

SOAH Docket No. 701-22-0438. IDEA

TEA Docket No. 291-SE-0722

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**Before the  
State Office of Administrative  
Hearings**

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**STUDENT, BY NEXT FRIEND PARENT,  
Petitioner**

**v.**

**AUSTIN INDEPENDENT SCHOOL DISTRICT,  
Respondent**

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**FINAL DECISION**

**I. STATEMENT OF THE CASE**

Student (Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against the Austin 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 issues in this case are whether the District failed in its child find duty and/or failed to provide Student with a free, appropriate public education (FAPE).

The Administrative Law Judge concludes the District violated its child find duty to Student. The District provided Student a FAPE after August 2023 to present, and Student's educational program was reasonably calculated to provide Student a FAPE in light of Student's unique circumstances.

## II. DUE PROCESS HEARING

The due process hearing was conducted September 10 – 12, 2024, via the Zoom videoconferencing platform. Student was represented throughout this litigation by Student's legal counsel, Yvonnilda Muñiz of the Law Office of Yvonnilda Muñiz. Parent also attended the hearing. The District was represented throughout this litigation by its legal counsel, Erik Nichols and Matt Acosta of Spalding Nichols Lamp Langlois. \*\*\*, Associate General Counsel for the District, attended the hearing. In addition, Dr. \*\*\*, the District's Executive Director of Compliance, Operations, Reporting, and Evaluations, attended the hearing as the party representative.

The parties offered joint and separately disclosed exhibits. The parties jointly offered 19 exhibits. Petitioner offered 36 exhibits, and all or portions of 25 of those exhibits were admitted. Petitioner offered the testimony of the District's Director of Evaluations for Special Education; a District licensed specialist in school psychology (LSSP); Student's \*\*\* assistant principal; Student's \*\*\*

guidance secretary; Student's \*\*\* counselor; a District supervisor for critical cases for special education; Student's spring 2023 case manager and fall 2024 \*\*\* teacher; Student's \*\*\* assistant principal; the District dyslexia representative for the August 2023 Admission, Review, and Dismissal (ARD) Committee meeting; Student's \*\*\* teacher; the District's Executive Director of Compliance, Operations, Reporting, and Evaluations; Student's private licensed dyslexia therapist; the District's Executive Director of Instructional Delivery and Inclusion in the Department of Special Education and Section 504; the Head of School for \*\*\*; a therapist from \*\*\* (\*\*\*) ; a therapist from \*\*\* (\*\*\*) ; and Parent.

Respondent offered 35 exhibits, and all those exhibits were admitted. Respondent offered testimony of a District dyslexia specialist and the District's Executive Director of Instructional Delivery and Inclusion in the Department of Special Education and Section 504. The hearing was recorded and transcribed by a certified court reporter. Both parties timely filed written closing briefs. The Decision in this case is due November 15, 2024.

### **III. ISSUES**

#### **A. Petitioner's Issues**

Petitioner raised the following issues under the IDEA for the 2021 – 2022, 2022 – 2023, 2023 – 2024, and 2024 – 2025 school years for decision in this case:

Free Appropriate Public Education (FAPE):

1. Whether the District failed to provide Student with a FAPE during the relevant time period.
2. Whether the District failed to develop an appropriate individualized education program (IEP).
3. Whether the District failed to provide services in a coordinated, collaborative manner by key stakeholders.

Child Find:

1. Whether the District failed to timely and appropriately identify Student for special education and related services.
2. Whether the District failed to timely and appropriately evaluate Student for special education and related services.

Procedural

1. Whether the District failed to provide Parent with the procedural safeguards when Parent requested a Special Education evaluation.
2. Whether the District failed to provide Parent with prior written notice (PWN) regarding refusal to evaluate Student.
3. Whether the District significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

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

Respondent generally and specifically denies Petitioner's issues and denies responsibility for providing any of Petitioner's requested relief. Respondent requests

dismissal of all claims/relief that arose under statutes other than the IDEA. Respondent plead the affirmative defense of the one-year statute of limitations based on the original date of filing in July 2022. Respondent requests denial of Petitioner's request for reimbursement of private placement because Parent did not give 10 business days' notice of Parent's decision to unilaterally place Student in a private program.

#### **IV. REQUESTED RELIEF**

Petitioner seeks the following items of requested relief:

1. The District hold an ARD committee meeting to discuss, review and accept the psychological evaluation conducted while Student was at \*\*\* and find Student eligible as a student with an emotional disturbance (ED) (\*\*\*), specific learning disorders – dyslexia (reading fluency) and math fluency, and other health impairment (OHI)- Attention Deficit Hyperactivity Disorder (ADHD).
2. The District reimburse Parent for the private psychological evaluation conducted in July 2022.
3. The District reimburse Parent for private residential placement during the 2021 - 2022 school year.
4. The District reimburse Parent for private residential placement during the 2022 - 2023 school year.
5. The District reimburse Parent transportation and other costs incurred while Student was at \*\*\* and \*\*\* Residential Treatment Centers (RTC).
6. The District reimburse Parent for tuition at \*\*\*.
7. The District reimburse Parent's costs for providing tutoring during the 2021 - 2022, 2022 - 2023, and 2023 - 2024 school years.

8. The District reimburse Parent's costs for providing counseling during the 2021 - 2022, 2022 - 2023, and 2023 - 2024 school years.
9. The District approve a student transfer to \*\*\* for the remainder of Student's \*\*\*.
10. The District pay or reimburse Parent for private tutoring as compensatory services for the remainder of the 2023 - 2024 school year and the 2024 - 2025 school year.
11. The District reimburse Parent's cost for the private dyslexia evaluation and the \*\*\* assessment.
12. The District reimburse Parent for private dyslexia instruction for the remainder of the 2023 - 2024 school year and the 2024 - 2025 school year.
13. The District provide reimbursement for private compensatory services to Student upon Student's return to the District.
14. Such other and further relief the Administrative Law Judge deems just and proper.

## V. FINDINGS OF FACT

1. Student is \*\*\* years old and resides with Student's Parent \*\*\*. Student was first enrolled in the District \*\*\*. Student is smart, kind, diligent, creative, artistic, and well-liked by others.<sup>1</sup>
2. Student was diagnosed with dyslexia on or about September \*\*\*, 2015, during Student's \*\*\*-grade school year by the District's 504 dyslexia services department. The dyslexia evaluation determined Student's full-scale intelligence score fell within the average range with a \*\*\*. Student performed within the average range for verbal comprehension and perceptual reasoning. Student's phonemic awareness, rapid alternative naming, and rapid letter naming were within the low average range.<sup>2</sup>

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<sup>1</sup> Joint Exhibit (JE) 5 at 4; JE 16; Petitioner's Exhibit (PE) 12 at 9; Transcript Volume (Tr. Vol.) III at 717.

<sup>2</sup> Amended Joint Stipulations of Fact (AJSOF) 2; JE 5 at 8.

3. Student received a neuropsychological assessment by a private evaluator and was diagnosed with \*\*\* with \*\*\* in December 2015. Again, Student's full-scale score fell within the average range with a standard score of \*\*\*. Student scored in the average range for visualization, inductive reasoning, working memory, mathematics, and basic writing skills. Student performed within the low average range in letter word identification and passage comprehension.<sup>3</sup> It is unclear when this evaluation was provided to the District; however, it was included in the District's 2023 full individual evaluation (FIE).
4. The District uses \*\*\* for its direct instruction dyslexia programs. The \*\*\* program is an evidence-based, tiered supplemental reading intervention and may be appropriate for a Student who previously received direct dyslexia instruction and needs ongoing reading supports. The \*\*\* program focuses on multi-syllabic word reading and supports fluency, reading comprehension, and vocabulary.<sup>4</sup>
5. During the spring semester 2020, Student's service tracking records included thirteen entries. The District documents its personnel meetings with a student, when it provides counseling to a student, and conversations with parents in their service tracking records. Parent employed a certified academic language therapist (CALT) and private tutors to assist Student with Student's dyslexia and other subjects during \*\*\* school.<sup>5</sup>
6. On October \*\*\*, 2020, Parent emailed the District to discuss Student's failing grades, Student's difficulty with online learning, and to obtain assistance with these issues. The District offered for Parent to bring Student to campus 1 – 2 days a week to help Student get caught up and organized. Student was failing \*\*\* classes on the first \*\*\* weeks progress report of the fall 2020 semester. On Student's first \*\*\* weeks report card, Student received the following grades: \*\*\*

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<sup>3</sup> JE 5 at 5, 8-9.

<sup>4</sup> Tr. Vol. II at 347-48.

<sup>5</sup> PE 8 at 10; Tr. Vol. I at 149; Tr. Vol. II at 398-99.

\*\*\*.<sup>6</sup>

7. During the fall 2020 semester, Student's service tracking records included seven entries related to communications with Parent and checking in with Student. On September \*\*\*, 2020, the District referred Student to a licensed mental health professional.<sup>7</sup>
8. In March 2021, Student had a discipline incident coded as \*\*\*.<sup>8</sup>
9. Student received section 504 services for dyslexia and ADHD and Student struggled mainly with concentrating and reading. At a section 504 committee meeting in May 2021, Parent expressed concerns about Student's \*\*\*. Student's teachers noticed significant gains in Student's reading fluency over the year. Student received the following section 504 accommodations: extend time if needed, increased response time, preferential seating, reduce distractions, note taking assistance, private discussion regarding behavior, Student responds best to positive reinforcement, directions given in a variety of ways, reading before peers on a voluntary basis, prioritized assignments, avoid penalizing for spelling errors, check for understanding, and "chunk" lengthy assignments.<sup>9</sup>
10. At the end of the 2020 - 2021 school year, Student received \*\*\* on Student's report card. In May, Student did not pass the \*\*\* STAAR exam.<sup>10</sup>

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<sup>6</sup> PE 8 at 2, 4, 15; PE 32.

<sup>7</sup> PE 8 at 13; Tr. Vol. I at 150-51.

<sup>8</sup> JE 15.

<sup>9</sup> JE 1, JE 5 at 15.

<sup>10</sup> RE 1; RE 7.



11. At the end of the fall 2021 semester, Student received \*\*\* on Student's report card.<sup>11</sup>
12. During the 2021 – 2022 school year, Parent and teachers emailed regarding Student's lack of progress, unwillingness to participate in class, and disruptive classroom behaviors. In the same school year, Student had \*\*\* discipline incidents coded: \*\*\*. Student's \*\*\* teacher acknowledged Student had not engaged in class, had failing grades, had trouble completing assignments; however, she never suspected Student had \*\*\*. She provided Student's section 504 accommodations, which were not effective.<sup>12</sup>
13. In the same school year, Student had \*\*\* incidents in Student's service tracking record related to behaviors at school such as inappropriate \*\*\*, not completing work, and non-compliant behaviors. On the service tracking record, Parent notified the District that Student had been "going through a lot," that Parent was concerned Student was not thriving, and in December 2021 that Parent was trying to get Student enrolled into an online school because Student was not happy. Additionally, Student's schedule changed from \*\*\* class due to Student's difficulty keeping up with the class.<sup>13</sup>
14. In March 2022, on Student's third \*\*\* weeks report card Student received \*\*\*.<sup>14</sup>
15. During an intake session for private counseling, Parent learned Student \*\*\*. Student was \*\*\*. Parent took Student to a residential treatment program in \*\*\*. Student was dismissed from the program \*\*\*.<sup>15</sup>

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<sup>11</sup> RE 2; RE 34.

<sup>12</sup> JE 15; PE 9 at 1 – 12, Tr. Vol. II at 249-54;

<sup>13</sup> Respondent's Exhibit (RE) 3; Tr. Vol. I at 153.

<sup>14</sup> RE 35.

<sup>15</sup> PE 11 at 6; PE 12 at 2-3; Tr. Vol. II at 414.

16. On April \*\*\*, 2022, the District emailed Parent to inform Parent Student did not pass \*\*\* classes in the third \*\*\* week grading period. Parent replied two days later to notify the District of Student's \*\*\* and Student not returning for the remainder of the year. Student's official withdrawal date was March \*\*\*, 2022, and Parent stated home school on the withdrawal form. The District counselor recalled Parent notifying her Student was withdrawing to \*\*\*.<sup>16</sup> It is unclear why the withdrawal date was backdated.
17. In April 2022, Student lived in Austin and Parent was taking Student to therapy and working on getting Student \*\*\*. Student \*\*\*. Parent called the District to notify them. Student was \*\*\*.<sup>17</sup>
18. Between May \*\*\*, 2022, and August \*\*\*, 2022, Student was placed at \*\*\* in \*\*\*. \*\*\* is a \*\*\* program that utilizes the experiential opportunities of a \*\*\* setting with a clinically focused intervention. During Student's time at \*\*\*, Student received individual therapy, family intervention, group therapy. Upon discharge, \*\*\* recommended a RTC so Student could practice and internalize the tools Student learned at \*\*\*. Parent sent Student to \*\*\* for Student's \*\*\*. Student had a limited amount of academics in the program. The academic curriculum was an ancillary part of the treatment program at \*\*\* and was not a focus for Student.<sup>18</sup>
19. In July 2022, Student participated in a private psychological evaluation conducted by a licensed clinical psychologist. The report included Parent and Student information, a review of the 2015 private neuropsychological report, and formal testing. Student reported Student began \*\*\*. Student's full-scale IQ continued to be in the average range with a score of \*\*\*.<sup>19</sup>

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<sup>16</sup> PE 9 at 19, 22; RE 12; Tr. Vol. I at 155.

<sup>17</sup> PE 12 at 5.

<sup>18</sup> AJSOF 5; JE 5 at 2; PE 12 at 5; PE 19 at 1, 5-6; Tr. Vol. II at 418-19, 421-22; 494-95; Tr. Vol. III at 703-04.

<sup>19</sup> JE 5 at 9; PE 11.

20. Student demonstrated relative weakness in working memory and processing speed. Student was within the average range for basic reading, decoding, phonologic processing, orthographic processing, dyslexia index, writing, and the low average range for reading fluency and math. Student was diagnosed with \*\*\*, ADHD, specific learning disorder, with impairment in reading fluency, math fluency and calculation – moderate, \*\*\*.<sup>20</sup>
21. The private evaluator recommended Student engage in \*\*\* along with other \*\*\* goals while at \*\*\*. For Student’s learning, the evaluator recommended increased time on assignments and tests, follow a less desirable task with a preferred task, chunking assignments, reduce direction steps, increased interaction with teachers to understand expectations, provide Student with outlines of information, allow Student to respond verbally and listen to audio books, practice reading skills by reading as often as possible, and preferential seating to minimize distractions.<sup>21</sup>
22. From August \*\*\*, 2022, to January \*\*\*, 2023, Student was placed at \*\*\* in \*\*\*. The academic program at \*\*\* is student-paced and teacher-driven. The academic team consists of teachers, tutors, a special education coordinator, and a school counselor to help students work toward meeting their academic goals. They utilize behavioral contingencies to adapt programming to individual student needs and situations. Parent indicated Student received academic instruction in a small classroom setting, received assistance from tutors and staff, and performed well.<sup>22</sup>
23. Student learned of Student’s \*\*\* date at \*\*\* and began to act out in that program. \*\*\* recommend Student return to \*\*\*, which Student did on January \*\*\*, 2023, and stayed until March \*\*\*, 2023. Student did not participate in any academic curriculum Student’s second time at \*\*\*. Parent

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<sup>20</sup> JE 5 at 4-5, 9, 12-14; PE 11 at 11, 22.

<sup>21</sup> PE 11 at 19-21.

<sup>22</sup> AJSOF 6; PE 16 at 1, PE 17 at 1; Tr. Vol. II at 438.

received services from \*\*\* to assist with Student’s transition back to Austin. They provided individual therapy for Student as well as family therapy.<sup>23</sup>

24. On February \*\*\*, 2023, the District sent Parent a letter which stated it refused to complete a FIE while Student resided in an out-of-state rehabilitation facility in \*\*\* and that Student had never been suspected by the District of having a disability. Additionally, the District stated it would consider an FIE upon Student’s return to residing in the District’s boundaries and was “inclined to grant the request” should Student return to the District. On March \*\*\*, 2023, Petitioner’s attorney notified the District’s attorney Student returned to Austin.<sup>24</sup>
25. The District’s policy is to evaluate students who are enrolled in a District school, reside within the District and are in a private school, or homeschooled.<sup>25</sup>
26. Student enrolled in private school at \*\*\* in Austin, Texas; however, it is unclear the exact date. During the summer 2023, Student received at \*\*\*.<sup>26</sup>
27. On April \*\*\*, 2023, the District sent Parent notice of their intent to conduct a FIE based on Parent’s request. Parent signed consent for the FIE on May \*\*\*, 2023.<sup>27</sup>
28. On June \*\*\*, 2023, Parent provided an OHI-ADD/ADHD physician’s report to the District, which indicated Student had difficulty maintain alertness in the classroom.<sup>28</sup>

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<sup>23</sup> Tr. Vol. II at 441-43; Tr. Vol. III at 715.

<sup>24</sup> JE 17; JE 18 at 2.

<sup>25</sup> Tr. Vol. I at 31.

<sup>26</sup> PE 24; AJSOF 12.

<sup>27</sup> JE 3 at 3.

<sup>28</sup> JE 4.

29. On July \*\*\*, 2023, the District completed an FIE. The evaluation included a review of Student's educational records, parent information, teacher reports, the June \*\*\*, 2023 OHI report, the July 2022 private psychological evaluation, the December 2015 private neuropsychological assessment, and formal testing. Student performed within the average range on comprehension knowledge, phonological processing, long term storage and retrieval, and visualization. On achievement tasks Student performed within the average range for word reading, silent reading, math problem solving, and written expression skills. Student showed weakness in math computation and oral reading and comprehension skills.<sup>29</sup>
30. The evaluator determined Student met the eligibility criteria for special education services under the following disability categories: OHI-ADHD, ED, and learning disability in reading fluency (dyslexia). The evaluator recommended the following for the ARD committee: to address Student's ADHD – review and consider Student's supports from Student's most recent section 504 plan, for math – teach self-monitoring skills and encourage Student to double check Student's work, access teacher office hours/tutoring times, increase organizational skills, encourage Student to use a planner, break longer term projects into manageable chunks and timelines, set timers to alert Student to move onto the next activity, re-teach, provide a copy of class notes, check for understanding, access to audio books and/or text to speech upon request, make reading before peers voluntary, establish predictable routines, set clear and reasonable expectations, and provide constructive feedback privately.<sup>30</sup>
31. The District sent notice of an ARD committee meeting to Parent on August \*\*\*, 2023, and a draft copy of the proposed IEP a few days later. Student's ARD committee met on August \*\*\*, 2023 for an initial meeting. Parent attended and agreed with the IEP. At the time of the meeting, Student attended \*\*\*. Student met the eligibility for special education under ED, OHI, and specific learning disability - dyslexia. The IEP included present levels of academic achievement and functional performance

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<sup>29</sup> JE 5 at 1, 15.

<sup>30</sup> JE 5 at 17.

(PLAAFP), information from Student's current \*\*\* teacher from \*\*\*, and current assessment and evaluation information.<sup>31</sup>

32. The IEP included two goals for English Language Arts (ELA)/reading, a goal for transition – success skills, a goal for self-help/independent functioning, multiple classroom accommodations, STAAR testing accommodations, and transition services. Student's educational placement was the general education setting for all subjects, except \*\*\* which was the special education setting.<sup>32</sup>
33. Parent expressed concerns about mastery of content and on grade level. Parent mentioned Student's regression during COVID with virtual learning, Student's \*\*\* struggles, and struggles with attention. Parent shared Student was doing well at \*\*\* with the small student to teacher ratio, but Parent wanted Student to re-enter mainstream \*\*\*.<sup>33</sup>
34. Student's IEP included dyslexia instructional services for 25 minutes once per week in the general education setting. The ARD committee did not recommend a behavior intervention plan or extended school year services.<sup>34</sup>
35. Student was scheduled to receive dyslexia intervention during \*\*\*. \*\*\* is a \*\*\* on multiple days a week where students can receive extra help. Sometimes students choose where to go during \*\*\* and sometimes it is teacher assigned. Student previously received direct dyslexia instruction during \*\*\* school, so the District did not recommend an additional direct dyslexia pull-out program, but rather additional support on Student's reading fluency using the \*\*\*.<sup>35</sup>
36. Student received a reading evaluation from a private dyslexia therapist on September \*\*\*, 2023. Student was reading at a \*\*\* grade level with listening

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<sup>31</sup> JE 5 at 17; JE 6; JE 7 at 1, 35, 42; RE 21; RE 22.

<sup>32</sup> JE 7.

<sup>33</sup> JE 7.

<sup>34</sup> JE 7.

<sup>35</sup> Tr. Vol. I at 175-76; Tr. Vol. III at 591.

comprehension skills at \*\*\* grade level. Student's word attack and oral fluency were below average. The private dyslexia therapist agreed with Student's STAAR testing accommodations in the 2023 IEP and would add extra time.<sup>36</sup>

37. Student attended \*\*\* during the fall semester of 2023 and received \*\*\*. Student's measures of academic progress (MAP) scores for reading and math were below Student's grade level peers.<sup>37</sup>
38. On January \*\*\*, 2024, Parent sent an email to the District that requested Student re-enroll in the District for the spring semester of \*\*\* grade, and that Student be allowed to transfer to \*\*\* instead of Student's home school of \*\*\*. The District responded that the transfer window for the current year had passed, but Parent could apply for transfer for the 2024 – 2025 school year. The transfer request was officially denied on January \*\*\*, 2024.<sup>38</sup>
39. During the spring 2024 semester, Parent emailed with various teachers of Student regarding homework and Student's progress in class. At the end of the 2023 – 2024 school year, Student's spring semester averages were \*\*\*. Student had a \*\*\*. Student passed the \*\*\* STAAR tests in the spring of 2024. Student received tutoring from a private math tutor during the spring 2024. Student's case manager for spring 2024 cannot recall if she sent IEP progress reports to the Parent.<sup>39</sup>
40. Student's ARD committee met on July \*\*\*, 2024, for an annual meeting. Parent attended and agreed to the IEP. The IEP continued the same eligibility criteria, accommodations, included updated ELA/reading goals, the same ELA – dyslexia goal, added new transition goals, and the same two transition/-success skills and self-help/independent functioning goals from the prior IEP.

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<sup>36</sup> PE 25; Tr. Vol. II at 304, 306-07, 337.

<sup>37</sup> PE 22 at 1; PE 24.

<sup>38</sup> RE 25 at 2-3; RE 26.

<sup>39</sup> JE 12; JE 13; RE 7 at 4; RE 28; RE 29; Tr. Vol. I at 179, 196-97.

Student's educational placement was the general education setting for all subjects, except \*\*\* which were the special education setting.<sup>40</sup>

41. Student's dyslexia services increased to \*\*\* minutes, three times per week. Student was not scheduled to receive direct dyslexia instruction, but rather supplemental support with the \*\*\* program. Parent wanted Student's baseline reading fluency and comprehension skills assessed at the beginning of the 2024 - 2025 school year so progress could be measured accurately. Parent informed the committee Student received private tutoring in math and dyslexia, and Student continued to need Student's accommodations to remain successful.<sup>41</sup>
42. Student was failing \*\*\* on Student's first progress report from the fall 2024 semester. Student's \*\*\* teacher checked in with Student every \*\*\* class (\*\*\*) to monitor Student's progress on turning in assignments, Student's organization, Student's grades.<sup>42</sup>
43. Parent declined counseling services for Student from the District because Parent liked the private counseling Student had in place.<sup>43</sup>

## VI. DISCUSSION

### A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

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<sup>40</sup> JE 11 at 10-11, 27.

<sup>41</sup> JE 11.

<sup>42</sup> PE 31; Tr. Vol. I at 178-82.

<sup>43</sup> Tr. Vol. II at 458.



There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 62; *Endrew F., ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

## **B. Duty to Provide a 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 district has a duty to provide FAPE to all children with disabilities ages 3–21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), .201; Tex. Educ. Code § 29.001.

The district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student’s unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student’s IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry 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.* 580 U.S. at 399.

### **C. Child Find Under the IDEA (Identification and Evaluation)**

The IDEA's child find provisions guarantee access to special education for students with disabilities. 20 U.S.C. § 1400(d)(1)(A). A school district, like Respondent, has an affirmative duty to have policies and procedures in place to locate and timely evaluate children with suspected disabilities in its jurisdiction, including children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a), (c)(1); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 949 (W.D. Tex. 2008).

The child find obligation is triggered when a school district has reason to suspect the student has a disability, coupled with reason to suspect special education services may be needed to address the disability. *Richard R.*, 567 F. Supp. 2d at 950; *Dep't of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Hawaii 2001). When these suspicions arise, the school district must evaluate the student within a reasonable time after school officials have notice of reasons to suspect a disability. *Richard R., supra*. A two-part inquiry is required to resolve a child find claim. The first inquiry is whether the school district had reason to suspect the student has a disability. The second inquiry is whether the school district had reason to suspect the student may need special education and related services as a result of the disability. *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 467 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F.3d. 303, 320 (5th Cir. 2017).

A school district must “identify, locate, and evaluate students with suspected disabilities within a reasonable time after the school district is on notice of facts or behavior likely to indicate a disability.” *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018); *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 790-91 (5th Cir. 2020). A delay is reasonable when, throughout the period between notice and referral, a school district takes proactive steps to comply with its child find duty to identify, locate, and evaluate students with disabilities. Conversely, a time period is unreasonable when the school district fails to take proactive steps throughout the period or ceases to take such steps. *O.W.*, 961 F.3d at 793.

## **1. Reason to Suspect Disability**

Student was diagnosed with dyslexia in September 2015 by a District evaluation. The District provided section 504 services to Student for dyslexia and ADHD beginning in \*\*\* grade. As a result, there is no dispute the District had reason to suspect Student had disabilities.

## **2. Reason to Suspect Need for Special Education Services**

The District argues it had no reason to suspect Student may need special education services to address Student’s disabilities.

The Texas Education Agency has issued Technical Assistance to school

districts on child find and eligibility.<sup>44</sup> This document sets forth a non-exhaustive list of circumstances that may indicate a need for a special education evaluation and directs school districts to consider multiple data sources to determine whether the cumulative impact rises to the level of suspecting a disability and need for special education services. Among others, indicators include hospitalization, outside evaluation/diagnosis provided by the parent, parental concerns regarding the child's struggles, and outside therapeutic services and counseling.<sup>45</sup>

The evidence showed the presence of several child find indicators by the spring semester of 2022. In May 2021, during a section 504 committee meeting, Parent expressed Parent's concerns about Student's \*\*\*, and Student did not pass the STAAR tests for \*\*\*. During Student's \*\*\* grade year in 2021- 2022, teachers and Parent discussed several times Student's lack of progress, inattentiveness, lack of participation, behavior problems, and Parent's concern about Student's \*\*\* and looking for an online school. Student's \*\*\* teacher testified she provided Student's section 504 accommodations, and they were not effective. By March 2022, Student's discipline incidents had increased from the previous year and Student's grades decreased. Student leveled down in \*\*\* due to Student's inability to keep up with the work. On Student's third \*\*\* weeks report card, Student had \*\*\* and Parent notified the District of Student's \*\*\*. When Parent withdrew Student from the District, the District knew

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<sup>44</sup> Texas Education Agency, *Technical Assistance: Child Find and Evaluation* (June 2020). Available at <https://tea.texas.gov/academics/special-student-populations/special-education/technical-assistance-child-find-and-evaluation-june-2020-revisedv5.pdf>

<sup>45</sup> *Id.* at 6.

it was due to Student going out of state to an RTC.

The Administrative Law Judge concludes there were sufficient indicators not only that Student had a disability, but also a suspicion Student may need special education as a result. *Richard R.*, 567 F. Supp. 2d at 950; *Cari Rae*, 158 F. Supp. 2d 1190, 1194. The threshold for suspicion is relatively low and does not turn on qualification for special education but instead on whether the student should be *referred* for an evaluation. *Woody*, 178 F. Supp. 3d at 467. The weight of the credible evidence shows the District knew Student had a disability and had reason to suspect special education services may be needed to address the disability by March 2022 when Student withdrew to attend a residential treatment program in \*\*\*.

The District argues its child find obligation ended when Student withdrew to attend \*\*\*. However, a school district may not condition an evaluation on enrollment. *C.C. Jr. v. Beaumont Indep. Sch. Dist.*, 65 IDELR 109 (E.D. Tex. 2015). Here, the District's Executive Director of Compliance, Operations, Reporting and Evaluations testified the District did not take any action to evaluate Student after receiving the due process hearing request in July 2022 because Student was not enrolled and did not reside in the District.

In *R.B.*, the court indicated the Fifth Circuit does not provide specific guidance on the issue of providing evaluations to students enrolled out of the district. However, that Court found persuasive analysis on this specific point by courts in other jurisdictions. In a situation in which a student who is identified as needing special-education assessment, or should have been identified, is then enrolled in a

school out of the district, the school district's ongoing child find responsibilities are based on where the student resides, rather than where the student is currently enrolled in school. *R.B. v. N. E. ISD*, No. SA-20-CV-01441-JKP, 20-21 (W.D. Tex. Feb. 16, 2022) citing 34 C.F.R. § 300.131; *Abramson*, 493 F. Supp. 2d at 85; *S.B. v. San Mateo Foster City Sch. Dist.*, No. 16-CV-01789-EDL, 2017 WL 4856868, at \*16-17 (N.D. Cal. Apr. 11, 2017), *aff'd sub nom. Burnett v. San Mateo Foster City Sch. Dist.*, 739 Fed. App'x. 870 (9th Cir. 2018).

Here the District concluded Student resided in \*\*\* during Student's time at \*\*\* and \*\*\* without regard to the length of the enrollment. Student's Parent continued to reside in the jurisdictional boundaries of the District, and Student returned home after Student completed treatment. The Administrative Law Judge concludes the District's child find obligation did not end when Student withdrew from the District and enrolled in \*\*\*.

### **3. Reasonable Time Period for an Evaluation**

The next inquiry in a child find case is whether the school district evaluated the student within a reasonable time after having notice of the behavior likely to indicate a disability. *Woody*, 178 F. Supp. 3d at 468. The IDEA's implementing regulations address how quickly a school district must act after parental consent to evaluate is obtained, but neither the statute nor its implementing regulations establish a specific number of days in which a school district must evaluate a student between notice of a qualifying disability and referring the student for an evaluation. *Woody*, 865 F.3d at 319. In *Woody*, the court inferred a "reasonable-time

standard” into the provision. *Id.* at 320. A school district must also “identify, locate, and evaluate students with suspected disabilities within a reasonable time after the school district is on notice of facts or behavior likely to indicate a disability.” *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018); *O.W.* 961 F.3d at 790-91 (5th Cir. 2020).

Read together, *Krawietz* and *Woody* indicate the reasonableness of a delay is not defined by its length in weeks or months, but by the steps taken by a school district during the relevant period. A delay is reasonable when, throughout the period between notice and referral, a school district takes proactive steps to comply with its child find duty to identify, locate, and evaluate students with disabilities. Conversely, a time period is unreasonable when the school district fails to take proactive steps throughout the period or ceases to take such steps. *O.W.*, 961 F.3d at 793. Under the test set out in this jurisdiction, a finding of a child find violation turns on three inquiries: (1) the date the child find requirement was triggered due to notice of a likely disability; (2) the date the child find duty was ultimately satisfied; and (3) the reasonableness of the delay between these two dates. *See, Krawietz*, 900 F.3d at 676.

The Administrative Law Judge concludes the District’s child find obligation to Student was triggered due to notice of Student’s disabilities and reason to suspect Student may need special education and related services by March 2022. Here, the District never referred Student for a special education evaluation, and did nothing in response either at the time, when reason to suspect was established, or in response to the due process hearing request in July 2022. The District took no proactive steps to identify Student after Student entered a residential placement in May 2022. This

Administrative Law Judge concludes the delay in doing so was not reasonable. See *Krawietz*, 900 F.3d at 676.

#### **D. FAPE**

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

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 (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.*, 580 F.3d at 294.



## 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 or 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, .320, .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 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. § 300.324(a)(1).

The evidence showed the District developed an appropriate IEP based on performance and assessment. The IEP took into consideration Student's prior private evaluations and the current District evaluation. Student's IEPs included annual academic goals, related services, transition services, and accommodations for the classroom and the STAAR test based on Student's present levels. Parent agreed

to the 2023 and 2024 IEPs. Petitioner argues the 2023 reading fluency goal lacked a baseline; however, Student had been out of the District for over a year at the time of the ARD committee meeting. The District needed time with Student to determine Student's baseline reading skills. Petitioner argues in its closing brief that Student's 2024 IEP did not include goals for ED or counseling services. Parent refused counseling services from the District and the goals were based on Student's needs, not Student's specific disabilities. Student's PLAAFPs included statements about Student's behavioral/social/emotional issues and addressed them with accommodations. Additionally, Student's accommodations were similar to the ones recommended by Student's private 2022 psychological evaluation and Student's private dyslexia therapist. Petitioner argues Student did not receive Student's dyslexia intervention during the spring 2024 but presented no evidence to support this claim. Additionally, failure to provide services is an implementation claim, which Petitioner did not plead in the original or amended complaints.

Student's IEP goals were oddly worded and could have been more artfully drafted; however, they were measurable and any deficits in the IEP did not impede Student's ability to make educational progress as evidenced by Student's mastery of content through grades and STAAR testing. Furthermore, IEPs are intended to be implemented and measured for a given academic year. *Lamar Consol. Indep. Sch. Dist.*

*v. J.T. b/n/f Apr. S.*, 577 F. Supp. 3d 599, 607 (S.D. Tex. Dec. 31, 2021). At the time of hearing, Student had only been enrolled in the District for a semester and a few weeks, which is short of the annual timeline for IEP goals. The IEPs had annual goals designed to enable Student to make progress in the general and special education setting.

## 2. 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 (LRE).” 34 C.F.R. § 300.114. State regulations require a school district’s continuum of instructional arrangements to be based on students’ individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, and hospital classes; resource rooms or services; self-contained programs or classrooms on a regular campus; nonpublic day school; and residential treatment facilities. 19 Tex. Admin. Code § 89.1005(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 evidence showed Student was educated in the LRE. Student participated in general education classes, except for \*\*\*, for the 2023 – 2024 school year and \*\*\* for the 2024 – 2025 school year were scheduled in the special education setting. Petitioner presented no evidence at hearing that Student was not educated in Student’s LRE. Petitioner argues in the closing brief that Student’s August 2023 IEP dyslexia services of 25 minutes, once per week in the general education setting were not enough, but then argues increasing Student’s intervention in the 2024 IEP to 30 minutes, three times per week in the special education setting is too restrictive and not Student’s LRE. This is the first time LRE was mentioned in this case and Petitioner’s argument is conflicting and not persuasive. Student was educated in Student’s LRE.

### **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.*, 909 F.3d at 766. 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 services were provided in a coordinated, collaborative manner by key stakeholders. Parent participated in section 504 meetings, called and emailed with District employees, participated in ARD committee meetings, and agreed with the District's IEPs. Parent expressed concerns about Student's reading fluency and Student's dyslexia interventions were increased to 30 minutes, three times per week to address those concerns. During the hearing, Parent did not mention any instances where Parent felt the District or the ARD committee did not listen to Parent's requests or concerns. Each ARD committee meeting ended in agreement. Petitioner failed to establish that the District excluded Parent in bad faith or refused to listen to Parent.

**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.*, 703 F.3d at 813-14.

The evidence showed that, after returning to the District from the RTCs and private school, Student made academic and non-academic progress. Because no progress reports on IEP goals were presented and Student's case manager from spring 2024 could not recall if she provided Parent with progress reports, it is impossible to tell exactly what type of progress Student made on Student's IEP goals. Despite the lack of progress reports, Student passed the \*\*\* STAAR tests in the spring of 2024 and earned a \*\*\*. While Student was failing \*\*\* on Student's first progress report in the 2024 - 2025 school year, no evidence was presented

to explain the reasons for this failure. As mentioned above, IEPs are intended to be measured for a given academic year; therefore, academic and non-academic benefits must be weighed considering the entirety of the academic year. *Lamar Consol.* 577 F. Supp. 3d at 607 (S.D. Tex. Dec. 31, 2021). Since Student's return to the District, Student had no discipline incidents and was working on Student's organizational skills. Student made academic and non-academic progress.

## **5. FAPE conclusion**

The District developed a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs from August 2023 to present. *Andrew F.*, 580 U.S. at 399, 403. Student's IEP and program were developed using private evaluations, District evaluations, and placed Student in Student's LRE. Parent, as well as key stakeholders from the District, provided input to develop Student's program and Student made progress. A review of the overall educational program shows Student was provided a FAPE and made progress with the program as it was developed and implemented. *Michael F.*, 118 F.3d at 253; *Hovem*, 690 F. 3d at 391.

## **E. Procedural Issues**

Petitioner alleged procedural violations of the IDEA. Liability for a procedural violation only arises if the procedural deficiency impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of

educational benefit. 34 C.F.R. § 300.513(a)(2).

The evidence showed the District did not provide Procedural Safeguards or Prior Written Notice at any point before Petitioner filed for a due process hearing on July 5, 2022. The District, however, filed a response to the Complaint on July 15, 2022, that included an explanation of why it did not evaluate Student and the basis for not doing so, which served as Prior Written Notice. Additionally, in the response, the District indicated the procedural safeguards were on the District website. The District therefore satisfied these requirements. 34 C.F.R. §§ 300.504, .508(e).

Additionally, the District did not impede Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student as addressed above in the third *Michael F.* factor.

#### **F. Private Placement and Residential Placement at District Expense**

Petitioner requested the District reimburse Parent for \*\*\*, \*\*\*, and \*\*\*. Student must meet a two-part test in order to secure reimbursement for private placement at the District's expense. First, Student must prove the District's program was not appropriate under the IDEA. Second, Student must prove placement at \*\*\* was 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).

The District developed an appropriate IEP in light of Student's unique circumstances as discussed above and Parent agreed with the IEP developed by the ARD committee on August \*\*\*, 2023. Parent never enrolled Student in the District after development of that IEP until the spring 2024 semester without any explanation to the District. Because the IEP was appropriate, there is no need for this Administrative Law Judge to analyze the second prong of whether \*\*\* was appropriate.

For residential placement to be considered appropriate under the IDEA, it must be 1) essential in order for the disabled child to receive a meaningful educational benefit, and 2) primarily oriented toward enabling the child to obtain an education. *Michael Z.*, 580 F.3d at 299 (5th Cir. 2009). The second prong is focused on "whether the child was placed at the facility for educational reasons and whether the child's progress at the facility is primarily judged by educational achievement." *Id.* at 301.

The evidence showed that Parent placed Student at \*\*\* due to Student's \*\*\*. Parent placed Student at \*\*\* after \*\*\* because \*\*\* recommended an RTC for Student. Both residential placements were not educational based and Student's progress in both facilities was not judged by educational achievement. Student's progress was judged on Student's efforts to \*\*\* and using the tools Student developed to deal with Student's \*\*\*. While Student benefited from both programs, the programs do not meet the requirements for reimbursement.



## VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District violated its child find duty to Student by failing to timely evaluate Student. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a), (c)(1); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 949 (W.D. Tex. 2008).
3. The District provided Student a FAPE after August 2023 to present, and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
4. Petitioner did not meet Petitioner's burden of proving the District made a procedural violation. 34 C.F.R. § 300.513(2)(i-iii).

## VIII. RELIEF AND ORDERS

The IDEA's central mechanism for remedying perceived harms is for parents to seek changes to a student's program. *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 483 (2nd Cir. 2002). Hearing officers have "broad discretion" in fashioning relief under the IDEA. Relief must be appropriate and further the purpose of the IDEA to provide a student with a FAPE. *School Comm. of Town of Burlington, Mass. v. Dept. of Educ.*, 471 U.S. 359, 369 (1985).

An impartial hearing officer has the authority to grant all relief deemed necessary, including compensatory education, to ensure the student receives the requisite educational benefit denied by the school district's failure to comply with the

IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991). In Petitioner’s closing brief, the request for reimbursement was limited to placement at \*\*\* and \*\*\*, the private psychological evaluation, therapy services at \*\*\*, and tuition for \*\*\*. Prior relief requested included tutoring. Petitioner presented no evidence on the costs of the tutoring interventions Student utilized; therefore, reimbursement cannot be awarded. Based on the findings that the District should have evaluated Student for special education services in the Spring of 2022 and it failed to do so until July 2023. The Administrative Law Judge makes the following orders:

1. The District shall reimburse Parent for the cost of the private psychological assessment made by Dr. \*\*\* on July \*\*\*, 2022. The cost of the evaluation was \$\*\*\*. The District shall pay Parent that amount by December 15, 2024.

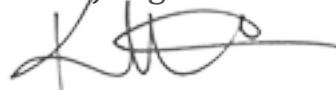
### ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner’s requested relief is **GRANTED IN PART AND DENIED IN PART** as described above.

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

**Signed November 15, 2024.**

ALJ Signature:



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Kasey White

Presiding Administrative Law Judge

## **NOTICE TO THE PARTIES**

The Decision of the Administrative Law Judge in this case is a final and appealable order. Any party aggrieved by the findings and decisions made by the Administrative Law Judge 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),516; 19 Tex. Admin. Code § 89.1185(n).