

SOAH Docket No. 701-24-06551.IDEA
TEA Docket No. 104-SE-1223

Before the State Office of Administrative Hearings

STUDENT, by next friends * and ***,
Petitioner**

v.

**Collinsville Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friends *** and *** (***) and, collectively, Petitioner), brings this action against Collinsville Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issue in this case is whether the District provided

Student a free appropriate public education (FAPE). The Hearing Officer concludes that it did.

II. DUE PROCESS HEARING

The due process hearing was conducted on May 21-22, 2024, through the Zoom videoconferencing platform. It was a closed hearing, and the proceedings were recorded and transcribed by a certified court reporter. Petitioner was represented by attorney Jordan McKnight. His legal assistant, Debra Liva, was present during the first day of the hearing. Student's ***, Student's legal guardians, were also present.

Respondent was represented by its attorneys, Rebecca Bradley and Angelica Sander with Abernathy Roeder Boyd & Hullett, P.C. ***, the District's Superintendent, attended as party representative. ***, the Special Education Director for the Grayson County Special Education Cooperative (Co-op), was also present.

The parties did not submit any joint exhibits.¹ Petitioner submitted 36 exhibits. Petitioner's Exhibit 12 was admitted over Respondent's relevance objection and subject to its hearsay objection. All but one of Petitioner's remaining exhibits were admitted. Respondent submitted 26 exhibits, and they were admitted into evidence without objection.

¹ The parties were ordered to confer and submit joint exhibits to avoid duplicative documents in the administrative record. *See* Order No. 1, Guidelines at 17; Order No. 3 at 5; Prehearing Tr. (Jan. 12, 2024) at 19; Prehearing Tr. (May 3, 2024) at 5. Counsel failed to do so and submitted numerous duplicative exhibits, including Respondent's Exhibits 1-3, 5, 6, 8, 10-14 and Petitioner's Exhibits 1-9, 13-16, 28-36. Where there are duplicates in the record, the Hearing Officer cites to Petitioner's Exhibits.

Petitioner called Student's *** (***) and Student's *** grade *** teachers to testify. Respondent called Student's *** and *** grade *** teacher; the dyslexia coordinator and interventionist who provided dyslexia services to Student; the Special Education Director for the Co- op;² the Superintendent; and ***, the Executive Director of Special Populations for *** Independent School District. Ms. *** provided testimony regarding her review of Student's education records.³

Both parties timely filed written closing briefs on June 24, 2024. The Decision in this case is due July 17, 2024.

III. PETITIONER'S ISSUES AND REQUESTED RELIEF

A. ISSUES

The relevant timeframe in this matter falls within the two-year statute of limitations, and Petitioner raised the following issues for decision:

1. Whether the District denied Student a FAPE by failing to develop an appropriate individualized education program (IEP) reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances;
2. Whether the District denied Student a FAPE by failing to properly implement Student's IEP; and

²School districts in Texas may enter into agreements with one another to share special education resources. These agreements are referred to as a shared service arrangement (SSA) or a cooperative (co-op). Tex. Educ. Code § 29.001. The Grayson County Co-op serves eleven school districts, including Respondent. Tr. at 359.

³ Respondent listed Ms. *** as an expert on its witness list during disclosures, and she was allowed to observe the entire hearing to facilitate her testimony. Respondent, however, did not proffer Ms. *** as an expert.

3. Whether the District failed to provide *** with an opportunity for meaningful participation in the educational decision-making process.

B. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to provide an independent educational evaluation (IEE) in all areas of actual or suspected disability;
2. Order compensatory education and related services to address Student's areas of disability and/or need, including private tutoring;
3. Order the District to create a plan that requires it to communicate effectively with *** and that provides timely access to all records available to *** under the IDEA;
4. Reimbursement for expenses related to educational or diagnostic services; and
5. Any and all other remedies Petitioner may be entitled to under the law.

IV. FINDINGS OF FACT

1. Student is a ***-year-old *** grader who attends *** in the District and lives with **. Student is polite, attentive, hard-working and gets along well with Student's classmates. *** are Student's legal guardians and educational decision-makers.⁴
2. Special education services in the District are provided by the Grayson County Co-op. The Co-op completed a full and individual evaluation (FIE) of Student in March 2019. According to the FIE, Student presented with average abilities in the following cognitive domains: comprehension-knowledge, short-term memory, visualization, processing speed, and auditory processing. Student, however, demonstrated relative weakness in long-term retrieval and fluid

⁴ Petitioner's Exhibit (PE) 1; Respondent's Exhibit (RE) 7 at 21; RE 22 at 13; Transcript (Tr.) at 25-27.

reasoning and performed in the below average range across all academic areas assessed including reading, math, and written expression.⁵

3. Student also scored in the below average range for receptive and expressive communication. Shortly after the FIE was completed, however, ***.⁶
4. Deficits in long-term retrieval impact the ability to recall previously learned information; retrieve specific words; and memorize facts. Meanwhile, deficits in fluid reasoning affect the ability to draw inferences; problem solve; transfer and generalize information; transform or extend a concept; and think conceptually.⁷
5. Evaluators concluded that Student demonstrated a pattern of strengths and weaknesses in cognitive ability and achievement and, therefore, met the eligibility criteria for a specific learning disability in basic reading skill, reading comprehension, math calculation and problem-solving, and written expression. Written expression has two components: a mechanical aspect, which relates to legibility, and a conceptual aspect—the actual output or content.⁸
6. Consistent with the results of Student’s FIE, Student was also identified with dyslexia. Student received dyslexia services through the **. The ** consists of **, and progress through the program requires meeting mastery criteria at the end of each **.⁹

2021-2022 School Year: ** Grade

7. Student’s admission, review, and dismissal (ARD) committee completed a review of existing evaluation data (REED) on October **, 2021. ** attended the meeting and provided input. Neither ** nor

⁵ PE 1 at 7-9.

⁶ RE 1 at 14.

⁷ PE 1 at 7; Tr. at 352.

⁸ PE 1 at 10, 14-15; Tr. at 372-73, 447.

⁹ PE 3 at 1; PE 5 at 22; Tr. at 323-24.

Student's teachers had any concerns regarding Student's receptive and expressive language or Student's articulation and fluency skills. Student was able to convey ideas and had no difficulty understanding and following oral directions. Upon completing the REED, the ARD committee met for the annual meeting to review Student's IEP. ¹⁰

8. The committee reviewed Student's present levels of academic achievement and functional performance ("present levels"). Student was working on *** in the *** program. Student's average accuracy for passages included in the program was ***%, but Student's accuracy with respect to *** grade-level text was ***%. This level of accuracy on grade-level text impairs reading comprehension. Meanwhile, Student's average *** accuracy was ***%.¹¹
9. According to the present level statements in Student's IEP, Student mastered Student's math goals related to ***, and Student demonstrated relative strengths in ***. Student struggled, however, with ***.¹²
10. The ARD committee developed IEP goals to meet Student's needs based on Student's present levels. The committee created a reading goal to increase Student's grade-level reading accuracy to ***%; a *** goal to improve Student's ability to ***; another *** goal to increase Student's *** accuracy to ***%; and a math goal to ***.¹³
11. Student's accommodations included: clarifying vocabulary and concepts; reading math problems to Student; allowing Student to leave class for individualized assistance; previewing text before reading; providing reading assistance upon request; scaffolding steps in a process (such as solving word problems); seating near the teacher; and teacher checks for understanding. In math, Student had access to manipulatives and supplemental aides, including math

¹⁰ PE 2 at 1-13; PE 3 at 23; Tr. at 163-64.

¹¹ PE 3 at 2.

¹² *Id.*

¹³ PE 3 at 4-5.

charts and mnemonic devices. Student was also allowed to complete work the next day, was exempt from reading in front of Student's classmates, and was not penalized for spelling errors. Finally, instructional passages were read aloud to Student for comprehension purposes, and Student received oral administration of tests in a small group.¹⁴

12. Student received all instruction and services in the general education setting with supplementary aids and services, including 90 minutes of inclusion support every week both in *** (***) for a total of 180 minutes. Inclusion support is provided to a group of students in the general education setting.¹⁵
13. Consistent with the cognitive profile from Student's 2019 FIE, Student struggled with retrieval of previously learned information and had difficulty with multi- step problem-solving. Deficits in these areas can impact a student's performance on the State of Texas Assessments of Academic Readiness (STAAR).¹⁶
14. Student *** STAAR in *** grade, but Student achieved ***. *** for purposes of the STAAR test is considered passing. Student scored in the ***. This was an improvement over Student's *** grade performance on the *** STAAR in which Student scored in the *** percentile and ***.¹⁷
15. Student's STAAR results further indicated that Student's *** increased from *** (as measured by the *** grade *** STAAR) to ***, and Student's *** increased from *** in *** grade to ***. A *** level is a quantitative measurement that indicates a student's *** ability or the difficulty of *** while a *** level represents the difficulty of a *** and a student's

¹⁴ PE 3 at 7-8, 17.

¹⁵ PE 3 at 13; Tr. at 313, 354.

¹⁶ PE 1 at 7; Tr. at 107-08, 286, 311-12, 326, 351-53, 425-27.

¹⁷ PE 25; PE 26; PE 27; PE 32; Tr. at 27-28, 108-11.

understanding of them. According to a summary of test results provided by TEA to parents and guardians, Student's scores reflected limited progress in *** and expected progress in *** from *** grade.¹⁸

16. The *** portion of the STAAR test is difficult for students with dyslexia to pass. It includes ***, and these students expend a great deal of energy ***. The amount of effort spent *** is exhausting and interferes with comprehension. These students can fail to pass the STAAR test but still make progress that is appropriate for them.¹⁹
17. By May ***, 2022, Student mastered Student's reading accuracy, ***, and math goals. Although Student continued to struggle with ***, Student's ability to do so increased from ***% in December 2021 to ***% in May 2022.²⁰
18. Student's ARD committee met on May ***, 2022, to review Student's performance on the STAAR and develop an accelerated instructional plan. The plan included 30 hours of accelerated instruction in *** to be provided during the school day. The meeting ended in agreement.²¹

2022-2023 School Year: * Grade**

19. On August ***, 2022, the Superintendent sent *** a letter outlining a communication plan for Student ***. According to the letter, the frequency of phone calls, emails, and campus visits from *** was monopolizing the time of District employees and hindering them from completing assigned tasks, teaching students, and communicating with other parents and guardians. The communication plan required *** to communicate only with the Superintendent by email. Communication

¹⁸ PE 28; PE 29, PE 30, PE 32; RE 10.

¹⁹ Tr. at 325-26, 328-29, 354-55, 353, 358.

²⁰ RE 13 at 1-2; Tr. at 328-29, 354-55, 358.

²¹ PE 4.

attempts by phone, email, or handwritten notes to District staff other than the Superintendent would not be accepted or receive a response.²²

20. The letter further provided that campus staff would continue to contact *** directly to schedule ARD committee meetings, teacher conferences, or to address disciplinary matters. *** was also allowed to visit the campus for scheduled meetings and events open to all parents. If, however, *** interrupted the instructional environment while on campus, the letter warned that additional repercussions could occur.²³
21. Student's *** teachers made an effort to build a positive relationship with ***, and the *** teacher and Special Education Director for the Co-op continued to communicate directly with *** even after the August 2022 communication plan was put into place.²⁴
22. The ARD committee met on October ***, 2022, for Student's annual meeting. *** attended and participated by telephone.²⁵
23. The Committee reviewed Student's present levels. Student was ***. As for written expression, Student was able to ***. Student needed to continue working on math skills and required accommodations and inclusion services. *** asked questions about Student's progress in ***. District staff pointed out that Student had almost completed *** dyslexia program and had mastered Student's IEP goals from the previous year.²⁶
24. The ARD committee developed new IEP goals based on Student's present levels. The IEP included two *** goals and a *** goal. The first *** goal targeted Student's ability to determine the meaning of grade-level

²²PE 35; RE 19; Tr. at 29-31, 347-48, 402-03.

²³PE 35.

²⁴RE 17; Tr. at 291-95, 330-31, 348.

²⁵PE 5; RE 4 at 3; Tr. at 289-90.

²⁶PE 5 at 16-17; RE 13 at 3-4; Tr. at 163-64.

academic words. The second *** goal addressed Student's needs in both reading and written expression and focused on Student's ability to determine the ***. The math goal required Student to ***.²⁷

25. Student's accommodations were updated from the previous year and included (among others): making corrections to assignments below a 70, providing study sheets or summaries, and reading assistance upon request. In math, Student continued to have access to manipulatives and supplemental aides. Student was also given a copy of class notes, had access to spelling assistance, and was allowed extra time to complete assignments.²⁸
26. Student received all instruction and services in the general education setting with supplementary aids and services, including 90 minutes of inclusion support every week in *** (for a total of 180 minutes across both subjects). Student's *** teacher would occasionally pull Student from Student's ***—to work with Student individually or in a small group.²⁹
27. Student *** grade STAAR in ***. However, Student's score on the *** portion of the test increased to *** from Student's score of *** on an interim assessment given in the fall of 2022. In addition, Student's *** increased from *** STAAR to ***, and Student's *** increased from *** STAAR.³⁰
28. Student completed the *** program in the spring of 2023, and Student earned the following grades in Student's classes: ***.³¹

²⁷ PE 5 at 4-5; RE 13 at 3-4; Tr. at 447-48.

²⁸ PE 5 at 7.

²⁹ PE 5 at 10-13; Tr. at 451-52.

³⁰ PE 33; RE 11; RE 12; Tr. at 44-45, 112-13.

³¹ RE 14 at 2; Tr. at 324.

29. Between August ***, 2022, and May ***, 2023, *** emailed the Superintendent approximately *** times. Among other things, *** asked for information related to Student's accommodations and service providers; expressed concern with Student's grades and frustration with the alerts received through the parent portal; requested that all teachers implement an assignment calendar; inquired about the use of text books and other instructional materials in the classroom; sought information related to STAAR testing and tutoring for Student ***; and asked that all graded work be sent home. The Superintendent responded to ***' emails and provided information and reports on STAAR testing, tutoring, Student's performance, Student's grades and assignments, and instructional materials used by teachers in the classroom. Although graded work went home on occasion, the Superintendent did not require teachers to make copies of it and send it home.³²

2023-2024 School Year: * Grade**

30. In response to concerns raised by ***, the District scheduled an ARD committee meeting for September ***, 2023, and sent *** an invitation on September ***, 2023. Student's *** did not return the invitation or attend the meeting, and the District rescheduled it for September ***. The District then sent an invitation for the rescheduled meeting to *** and counsel for Petitioner. The invitation was not returned, and *** did not attend the meeting on September ***, 2023.³³
31. The ARD committee reviewed Student's present levels at the September ***, 2023 meeting. Student mastered Student's IEP goals from the previous year, and the ARD committee developed new ones, including two math goals, two *** goals, and a *** goal. Student's math goals focused on Student's problem-solving skills while Student's *** goals targeted the ***. Student continued to receive instruction in the general education classroom with supplementary aids and

³² PE 10; PE 11; PE 12; RE 22; RE 23; Tr. at 32-38, 389, 403-07, 412.

³³ RE 6.

- supports, including 90 minutes of inclusion support every week in both ***.³⁴
32. Student's accommodations remained largely unchanged from the previous year. However, as a *** grader, Student was able to ***.³⁵
 33. Student received the following grades for the first semester of *** grade: ***. Student made progress in *** during the second semester, receiving *** for the ***-week grading periods.³⁶
 34. Non-academically, Student demonstrated growth over the course of the year by asking more questions, removing ***self from a talkative group of peers when necessary, and working independently.³⁷
 35. Between August ***, 2023, and March ***, 2024, *** emailed the Superintendent approximately *** times expressing concerns regarding Student's grades and frustration with the alerts received through the parent portal, whether services and accommodations were being provided, and Student's eligibility to ***. They also requested once again that teachers send Student's graded work home. The Superintendent emailed *** and provided information in response to their requests.³⁸
 36. The parent portal sends parents an alert when their student receives a failing grade. If a student fails to submit an assignment, a 0 is entered for that assignment and averaged into the student's grade. Student sometimes failed to submit assignments and/or make corrections for a 70, and ***

³⁴ PE 15; RE 6 at 5, 8-9; RE 7 at 8-9, 20-21, 47, 55-56; RE 21; Tr. at 256-58.

³⁵ RE 7 at 11; Tr. at 104.

³⁶ RE 14 at 4; Tr. at 209-10. At the time of the due process hearing, grades were not yet available in Student's ***.

³⁷ Tr. at 209-10.

³⁸ PE 13; PE 14; PE 15; PE 16; PE 17; PE 18; PE 19; PE 20; PE 21; PE 23; PE 24; RE 23; Tr. at 57-58, 61, 70-71, 121-22.

would receive an alert. Student's grade and the information available to *** on the parent portal would be updated after Student submitted a missing assignment or corrected Student's work. Student's grade in a class could change daily to weekly.³⁹

37. The District has attempted three times to obtain ***'s consent for Student's triennial evaluation. Petitioner has not yet responded to those requests.⁴⁰
38. Teachers and staff received copies of Student's IEPs during the relevant timeframe and implemented them with fidelity.⁴¹

V. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing and the burden of proof in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden in this case is therefore on Petitioner to show that the District failed to develop and implement appropriate IEPs and denied *** an opportunity for meaningful participation in the decision-making process.

³⁹ Tr. at 59, 69-70, 154, 195-96, 240, 264-65.

⁴⁰ RE 8 at 1-11.

⁴¹ Tr. at 208, 211, 236, 241, 250-51, 254-55, 286-88, 310-11.

B. FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a 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 services and supports provided must be at public expense and comport with the student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). In this case, the District was responsible for providing Student with a program that was reasonably calculated to enable Student to make progress appropriate in light of Student's unique circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

C. APPROPRIATE PROGRAM

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

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. by Barry F., 118 F.3d 245, 253 (5th Cir. 1997); *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765-66 (5th Cir. 2018) (citing *Andrew F.*, 580 U.S. 386).

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. *Michael Z.*, 580 F.3d at 294.

1. Individualized on the Basis of Assessment and Performance

A school district must have an IEP in effect 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, 300.320, 300.323(a). In developing the IEP, the school district must consider the student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). While the IEP need not be the best possible one or designed to maximize a student's potential, it must nevertheless provide the 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).

Student's *** grade IEPs met these requirements. Student has dyslexia and specific learning disabilities in basic reading skill, reading

comprehension, written expression, math calculation, and problem-solving. Student's *** grade IEPs included dyslexia services through the *** program. Student's *** grade IEP included goals in reading and writing to increase Student's grade-level reading accuracy, improve Student's ***, and increase Student's *** accuracy. Student's present level statements also indicated that Student struggled with ***. The ARD committee addressed Student's needs in this area by including a math goal aimed at Student's ability to ***—a skill that falls under the state's *** standards. *See* 19 Tex. Admin. Code § 111.7(a)(4), (b)(4)(A).

Student's *** grade IEPs continued to focus on Student's needs in reading, written expression, and math. Student's *** grade goals targeted Student's ability to ***. Meanwhile, Student's *** grade IEP built upon mastery of Student's previous goals and focused on reading comprehension, editing written work, problem-solving, and ***. Finally, Student received inclusion services and accommodations to support Student's learning throughout *** grade.

Petitioner nonetheless argues on various grounds that Student's IEPs were not appropriately individualized. More specifically, Petitioner contends that: the District should have developed *** and speech goals and provided speech services to Student (*Pet. Brief* at 5-6); Student's *** grade IEP did not include writing or dyslexia goals (*id.* at 2-3, 5); Student improperly received dyslexia services in a general education setting rather than through special education (*id.* at 5); the

District failed to revise Student’s IEP even though Student continued to struggle (*id.* at 3); and Student’s goals were not derived from baseline data but based on grade-level standards (*id.* at 4). Notably, Petitioner did not offer any expert testimony at the hearing and provided few, if any, citations to legal authority in Petitioner’s closing brief to support the conclusion that these purported deficiencies—either alone or in combination—resulted in a denial of FAPE. This, however, is not the only problem with the arguments advanced by Petitioner on the issue of whether Student’s IEPs were individualized. Petitioner’s position also suffers from the shortcomings discussed below.

Petitioner’s argument with respect to speech goals and services is based on the results of Student’s 2019 FIE which showed that Student scored in the below average range for receptive and expressive communication. Shortly after the FIE was completed, however, ***, and by the time of the 2021 REED, neither *** nor Student’s teachers had any concerns with Student’s receptive and expressive language or Student’s articulation and fluency skills. Student was able to convey ideas and had no difficulty understanding and following oral directions. Petitioner thus failed to show that the District denied Student a FAPE by not including a speech goal in Student’s IEP or providing Student with speech services.

As for the absence of a *** goal, Petitioner’s position is premised on Student’s performance on the *** grade *** STAAR and the argument that an IEP is defective if it fails to include goals for every recognized need. *See Pet. Brief* at 3. While an IEP’s failure to address a single need may result in a denial of FAPE in some cases, it is equally true in other cases that not every need identified requires a distinct goal in order for a student to receive a FAPE. *Compare S.F. v. McKinney*

Indep. Sch. Dist., No. 4:10-CV-323-RAS-DDB, 2012 WL 718589, at *11 (E.D. Tex. Mar. 6, 2012), *rep. and recommendation adopted*, No. 4:10-CV-323-RAS-DDB, 2012 WL 1081064 (E.D. Tex. Mar. 30, 2012) *with Coleman v. Pottstown Sch. Dist.*, 983 F. Supp. 2d at 543, 572-73 (E.D. Penn. 2013). Whether the failure to include an area of weakness in an IEP violates the IDEA must be weighed based on the facts of the student's disability, Student's identified weakness, and the other *Michael F.* factors. *S.F.*, 2012 WL 718589, at *11. Student has a specific learning disability in reading, math, and writing. Student's IEP included goals to address those areas of need. Meanwhile, the evidence showed that Student received positive feedback from Student's *** teachers in *** grade and that Student earned passing grades in those classes.⁴² Based on this evidence and the remaining *Michael F.* factors discussed below, the Hearing Officer finds that Petitioner failed to show that Student required an IEP goal in *** to receive a FAPE.

Petitioner's claim that the District denied Student a FAPE by providing dyslexia services in the general education setting rather than through special education is equally without merit. The state has adopted a Dyslexia Handbook that school districts must follow in providing dyslexia services to students. 19 Tex. Admin. Code § 74.28. The Handbook lays out the critical components, delivery, and training requirements for providers of dyslexia instruction. Notably, it does not require a district to provide dyslexia services in a special education setting. Rather, it requires school districts to provide services in a manner that best meets each student's needs. *See generally The Dyslexia Handbook: Procedures Concerning Dyslexia*

⁴² Petitioner argues that Student's grades were inflated due to one of Student's accommodations that allowed Student to correct Student's work for a passing grade of 70. *Pet. Brief* at 8-9. This argument is addressed below in Section V(C)(4).

and Related Disorders (Dyslexia Handbook) (Texas Education Agency, Sept. 2021). There is no indication that Student struggled to make progress in the dyslexia program provided by the District. The evidence showed instead that Student successfully completed the *** program in the spring of 2023.

With respect to the perceived lack of writing and dyslexia goals in *** grade, Student's *** grade IEP included, among other things, a goal for ***. Student's dyslexia teacher testified that this goal not only applied to reading but also applied to Student's needs in written expression. Moreover, the *** is a critical component of dyslexia instruction. *The Dyslexia Handbook* at 40.

Petitioner also contends that Student's goals were not individualized because they were based on grade-level standards. *Pet. Brief* at 4-5. Here again, Petitioner's arguments are not supported by the record or citation to authority. IEP goals must be appropriately ambitious and also aligned with grade-level academic content standards. *See, e.g., Andrew F.*, 580 U.S. at 402; *Dear Colleague Letter*, U.S. Dep't of Educ. (OSERS Nov. 16, 2015). The fact that Student mastered Student's IEP goals from one year to the next and that these goals were aligned with grade-level standards supports the conclusion that Student's goals were appropriately ambitious.

Petitioner similarly maintains that Student's goals were not individualized and could not be appropriately measured because there was no baseline data for them. *Pet. Brief* at 4-5. Caselaw, however, requires a student's program to be based on assessment and performance while the regulations require a statement of the student's present levels and that the goals be specific and measurable. Student's IEPs met these criteria. Moreover, Student's progress reports for each ***-week

grading period reflected Student's initial ability with respect to each goal and Student's progress towards mastery, thereby negating Petitioner's argument that Student's progress could not be measured.

Finally, Petitioner contends that the District failed to revise Student's IEP even though Student "continued to struggle." Petitioner's claim, however, is at odds with the record. Student's IEP was revised annually to include new IEP goals and updated accommodations, and Student's IEP was revised in May 2022 to add an accelerated learning plan in accordance with state law. Petitioner's position appears to be based on the premise that Student was not making appropriate progress. For the reasons set forth below in Section V(C)(4), the Hearing Officer disagrees.

In sum, Student's IEPs were individualized on the basis of assessment and performance.

2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with nondisabled 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); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989). State regulations require a school district's continuum of instructional arrangements to be based on the students' individual needs and their IEPs and include a continuum of educational settings. 19 Tex. Admin. Code § 89.1005(c).

Student in this case is eligible for special education services with a specific learning disability in multiple academic areas, and Student receives instruction in the general education setting with supplementary supports and services. Petitioner argues, however, that the District violated this requirement by providing more inclusion time than was contemplated by Student's IEP and that Student's inclusion teacher removed Student from class during instructional time.⁴³ Neither argument has merit.

Petitioner offered no evidence to show that the presence of an inclusion teacher in the classroom for more minutes than required impeded Student's progress or affected Student's ability to complete work independently. Nor was any evidence offered to show that this somehow transformed Student's placement into a more restrictive setting than the one agreed to by the ARD committee.

To the extent Petitioner contends Student's inclusion teacher improperly pulled Student from class during instructional time, the record does not support this claim. The weight of credible evidence shows instead that Student's inclusion teacher would sometimes work with Student individually or in a small group in another room during "***." *** in the day that allows students in the general education setting to complete homework or missing assignments or get help with concepts they have not yet mastered.

⁴³ Petitioner acknowledges that the least restrictive environment requirement has limited application in this case but also suggests in passing that Student may have required a more restrictive environment to meet Student's needs. *Pet. Brief* at 10-11. Petitioner bases this suggestion on Student's claim that Student was not performing on grade-level during the relevant timeframe. Notably, Petitioner did not raise this claim in Student's pleadings, and more importantly, failed to offer any evidence to support the conclusion that a more restrictive environment was necessary in order for Student to receive a FAPE.

Based on the evidence presented, the Hearing Officer concludes that Student was mainstreamed to the maximum extent possible, and Student's placement was the least restrictive environment appropriate to meet Student's needs.

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.*, Civil Action No. 4:16-CV-0058, 2017 WL 3017282, at *27 (S.D. Tex. June 15, 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 presented with respect this factor showed that both parties engaged in collaborative and uncollaborative conduct. *** participated in ARD committee meetings, asked questions, and provided input. The District committee members listened to what *** had to say, even when they did not agree with ***. Student's *** teachers made an effort to build a positive relationship with ***, and the *** teacher and Special Education

Director continued to communicate directly with *** even after the August 2022 communication plan was put into place. ***, however, refused to attend Student's September ***, 2023 annual ARD committee meeting and have so far refused to consent to Student's triennial evaluation.

Meanwhile, Petitioner claims that the Superintendent engaged in conduct outside the educational decision-making process that did not foster a collaborative relationship. *Pet. Brief* at 15-16. More specifically, Petitioner alleges that the Superintendent participated in ***. These allegations, if true, would indeed run counter to the collaborative relationship contemplated by the IDEA, but Petitioner's allegations are nebulous at best. These claims were not supported by anything in the record other than statements made by *** during *** testimony and the Superintendent's admission that ***.⁴⁴ Moreover, these allegations are conceivably related to a proceeding other than this one and do not appear to bear on the manner in which special education services were delivered by staff members to this particular student.

Petitioner also points to implementation of the August 2022 communication plan and argues that it denied *** meaningful participation in the development of Student's program. *Pet. Brief* at 12-13. *** in the District, and *** contacted multiple staff members on a variety of topics through various means on a regular basis. The evidence indicated

⁴⁴ Tr. at 389.

that the communication plan was implemented to consolidate communications, conserve staff resources, and minimize confusion, and that—although *** often disagreed with the Superintendent—he responded to them and their requests for information in accordance with the communication plan.

While the Hearing Officer recognizes that the relationship between the Superintendent and *** was clearly strained, the Superintendent did not ignore ***'s communications. Other service providers worked to build a positive relationship with ***, and *** were not excluded from the educational decision-making process. On balance, the Hearing Officer concludes that the District's efforts to provide services to Student were sufficiently collaborative for purposes of providing a FAPE.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813-14 (5th Cir. 2012). The purpose of an IEP is to provide an educational benefit, not remediate a disability. *E.R.*, 909 F.3d at 769 (5th Cir. 2018). The evidence in this case showed that Student received academic and non-academic benefits and made appropriate progress in light of Student's unique circumstances.

Student mastered Student's IEP goals, completed the dyslexia program, and—with the aid of inclusion support and accommodations—received passing grades from year to year. Student also showed growth non-academically. Student was more inclined

to engage in self-advocacy by asking questions. Student removed ***self from distracting situations when necessary, and was able to work independently.

Petitioner, however, contends that Student did not make appropriate progress and points to Student's performance on the STAAR tests. Student indeed struggled with STAAR testing. The evidence showed, however, that deficits in long-term retrieval and fluid reasoning impact a student's performance on these tests and that the *** STAAR is particularly difficult for students with dyslexia to pass. Notwithstanding these obstacles, Student demonstrated progress that was appropriate for Student from one year to the next.

Petitioner also argues extensively that Student's grades were not a true representation of Student's ability due to an accommodation included in Student's *** grade IEPs that allowed Student to correct Student's work for a passing grade. It is worth noting that the accommodation was an ARD committee decision that *** agreed to in*** grade and that there are benefits to such an accommodation for students with disabilities. More importantly, however, Student's grades are only one factor to be considered in determining whether Student made appropriate progress from one year to the next. Based on a holistic review of the evidence presented, the Hearing Officer concludes that Student received academic and non-academic benefits from Student's special education program and, overall, made appropriate progress from year to year. *See H.W. v. Comal Indep. Sch. Dist.*, 32 F.4th 454, 468-69 (5th Cir. 2022) (5th Cir. 2022) (stating that the inquiry into educational benefit should properly focus on a holistic, overall academic record perspective).

D. IEP IMPLEMENTATION

When determining whether a school district failed to adequately implement a student's IEP, a hearing officer must determine (1) under the third *Michael F.* factor, whether there was a significant or substantial failure to implement the IEP, and (2) under the fourth *Michael F.* factor, whether there have been demonstrable academic and non-academic benefits from the IEP. *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1389 (2021). Petitioner must show more than a *de minimis* failure to implement all elements of Student's IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

In an effort to support Petitioner's implementation claim, Petitioner revisits two of the arguments Petitioner raised with respect to Student's least restrictive environment: namely, that Student received too many minutes of inclusion and that Student's inclusion teacher sometimes worked with Student outside the classroom during a *** in the school day to help Student with corrections. Petitioner then goes on to criticize the District for not logging the precise number of minutes spent with Student during inclusion. *Pet. Brief* at 16-19. Petitioner's position is not persuasive. Petitioner failed to show that these practices were inconsistent with Student's IEPs much less that they amounted to a failure to implement a significant or substantial portion of the IEPs.

Finally, Petitioner argues that Student's inclusion teacher—who was participating in an alternative certification program—was not a certified teacher and did not have previous experience with inclusion support. *Pet. Brief* at 19. While

Petitioner correctly points out that the regulations require school districts to ensure that staff who provide special education services are properly prepared and trained (34 C.F.R. § 300.156(a)), Student’s analysis stops short. It overlooks § 300.156(c)(2) which permits teachers participating in alternative certification programs to hold a special education teaching position as long as the teacher receives high-quality professional development; participates in a program with intensive supervision, structured guidance, and ongoing support; and assumes the functions of a teacher only for a specified period of time not to exceed three years. 34 C.F.R. § 300.156(c)(2)(i)-(ii). Student’s inclusion teacher was pursuing certification through ***—an alternative certification program approved by the Texas Education Agency—and was working under the supervision of a special education teacher on campus.⁴⁵ She, therefore, satisfied the “properly prepared and trained” requirement set forth in § 300.156(a).

The evidence at the hearing established that the District provided Student with the services and supports identified in Student’s IEPs with fidelity and that these services and supports conveyed an educational benefit. The District provided dyslexia services aimed at developing Student’s ability to ***, and Student successfully completed the program in the spring of 2023. Student also received inclusion support and accommodations in the general education setting, met Student’s IEP goals, and earned passing grades throughout the relevant timeframe. While Student struggled with state standardized testing, the evidence showed that Student nonetheless made appropriate progress in light of Student’s unique circumstances.

⁴⁵See Tr. at 254; <https://tea.texas.gov/texas-educators/preparation-and-continuing-education/becoming-a-certified-texas-educator-through-an-alternative-certification-program>.

Petitioner did not meet Petitioner's burden of showing that the District failed to properly implement Student's IEPs.

E. FAPE CONCLUSION

Student's IEPs included specific and measurable goals based on assessment and performance. Student also received appropriate accommodations and supplementary support tailored to meet Student's needs in the least restrictive environment. Although the relationship between *** and the Superintendent was strained, the Superintendent responded to *** concerns and requests for information in accordance with the August 2022 communication plan. The District provided *** with opportunities for meaningful participation in the educational decision-making process, and a review of the Student's overall educational program shows Student received a FAPE and made appropriate progress with the program as it was developed and implemented. *Endrew F.*, 580 U.S. at 399, 403; *Michael F.*, 118 F.3d at 253; *Hovem*, 690 F. 3d at 391.

VI. CONCLUSIONS OF LAW

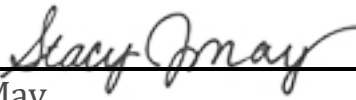
1. The burden of proof in this case was on Petitioner. *Schaffer*, 546 U.S. at 62.
2. Petitioner did not meet Petitioner's burden of showing that the District denied Student a FAPE by failing to develop an appropriate IEP. *Id.*; *Rowley*, 458 U.S. at 188; *Endrew F.*, 580 U.S. at 399, 403; *Michael F.*, 118 F. 3d at 248, 253.
3. Petitioner did not meet Petitioner's burden of showing that the District denied Student a FAPE by failing to appropriately implement Student's IEPs during the relevant timeframe. *Schaffer*, 546 U.S. at 62; *O.W.*, 961 F.3d at 796; *Bobby R.*, 200 F.3d at 349.

4. Petitioner did not meet Petitioner's burden of showing that the District denied *** an opportunity for meaningful participation in the educational decision-making process. *Schaffer*, 546 U.S. at 62; *White*, 343 F.3d at 380.
5. The District provided Student a FAPE during the relevant time period, and Student's IEPs were reasonably calculated to enable Student to make appropriate progress in light of Student's unique circumstances. *Andrew F.*, 580 U.S. at 399, 403; *Rowley*, 458 U.S. at 188, 203-04.

VII. ORDER

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

Signed July 17, 2024.



Stacy May
Administrative Law Judge

VIII. NOTICE TO THE PARTIES

This Decision 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. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516(a); 19 Tex. Admin. Code § 89.1185(n).