

DOCKET NO. 361-SE-0823

STUDENT	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT,	§	
Petitioner	§	
v.	§	HEARING OFFICER
PEARLAND INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Student (Student), by next friend Parent, filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) on August 18, 2023. Respondent in the complaint is Pearland Independent School District, (the District). The hearing was conducted on March 20, 21, and 22, 2024. The parties agreed to waive the resolution session and agreed to participate in mediation through the Texas Education Agency.

At all times during the proceedings, Student was represented by Mark Wilburn, attorney with Wilburn and Pevsner, PLLC. Respondent was represented by Tanya Dawson, General Counsel for Pearland ISD. The hearing was recorded and transcribed by Ann Berry, a duly certified court reporter.

Student’s Claims

1. The District failed to offer an appropriate individualized program for Student on the basis of Student’s assessment and performance for the 2023-2024 school year.
2. The District failed to propose to provide instruction and services in the Least Restrictive Environment appropriate to Student’s needs.
3. The District failed to collaborate appropriately with Student’s Parents.

Student's Requested Relief

Student sought the following relief against the District for these alleged violations:

1. An order to compel the District to develop and implement an appropriate Individualized Education Program (IEP) with appropriate supports.
2. An order to compel the District to continue to provide special education instruction and services in the *** setting at a level equal to or greater than the level Student was receiving during the 2022-2023 school year.
3. An order to compel the District to revise its approach in the *** class to provide Student with an appropriate education individualized to Student's unique needs, characteristics, and circumstances.

The Due Process Hearing

The due process hearing began as scheduled on March 20, 2024. The hearing was conducted using the virtual Zoom platform. The hearing was open to the public, and Student did not attend. Each party was allowed eleven and one-half hours for the presentation of argument and evidence at the hearing.

The presentation of evidence concluded on March 22, 2024. At the close of the evidence, the parties made a joint motion, on the record, that the parties be allowed to submit written closing arguments and that the decision due date be extended a commensurate number of days to allow for receipt of transcripts and additional time for the parties to submit their written closing arguments. Finding Good Cause to extend the decision due date, the Hearing Officer granted the motion. The date for submission of written closing arguments was continued to May 6, 2024, and the decision due date was extended to June 3, 2024.

FINDINGS OF FACT

Based on a preponderance of the evidence admitted at the hearing, the Hearing Officer makes the following findings of fact:

1. Pearland Independent School District is a political subdivision of the State of Texas and a duly incorporated Independent School District.

2. Student is ***-year-old in the *** grade at ***. At all relevant times, Student resided with Student's Parents within the jurisdictional boundaries of the District. (JEx 36).
3. Student was determined eligible for special education services in 2016 as Other Health Impaired (OHI) for Attention Deficit Hyperactive Disorder (ADHD) and Specific Learning Disorder (SLD) in basic reading skills, reading fluency and written expression. In 2022 Student was identified as eligible for special education and related services as having dyslexia. (JEx 1-3, JEx 19-156).
4. The Parent was at all times timely provided with notices of procedural safeguards. (JEx 2, 5,7).
5. The District uses the Benchmark Assessment System (BAS), which classifies students based on their ability to read independently and with the support of an instructor, to measure a student's reading level. The BAS begins with level A, which is a non-reader at or below the pre-K level. (Tr. p. 31: 4-5).
6. In the *** grade Student read at an independent BAS level of *** at a rate of *** words per minute. This corresponds to approximately the *** grade. (JEx1-4; Tr. p. 30:17-32).
7. Student received reading instruction in the *** setting in the *** grade, school year 2020-2021. (JEx1-6; Tr. pp. 33:20-34:9).
8. Student received reading instruction in the *** setting in the *** grade, school year 2021-2022. In October 2021 Student was reading at BAS level ***, which corresponds to the *** grade. (JEx 4-33; Tr. p. 36:16-23).
9. In March 2022 Student was reading at a BAS level ***, which corresponds to the *** grade. (JEx 9-51; R17-22; Tr. p. 41:9-42).
10. The District increased Student's time in the *** setting from 45 to 90 minutes of reading instruction for the 2022-2023 school year. (JEx 9-54; Tr. p.45:5-16).
11. In August 2022 the Parent provided the District with copies of the private neuropsychological evaluation of Student conducted by ***. Student's ARD committee met on October ***, 2022 to consider the private evaluation. (JEx 13, 14; Tr. pp. 197, 367-369).
12. The *** neuropsychological evaluation conducted in April 2022 confirmed that Student's reading levels were very low. Consistent with the March 2022 IEP documentation, the *** evaluation recommended individualized intervention in reading and writing and *** tutoring for ***, reading, and writing. (JEx. 9-54, 13-81; Tr. P. 52:2-14).
13. In an October ***, 2022 ARD, the District proposed conducting additional testing in the areas of phonological awareness and auditory processing for Student. Parents agreed to the additional testing for Student. (JEx 14, Tr. pp.198-199).

14. In the October ***, 2022 ARD, during Student's *** grade year, the District continued to recommend 90 minutes of reading instruction in the *** setting. (JEx 14-87; T p. 52:15-55, 55:2-56).
15. Based upon the additional testing by ***, the District's Licensed Specialist in School Psychology (LSSP), presented to the ARD as the November ***, 2022 Specific Learning Disability Report, Student had an overall IQ of*** and met special education eligibility in the areas of dyslexia and written expression in addition to the prior eligibilities of SLD in basic reading, reading fluency and OHI for ADHD. (JEx 15-116, Tr. p.377; JEx 9-51-52; Tr. p. 43:8-44).
16. The LSSP who conducted the November 2022 evaluation indicated that the finding of eligibility for dyslexia related in part to a change in the law, which allowed a dyslexia finding based merely on difficulties in basic reading skills or reading fluency, and in part due to the results of Student's orthographic processing assessment. The report also found that Student's Specific Learning Disability included Written Expression. (Tr. p. 62:21-64; JEx 15:117-118).
17. The family's advocate requested, and the ARD committee agreed, that the evaluation conducted by the District's LSSP in November 2022 be considered as Student's re-evaluation. (JEx 16-130).
18. The District convened an ARD to propose and determine services for Student given Student's new eligibilities. The Parents and the family's advocate attended and participated in the meeting which began on December ***, 2022 and, after several recesses, concluded in March 2023. (JEX 16, Tr. pp.196, 200, 216, 368).
19. In December 2022 the ARD Committee proposed a significant reduction to Student's reading instruction in the *** classroom from 90 minutes to 15 minutes per day. The 15 minutes in *** was to be allocated to reading fluency. The ARD Committee proposed to allocate time for reading in the general education setting with reading intervention by inclusion teachers. (JEx 16-125; Tr. pp. 72:12-73, 95:12-23).
20. The only material change in Student between October 2022 and December 2022 was the identification of Student as having dyslexia—an identification which opened up the possibility of providing Student dyslexia intervention services. (JEx 16-125; Tr. pp. 91:1-96, 96:17-99, 98:6-101).
21. The December ***, 2022 ARD proposed to decrease Student's time in the *** room and move Student to a regular education classroom for *** (***) so that Student could spend more time with typically developing peers. (Tr. p. 96:17-99).
22. Because Student was at a BAS Level ***, the goal of reaching a BAS Level *** was discontinued. When attempting to read informational or fictional material at BAS Level ***, Student had a 20% fluency rate. (JEx 19-157; Tr. pp. 146:5-147, 162:20-164).

23. The ARD committee proposed revised accommodations to include the following: check for understanding in all core subjects, not just for reading, added clarification of vocabulary in all core subjects, added note taking as an accommodation in all core subjects, added the accommodation of oral administration at student request in *** for assignments and tests, revised preferential seating to include and to allow for movement, and minimization of distractions to complete work, revised checking for understanding in all core subjects and clarification of vocabulary in all core subjects. (J16-125).
24. In the reconvened meeting of the ARD on February ***, 2023, the District proposed that Student's schedule of services include reduced *** (***) from 90 minutes in the *** setting to 15 minutes of *** *** to address reading fluency daily, 45 minutes of *** with inclusion support five times a week in the general education setting, and adding dyslexia intervention as a pull out for 30 minutes four times a week. (JEx 16-125).
25. The ARD committee proposed placing Student in the general education *** setting to provide access to the full *** general education curriculum. The ARD meeting ended in disagreement. (JEX 16-127,137).
26. A reconvened ARD meeting was held on March ***, 2023. The ARD committee agreed to let Student continue to follow the schedule of services that Student was currently following until the Annual ARD in April and agreed to begin dyslexia intervention services for 30 minutes 4 times a week. (JEx 17-148; Tr. pp. 226-227).
27. At the Annual ARD meeting on April ***, 2023, the ARD discussed Student's present levels of performance, grades, academic performance, and other data. Student was reading at a level *** with 96 % accuracy, which was an increase from level *** at the end of the *** grade year. The Parent requested that Student continue to receive 90 minutes in the *** room for reading for the remainder of the school year and the District agreed. The District also agreed that it would gather data, and revisit placement for the *** grade year in May 2023. (JEx-22-185, 192-196).
28. In March 2023 Student was reading at a BAS Level ***, which corresponds to the *** grade. (JEx 19-157; T p. 145:21-146).
29. At the May ***, 2023 reconvened ARD meeting, the District again proposed 15 minutes of reading fluency instruction in the *** room 5 days a week, dyslexia intervention for 30 minutes 4 times a week, and 45 minutes in general education *** with inclusion support daily. (JEx 22-185, 194).
30. The May ***, 2023 ARD ended in disagreement. A reconvened ARD was scheduled for August ***, 2023. (JEx 22-188, 195).
31. At the end of the *** grade, Student was reading at BAS level *** and was reading BAS Level *** materials at a rate of *** words per minute. (JEx 22-182).
32. Student was able to comprehend on grade level when being read to. (JEx 22-182; Tr. p.78).

33. At the end of the *** grade Student was reading between BAS level ***, approximately *** grade level. Student reads at a rate of *** words per minute. (Tr. p. 278:6-279:22).
34. In the *** classroom, students are taught a modified curriculum that does not include everything in the TEKS. *** grade standard TEKS would not be presented to Student in the *** grade *** classroom. The curriculum in the *** classroom is collectively modified to meet the needs of students in the class as a whole, rather than that of individual students. (Tr. pp. 101:13-102; Tr. p. 102:11-14, 158:19-161).
35. In the *** classroom 20 minutes was spent on writing and 40-50 minutes was spent in smaller group reading activities working with students on basic reading skills and guided reading. In the basic reading skills group students did not work at *** grade reading levels. The only exposure Student received to the regular *** grade reading TEKS was in the ***. (Tr. pp. 106:8-113, 114:8-117).
36. The District uses the *Reading by Design* curriculum in the *** class for students with dyslexia. The *Reading By Design* curriculum covers the critical components listed in the *Texas Dyslexia Handbook*. (Tr. pp. 516:24-25, 517: 6-7).
37. ***, the District's Director of Special Programs, testified that the *Reading By Design* Curriculum is a modified curriculum and does not cover all of the readiness standards for *** grade ***. (Tr. p. 595:9-17).
38. Student would be exposed to meaningful conversations from typically developing peers in the general education *** classroom. (Tr. pp. 121:23-122).
39. For the entire day, except for the 90 minutes allocated to *** ***, Student was in general education classrooms and exposed to meaningful conversations from typically developing peers in Student's other classes and during lunch and breaks. (Tr. pp. 121:23-122, 122:23-125; JEx 16-125).
40. The primary difference between the *** setting and the general education *** setting with respect to Student's work in reading would be the ability of Student in the general education setting to work on reading projects with Student's typically developing peers. (Tr. p. 125:16-127).
41. Dr. ***, the District's psychological expert witness, reviewed Student's evaluations and records but did not interview Student or Student's parents. (Tr. pp. 653:12-18, 659:13-16).
42. Dr. ***'s report defines Special Education as specially designed instruction adapting as appropriate to the needs of a child with a disability, the content, the methodology and/or the delivery of instruction to meet their unique needs. (REx 30).
43. The Parent first reported to the school that Student experienced *** in an email to an assistant principal in October 2020. (PEx-7). Through Student's *** grade school years, the parent

continued to address Student's *** during ARD meetings and reported to the school that Student suffered from *** due to ***. Student suffers from severe *** which are triggered by *** in the presence of Student's typically developing peers or to be *** linked to Student's reading disability. (Tr. p. 435:11-436).

44. Based upon teacher and administrator observations, Student had a good relationship with Student's peers. (Tr. p. 328).
45. Several staff members testified that they had not seen Student display *** in a variety of contexts, but they overlooked the fact that the issue is not one of *** with peers in all contexts, but rather limited to *** in the context of reading. These staff members had not observed Student *** in a group of peers or in a reading setting with non-disabled peers. (Tr. pp. 171:25-174, 238, 240; 332:24-333, 442:9-19).
46. Student was not diagnosed with *** disorder. (Tr. pp.408-409).
47. The evaluation of Student conducted by the District's LSSP did not indicate any concerns regarding ***. (Tr. p. 369).
48. The independent evaluation from *** neuropsychology did not indicate concerns regarding ***. (J13).
49. The Parent's expert in clinical psychology, Dr. ***, determined from interviews with the Parents, Student, and through testing of Student that Student experiences an increase in social stress due to the compounding impact of Student's academic deficits and the resultant physical manifestations. (PEx 2; Tr. p. 391:9-395).
50. The proposed IEP for March 2023 indicates that the ARD consideration of LRE shows the benefits of the *** setting for Student would result in decreased frustration and stress and increased student self-esteem/worth for students. (JEx 19-58; Tr. pp. 500:21-23, 501:1-4).
51. Because of Student's severe reading deficits and Student's *** of Student's typically developing peers in the general education classroom, Student would be unlikely to make progress in reading if Student's *** reading instruction time were significantly reduced. Even with inclusion support for reading in the general education classroom, Student would be more likely to make no progress or even to regress in reading if Student's *** reading instruction time were reduced to the extent proposed by the District. (JEx 22-193-196).

DISCUSSION

I. The Nature of the Dispute

Student asserts several claims under IDEA. Student claims that the District failed to individualize Student's program on the basis of Student's assessment and performance; the District failed to propose

to provide instruction and services in the least restrictive environment appropriate to Student's needs; the District failed to collaborate appropriately with the Parents; and the District has failed to offer to provide Student positive academic or non-academic benefits appropriate to Student's unique characteristics, circumstances, and needs, specifically with respect to reading, for the 2023-2024 school year.

II. The Governing Legal Standards

A. Burden of Proof

Student has the burden of proof to establish the inappropriateness of the educational plan proposed by the District. As the Supreme Court has explained, "(t)he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Applying this principle, the Fifth Circuit held that, "the IDEA creates a presumption in favor of a school system's educational plan, placing the burden of proof on the party challenging it." *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5th Cir. 2003). Consequently, Student bears the burden of proof to overcome the presumption that the plan proposed by the District was appropriate. *See id.*

B. FAPE

The IDEA requires that all children with disabilities who are in need of special education and related services are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. Nothing in IDEA requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of the IDEA and who, by reason of that disability, needs special education and related services is regarded as a child with a disability. 20 U.S.C. §1414(a)(3)(a)(B).

The purpose of the IDEA is to ensure all children with disabilities have available to them a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). A school district is responsible for providing a 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 the child's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188- 189, 200-201, 203-204 (1982). (*Rowley*)

The IDEA requires more than a diagnosis of a disability. It requires that a child exhibit symptoms of a qualifying disability and exhibit them to such a degree that they interfere with the child's ability to benefit from the general education setting. *Alvin Indep. Sch. Dist. v. A.D.*, 46 IDELR 221 (5th Cir. 2007); *Student v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Filed Aug. 10, 2007).

C. Standards of IEP Appropriateness

The Fifth Circuit has addressed the meaning of the *Rowley* standard in light of the Supreme Court's recent decision in *Andrew F. v. Douglas Cnty. Sch. Dist. No. 15-827*, 580 U. S. 386, 400-01 (2017). The Fifth Circuit concluded that while *Rowley* sets the floor of opportunity for an eligible student, the *Andrew F.* decision does not displace or differ from the Circuit's own standard set forth in *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). Accordingly, the appropriateness of the IEP proposed by the District must be analyzed in accordance with the holding in *Michael F.*

The Court in *Michael F.* determined that a student's IEP is reasonably calculated to provide meaningful educational benefit when:

1. The program is individualized on the basis of Student's assessment and performance;
2. The services are provided in a coordinated and collaborative manner by the key stakeholders;
3. The program is administered in the least restrictive environment; and
4. Positive academic and non-academic benefits are demonstrated.

Cypress- Fairbanks ISD v. Michael F., 118 F.3d 245, 251 (5th Cir. 1997)

The Fifth Circuit in *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 397 (5th Cir. 2012), explained that the focus of the IDEA is on the child's "whole educational experience, and its adaptation to confer 'benefits' on the child." See 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV). Every IEP begins by describing a student's present level of achievement, including explaining "how the child's disability affects

Student’s involvement and progress in the general education curriculum.” 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa). It then sets out “a statement of measurable annual goals ... designed to ... enable the child to be involved in and make progress in the general education curriculum,” along with a description of specialized instruction and services that the child will receive. 20 U.S.C. §§ 1414(d)(1)(A)(i)(II), (IV).

A school district’s obligation when developing a student’s IEP is to consider the student’s strengths, the student’s parents’ concerns for enhancing the student’s education, results of the student’s most recent evaluation data, and the student’s academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1)(i). While the IEP need not be the best possible one nor must it be designed to maximize the student’s potential, the school district 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).

To meet its substantive obligation under the IDEA a district must offer an IEP that is reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances. The adequacy of a given IEP turns on whether it is appropriate to the unique characteristics, needs, and circumstances of the child for whom it was created. *Endrew F. v. Douglas Cnty. Sch. Dist., No. 15-827*, 580 U. S. 386, 400-01 (2017).

III. Student Proved That Student’s August *, 2023 Proposed IEP Was Not Appropriate.**

The IEP at issue in this matter is the one the District offered the Student on August ***, 2023. For reasons summarized below, Student’s educational program under the proposed IEP did not comply with the legal standards of appropriateness set forth in *Endrew F.* and *Michael F.*

A. Individualized On the Basis Of Student’s Assessment And Performance.

The evidence showed that Student’s IEP was devised by a properly constituted ARD committee, including the Parent. Moreover, placement for reading instruction in the *** room was appropriate, as

both parties agree.

However, the District's proposed reduction of the Student's minutes in the *** setting (from 90 minutes to only 15 minutes) was not appropriate. The evidence showed that although the Student's reading performance continues to lag behind Student's grade level, Student did make some progress in reading under the IEP for the 2022-2023 school year while receiving 90 minutes of reading instruction in the *** setting. The evidence further showed that Student would have been likely to continue to make progress in the 2023-2024 school year (and, in fact, did make such progress) with a program that included 90 minutes of *** reading instruction.

The District's argument that Student would make better progress in reading if Student spent more time in the general education setting with inclusion support was not supported by credible evidence. On the contrary, the evidence established that Student's severe reading deficits coupled with Student's social *** about having those deficits displayed in front of Student's typically developing peers make it unlikely Student would be able to make meaningful reading progress in a general education setting. Student's placement therefore should continue to include at least 90 minutes of reading instruction in the *** class, with appropriate dyslexia intervention and intensive instruction designed to improve Student's reading fluency.

In addition, based on the evidence, the Student is likely capable of receiving instruction in more of the standardized reading curriculum than Student is currently being taught in Student's *** class. There Student has received a modified curriculum in which Student was taught less than half of the standard reading skills. Student's evaluation and assessments show that Student is intelligent and has adequate reading comprehension. Student therefore needs instruction in more than the minimum readiness skills in order to make meaningful progress and, accordingly, should have been offered an individualized program in which Student was taught close to or at Student's level of assessment and performance.

For these reasons, Student's IEPs and overall educational programming did not provide Student a FAPE during the relevant time period and were not consistent with the requirements of *Andrew F.* and *Michael F.*

B. Provided in a Coordinated and Collaborative Manner by Key Stakeholders

At all times, the Parents were provided with proper notice of ARD meetings and procedural

safeguards. The deliberations of the ARD meetings indicate that the Parents fully participated in the ARD meetings and that the District considered and fully discussed parental concerns during ARD meetings. The August 2023 proposed IEP was developed by the required members of the ARD committee, including the Parents who were accompanied by an advocate. The ARD meeting began in December 2022 and finally concluded in disagreement when the Parents filed for this due process hearing in August 2023. However, despite the collaborative effort, the parent was never in agreement with the proposed IEP and at every ARD convened for developing this IEP the Parents indicated their disagreement with some of the key provisions of the proposed IEP. The Parent filed a request for a due process hearing following the ARD meeting and in accordance with “stay-put,” Student continued to receive 90 minutes of reading instruction in the *** room as it was Student’s current educational placement before the parents filed for a hearing. 20 U.S.C. §1415 (j); 34 C.F.R. § 300.518 (a).

C. Least Restrictive Environment

The evidence shows that Student cannot reasonably be expected to receive an educational benefit in reading from placement in a general education *** classroom setting. Student suffers from *** as in need of assistance with reading in the general education classroom, such as *** by another teacher. Student’s proposed IEP for August ***, 2023, placed the student in the general education *** classroom except for 15 minutes of instruction in reading fluency in the *** room. The proposed placement, even with modifications, did not provide for education in the least restrictive environment in which Student can obtain an educational benefit.

Student was with the general school population during all other classes, extracurricular activities, lunch, and bus transportation to and from school. Student’s placement in the *** room for *** satisfied IDEA requirements for least restrictive environment. *34 C.F.R. § 300.115.*

D. Positive Academic and Non-academic Benefits Demonstrated

The credible evidence at the hearing showed that the District’s provision of special education to Student under the proposed IEP was not reasonably calculated to, and would not likely, result in meaningful education benefits to Student. Student would likely not achieve academic progress, meet

the goals and objectives set forth in the proposed IEP, or make progress in reading.

The evidence supports Student's claim that Student was denied FAPE because Student's proposed August ***, 2023 IEP would not be appropriate.

V. Conclusion

When looking at the totality of the Michael F. factors as applied to the proposed IEP at issue here, the evidence showed that the IEP offered by the District for the 2023-2024 school year was not individualized based on Student's assessment and performance and did not provide for education in the least restrictive environment in which Student can obtain an educational benefit.

The IEP was developed in a sufficiently coordinated and collaborative manner by the key stakeholders but it failed to provide Student with a program that was reasonably calculated to deliver meaningful academic benefit in light of Student's unique circumstances for the 2023-2024 school year. *Andrew F.*, 137 S. Ct. at 992. Based on the four factors of Michael F., the evidence established that the District failed to offer Student a FAPE during the 2023-2024 school years.

CONCLUSIONS OF LAW

1. Student met Student's burden of proving that Respondent failed to propose an appropriate IEP for Student for the 2023-2024 school year. 34 C.F.R. §300.320.
2. Student met Student's burden of proving that the District's proposed IEP for the 2023-2024 school year did not provide for placement of Student in the Least Restrictive Environment in which Student can obtain an educational benefit. 20 U.S.C. § 1412(a)(5), 34 C.F.R. § 300.115.
3. Student met Student's burden of proving that the instruction proposed for delivery in the *** room was not individualized to Student's unique needs, characteristics, and circumstances. *Andrew F. v. Douglas Cnty. Sch Dist. No. 15-827*, 580 U. S. 386, 400-01 (2017).
4. Petitioner failed to meet Student's burden of proving that the District failed to collaborate appropriately with Student's Parents. *Cypress- Fairbanks ISD v. Michael F.*, 118 F.3d 245, 251 (5th Cir. 1997).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and Discussion,

IT IS HEREBY ORDERED THAT:

1. The District is required to convene an ARD meeting for Student within a reasonable period of time in advance of the next school year and adopt an IEP for Student that provides instruction and services in the *** setting at a level equal to or greater than the level Student was receiving in the 2022-2023 school year.
2. The District is required to revise Student's IEP to provide for instruction delivered to Student in the *** setting that is individualized for Student's unique needs, characteristics, and circumstances, including but not limited to, Student's assessments and performance and Student's ability to learn the reading TEKS.
3. Any and all other requested relief is **DENIED**.

SIGNED on the _____ day of May 2024.

Sandy Lowe
Special Education Hearing Officer
For the State of Texas