</sup>
- (2) Was the program administered in the least restrictive environment?<sup>[L] [SEP]</sup>
- (3) Were the services provided in a coordinated and collaborative manner by key stakeholders?
- (4) Were positive academic and non-academic benefits demonstrated by the program?<sup>[L] [SEP]</sup>

These four factors need not be accorded any particular weight nor be applied in any particular way. The factors are indicators of an appropriate program.<sup>52</sup> [L] [SEP] An IEP is to be reviewed as it existed at the time the hearing request was filed.<sup>53</sup>

#### **Factor 1: Was the program individualized on the basis of Student’s assessment and performance?**

Following Petitioner’s presentation of the June 2020 outside evaluation, Petitioner timely referred Student for an evaluation. Parent provided consent to the FIIE evaluation October \*\*\*, 2020. The FIIE was completed January \*\*\*, 2021. Respondent used a variety of technically sound assessment tools and strategies to gather relevant information about Student. District included information provided by Parent. No use of a single measure or assessment was used as the sole criterion for determining whether Student is a child with a disability and for determining an appropriate IEP for Student. Respondent assessed Student in all areas of suspected disabilities. District reviewed and included information from Student’s outside evaluation. The FIIE was individualized, comprehensive and appropriate. It met the procedural requirements of the IDEA.<sup>54</sup>

---

<sup>49</sup> *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189 (1982).

<sup>50</sup> *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 246-248 (5th Cir. 1997).

<sup>51</sup> *Id.* 118 F. 3d at 247-248; *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988 (U.S 2017); *E.R. v. Spring Branch Ind. Sch. Dist.*, 909 F. 3d. 754 (5<sup>th</sup> Cir. 2018).

<sup>52</sup> *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

<sup>53</sup> *Z.F. v. Harrison Cnty.*, 2005 WL 2373729 (D.C. Ind. 2005).

<sup>54</sup> 34 C.F.R. §§300.304, 300. 305.

The initial ARDC met in March 2021 and reviewed the FIIE data and timely determined that Student has a disability and is in need of special education services. Student's PLAAFP was thoroughly discussed. Teachers reported no significant concerns regarding hyperactivity in Student. Student participated in classroom activities, but required reminders to remain on task. Student expressed \*\*\*self fluently and had good comprehension of grade level text that was read to Student. Student's basic reading skills impacted Student's performance on grade-level activities and assessments. Student's math reasoning skills were good.

The ARDC developed proposed goals that addressed basic reading skills and reading fluency. At the time of the ARDC meeting, Petitioner wanted a goal to address Student's OHI eligibility, Student's teachers found that Student was easily redirected and compliant, and saw no need for a goal for behavior. Parent gave consent for special education services to commence despite disagreement with parts of Student's IEP.

Petitioner again raised the issue of adding a behavior goal at the reconvened ARDC meeting held in April 2021. Again, Student's teachers believed behavior could be redirected in the classroom. District members of the committee explained that Student's evaluation data and teacher input did not support a finding of a learning disability in the areas of reading comprehension and written expression.

In October of Student's \*\*\* grade, the ARDC met again. The resource and inclusion teacher had tried a variety of strategies to help Student to decrease the number of times that Student stopped while reading to discuss what Student read, but with little success. The ARDC added a behavior goal to address this off task behavior.

Petitioner argued that a child's disability requires a goal for that disability. However, Petitioner failed to produce any credible evidence or case law in support of this position. At the time of the initial ARDC meeting, Student's critical needs were addressed with two goals. It is that IEP that is considered when determining the appropriateness of Student's program. Petitioner failed to carry the burden of showing that the March/April IEP was not individualized based on assessment and performance.

**Factor 2: Was the program administered in the least restrictive environment?**

Student was in general education class with the exception of \*\*\* minutes of daily \*\*\*. Parent's advocate agreed with \*\*\* support. Parent requested in class support in Student's general education setting during \*\*\*. Respondent complied with Parent's request. Student's program was administered in the least restrictive environment.

**Factor 3: Were the services provided in a coordinated and collaborative manner by key stakeholders?**

The record is replete with instances that support a finding that Respondent collaborated with Parent at every ARDC meeting. District sent the FIIE report to Parent. It sent the proposed IEP to Parent before the ARDC meeting. The proposed IEP was amended in response to parental input. Parent testified that she was able to say what she wanted to say at the ARDC meetings. While the District members did not agree to all of Parent's requests, it is not required to do so. The ARDC has responsibility for the development of a child's IEP. No one member can dictate decisions.<sup>55</sup>

Respondent sent a teacher bundle to Student's teachers. The bundle included determination of services, schedule, accommodations, state assessment, and Student's goals.

Ms. \*\*\*, who was Student's case manager, collaborate and coordinated weekly with Student's teachers. At the meetings, the group planned Student's lessons grades, and discussed any needs that may have arisen.

The credible evidence shows that Student's services were provided in a coordinated and collaborative manner by key stakeholders.

**Factor 4: Were positive academic and non-academic benefits demonstrated by the program?**

Student's IEP was implemented in the latter part of the 2020/2021 school year. At the time of Student's eligibility for special education services, Student's BAS reading level was \*\*\*. Student read at a rate of \*\*\*% accuracy. Two months later in May 2020, Student's BAS level was \*\*\* with \*\*\*% accuracy, fluency at \*\*\*. Student's progress report indicated that Student had mastered Objective One of Student's decoding goal by the end of that school year. By October 2021, Student was reading at a level\*\*\*. At the time of the hearing, Student had progressed to a level \*\*\*.

At the October 2021 ARDC meeting, teachers reported that Student's behavioral skills were commensurate with Student's peers. Student responded well to redirection when off-task. No behavioral incidents were reported. The evidence supports a finding that Student received positive academic and non-academic benefits from Student's education program.

The overall credible evidence supports a finding that Respondent conducted its FIIE in accordance with the IDEA. Student's program was individualized based on Student's assessment and performance. The IEP provided appropriate supports and accommodations, and was fully implemented in the least restrictive environment in a coordinated and collaborative manner by the key stakeholders. The program resulted in positive academic and non-academic benefits. Having found that all four factors were met, this hearing officer finds that Petitioner failed to carry the burden of proving that Respondent denied Student a FAPE.

---

<sup>55</sup> *Rockwall Indep. Sch. Dist. v. M.C.*, 816 F.3d 329, 339 (5<sup>th</sup> Cir. 2016).  
Student v. Pearland ISD  
Docket No. 219-SE-0721  
Decision of Hearing Officer  
February 20, 2022  
Page 14 of 16

### Conclusions of Law

1. Student is eligible for special education services as a student with a disability under IDEA, 20 U.S.C. §1400 et. seq. and its implementing regulations. Pearland Independent School District is responsible for providing the student with a FAPE.
2. The one-year statute of limitations rule applies in the instant action. The relevant time period is July 24, 2020-July 24, 2021. 34 C. F. R. 34 C.F.R. §300.507; 20 U.S.C. §1415(f)(3)(C).
3. Due to lack of appropriate instruction in \*\*\* (limited instruction) during the 2019/2020 school year, Respondent did not have reason to suspect that Petitioner had a disability and was in need of special education services until October 2020. Within a reasonable time period after notice, Respondent referred Student for an evaluation. Respondent did not fail in its Child Find duty. 34 C.F. R. §300.309(b); 19 Tex. Admin. Code §89.1040(c)(9)(A); *El Paso Indep. Sch. Dist. v. Richard R. R.*, 567 F. Supp. 2d 918, 950 (W. D. Tex. 2008).
4. Respondent provided Parent the opportunity to participate in the development of Petitioner's individualized education program. 34 C.F.R. §300.322; *W.V. v. Copperas Cove Indep. Sch. Dist.*, 826 Fed. Appx. 374 (5<sup>th</sup> Cir. 2020).
5. Respondent provided Petitioner a free, appropriate public education. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988 (U.S 2017); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 246-248 (5th Cir. 1997).

### **ORDERS**

IT IS ORDERED that all requests for relief are DENIED.

SIGNED on February 20, 2022.

---

Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas

### **NOTICE TO THE PARTIES**

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, 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 A civil action brought in Student v. Pearland ISD  
Docket No. 219-SE-0721  
Decision of Hearing Officer  
February 20, 2022  
Page 15 of 16

state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).