

DOCKET NO. 128-SE-0119

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

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, ***, by Student’s next friends *** and *** (“Petitioner” or “Student”), brought this action against the Houston Independent School District (“Respondent” or “District”) under the Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 *et seq.* (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the District failed to fulfill its Child Find duty in a timely manner and whether Petitioner was denied a free, appropriate public education (FAPE) as a result. Petitioner established a Child Find violation and denial of a FAPE beginning in January 2018 through August 14, 2018. Claims that arose prior to January 2018 are dismissed as outside of the one-year statute of limitations as applied in Texas. Petitioner was denied a FAPE for the period of time between January 2018 and August 2018.

The District raised a counterclaim challenging whether the District’s June 2018 full and individual evaluation (FIE) was appropriate and the Parent therefore is not entitled to a publicly-funded independent educational evaluation (IEE). The Hearing Officer concludes the June 2018 FIE was an appropriate evaluation and Parent is not entitled to a publicly-funded IEE.

II. PROCEDURAL HISTORY

A. Legal Representatives

Student was represented throughout this litigation by Student's legal counsel, Terry Gorman and Chigozie Odediran of the Gorman Law Firm. The District has been represented throughout this litigation by its legal counsel Hans P. Graff, Deputy General Counsel for the District.

B. Resolution Session

The parties conducted a timely, but unsuccessful Resolution Session on January 19, 2019.

C. Continuances

There were no continuances in this case. An amended scheduling order (Order No. 4) was issued on February 1, 2019 after Petitioner requested, and was granted leave to file an amended complaint.

III. DUE PROCESS HEARING

The due process hearing was held on March 26-27, 2019. Petitioner continued to be represented by Petitioner's legal counsel, Terry Gorman, assisted by his co-counsel Chigozie Odediran. Student's parents, *** and ***, attended the hearing. Respondent continued to be represented by its legal counsel, Hans P. Graff. ***, District Senior Manager for Special Education, attended the hearing as the District's party representative. The hearing was recorded and transcribed by a certified court reporter.

At the conclusion of the hearing, the District made an unopposed request to leave the record open to allow for submission of written closing arguments with the benefit of access to the hearing transcript. The District also proposed an extension of the decision due date to give the Hearing

Officer time to review the extensive record, conduct legal research, and consider the parties' written closing arguments in preparing the decision. The decision due date was extended, by agreement, to May 24, 2019.

IV. ISSUES

A. Petitioner's Issues

Petitioner raised the following issue: Whether the District failed to timely identify Student in all areas of disability and devise an appropriate Individualized Education Program (IEP) and therefore failed to provide Student a FAPE under the IDEA within the one year statute of limitations period that applies in Texas; and specifically:

CHILD FIND: Whether the District failed to timely identify Student for special education due to medically diagnosed conditions of dyslexia, dyscalculia, dysgraphia, Specific Learning Disorder (SLD) with reading and mathematics impairments, Unspecified ***, ***, ***, Attention Deficit Hyperactivity Disorder (inattentive), and Other Health Impairment.

FAPE: Whether the District failed to draft and implement IEP that is objective, measurable, and demonstrates academic and non-academic progress.

B. Respondent's Legal Position and Counterclaim:

On January 14, 2019, Respondent filed a timely Response to the Complaint in the form of a General Denial and counterclaim. The District generally denies the allegations and maintains Student was timely and properly evaluated, re-evaluated, and identified for special education, and provided an appropriate IEP.

The District counterclaim raises the following issue for decision:

EVALUATION: Whether the District's June 2018 full individualized evaluation was an appropriate assessment and Student's parent is therefore not entitled to an IEE at public expense.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following items of relief:

1. Private placement at the *** private school and an order directing the District to publically fund Student's unilateral private school placement;
2. Private school tuition reimbursement;
3. Reimbursement for the cost of a privately obtained IEE;
4. Reimbursement for tutoring costs;
5. Attorneys' fees (Dismissed pursuant to 19 Tex. Admin. Code § 89.1192);
6. An order directing the District to draft and implement an appropriate IEP to be implemented by Student's private school; and
7. An order directing the District to provide necessary private therapeutic services to meet its obligation to provide Student a FAPE.

Petitioner's request for attorney's fees was previously dismissed as outside of the Hearing Officer's limited jurisdiction.¹ 19 Tex. Admin. Code § 89.1192.

B. Respondent's Requested Relief

Respondent requests the hearing officer grant the counterclaim and deny the relief requested by Petitioner.

¹ Order No. 3.

VI. FINDINGS OF FACT

1. Student is a *** year-old ***.² Growing up Student met all developmental milestones.³
2. Student is a cooperative and happy child who enjoys ***.⁴
3. Student's Mother first suspected a learning disability in 2014 based upon screenings done by Student's *** teacher which revealed Student had an inability or aversion to ***,⁵ that Student was ***,⁶ had difficulty distinguishing ***,⁷ and exhibited other indicators of a possible speech issue.⁸
4. In 2014, Student attended a private ***. During that year, Student failed to make adequate progress learning Student's ***.⁹
5. In 2015, before Student began ***, Student's parents (Parents) obtained a private speech and language evaluation by a speech pathologist that ruled out a speech issue.¹⁰
6. Prior to Student's ***, in August 2015 Student enrolled in ***.¹¹
7. A comprehensive neuro-visual evaluation of Student was completed in January 2015. In August 2015, a comprehensive eye and developmental neurosensory evaluation was completed. These evaluations determined Student has visual and neurosensory deficits and recommended numerous classroom accommodations.¹²
8. After the first nine weeks of the 2015-2016 school year, Student's *** teacher refused to sign/renew Student's *** and recommended Student *** *** due to Student's social and emotional immaturity, academic deficits, and overall unpreparedness to meet ***

² Transcript (Tr.) at 46-47.

³ Joint Exhibit (JE)-1 at 002.

⁴ Petitioner's Exhibit (PE)-6, 7; Tr. at 28, 125, 280.

⁵ Tr. at 48-49.

⁶ Tr. at 48.

⁷ Tr. at 51.

⁸ Tr. at 52.

⁹ JE-4 at 015.

¹⁰ Tr. at 53.

¹¹ JE-43 at 1; JE-14 at 182; Tr. at 60-61, 295-96, 315-16.

¹² JE-2; JE-3.

expectations.¹³

9. Student remained in *** despite the teacher's recommendation that Student *** ***.¹⁴ District administration never informed Student's *** teacher why her recommendation to return Student to *** was not followed.¹⁵
10. Student's teacher began the special education referral process within the first nine weeks of Student's *** year (2015-2016 school year).¹⁶
11. Parent requested a Section 504 Committee meeting on August ***, 2015 (***). Student was referred for a Section 504 evaluation in November 2015 due to concerns Student was having difficulty retaining information, *** letters and single digits, and other concerns raised in a private neuropsychological evaluation from *** completed on October ***, 2015.¹⁷
12. The October 2015 evaluation from *** expressed concern Student was having difficulty *** letters and numbers and retaining information, but the results of the evaluation were inconclusive. "...[Student] is at some risk for later reading and spelling problems. At this point, however, it's too early to know."¹⁸
13. Due to Student's academic difficulties, Student's *** teacher initiated Tier I, II, and III interventions¹⁹ to help remediate academic deficits. The interventions began during the FIE referral process and continued for the remainder of the 2015-2016 school year.
14. Student's initial FIE was completed in January 2016. The FIE determined Student was not eligible for special education. Specifically, the 2016 FIE determined Student did not meet criteria as a student with a Specific Learning Disability (SLD) despite displaying weaknesses in Basic Reading, Reading Fluency, Reading Comprehension, Math Calculations, and Written Expression because Student did not display both cognitive strengths and weaknesses within the average ability profile.²⁰
15. The January 2016 FIE concluded, after applying the relevant exclusionary factors, that Student has normative (*i.e.*, when compared to other students of the same age) deficits in academic achievement and displayed weaknesses in Basic Reading, Reading

¹³ Tr. at 296-97.

¹⁴ Tr. at 298, 317.

¹⁵ Tr. at 319.

¹⁶ Tr. 299-300, 321-22.

¹⁷ JE-4 at 015; JE-43 at 1.

¹⁸ JE-4 at 018; Tr. at 278-79.

¹⁹ Tr. at 299-300 (explaining, "Tier I means you're grade level, Tier II means you need more at your instructional level, and Tier III means you need more intense."), 319-20.

²⁰ JE-43 at 1-2; JE-5 at 030; Tr. at 110.

Comprehension, Reading Fluency, Math Calculation, and Written Expression.²¹

16. Despite finding Student did not meet the criteria as a student with an SLD, the January 2016 FIE identified deficits in reading comprehension and written expression and found Student met the criteria for dyslexia.²²
17. Parents signed that they received and understood the Procedural Safeguards and Prior Written Notice the District provided in January 2016.²³ The Procedural Safeguards advised Petitioner of their right to file a request for a due process hearing, among other procedural rights.
18. In January 2016, Student began receiving Section 504 accommodations and dyslexia services 4 times per week, for 45 minutes per session.²⁴
19. During ***, Student demonstrated difficulty with reading words on the High Frequency Word Evaluation. Student earned scores of **%, **%, and **%.²⁵
20. Student failed *** and the District proposed Student *** ***. Mother or Parents disagreed with this proposal.²⁶
21. After ***, Student completed summer school in June 2016 and was promoted to ***.²⁷ However, Student's summer school grades of Reading (***), Language Arts (***), and Math (***) did not accurately reflect Student's academic skills.²⁸
22. After the 2015-2016 school year, Parents engaged the *** teacher as a private tutor who tutored Student throughout Student's *** and *** years.²⁹ The tutor is a professional educator with over 16 years of teaching experience and a master's degree in curriculum development.³⁰ Student's teacher/tutor did not observe any significant academic progress during Student's *** and *** school years.³¹
23. An occupational therapy (OT) screening was conducted on February ***, 2016, and

²¹ JE-5 at 30.

²² JE-5 at 31.

²³ JE-10 at 89-93.

²⁴ JE-43 at 2; JE-5 at 031.

²⁵ JE-43 at 2.

²⁶ JE-43 at 2; Tr. at 79, 303.

²⁷ JE-43 at 2; Tr. at 81, 335.

²⁸ Tr. at 335-36.

²⁹ Tr. 336-43.

³⁰ Tr. at 328.

³¹ Tr. 336-39.

- determined Student did not need OT.³²
24. On September ***, 2016, Parent consented to a Section 504 re-evaluation to determine whether Student met criteria as a student with impairments of dysgraphia and/or dyscalculia. One year later, on September ***, 2017, Student was determined to be eligible for Section 504 accommodations for dyslexia, dysgraphia, dyscalculia, and a visual disorder.³³
25. Student never received services as a student with dysgraphia or dyscalculia.³⁴
26. The September 2016 Section 504 re-evaluation determined Student continued to struggle with “*** numbers and letters, solving basic math problems, and using correct letter formations and spacing when writing.”³⁵ The Section 504 re-evaluation also noted Student continued to struggle to understand academic concepts, *** numbers, solving simple patterns, *** letters, using correct spacing when writing, recognizing words, and remembering information.³⁶ Furthermore, the 504 re-evaluation also stated Student had difficulty reading words quickly and monitoring for meaning while reading grade level connected text. Specifically, Student was evaluated for Text Fluency (*i.e.*, the ability to read grade level text with meaning within a specific time period) and scored in the *** percentile when compared to students Student’s own age/grade. Student scored in the *** percentile in Comprehension (focused on reading and understanding sentences and paragraphs), Student’s Vocabulary was in the *** percentile, and Spelling was in the *** percentile, as compared to Student’s same age peers.³⁷
27. In May 2017, Student completed ***, receiving four Bs and one A.³⁸
28. During ***, Student continued to demonstrate difficulty with reading words on the High Frequency Word Evaluation. Student earned scores of ***, and ***.³⁹
29. Student received straight As during ***, the 2017-2018 school year.⁴⁰
30. Student’s *** teacher referred Student for a second FIE in March 2018 after observing Student was unable to read words under untimed conditions, process phonologically,

³² JE-6 at 033.

³³ JE-7 at 041; JE-39 at 290; JE-43 at 041-042.

³⁴ Tr. at 82, 96-97, 142.

³⁵ JE-7 at 35.

³⁶ JE-7 at 36.

³⁷ JE-7 at 37.

³⁸ JE-43 at 2; JE-16 at 186.

³⁹ JE-43 at 2.

⁴⁰ JE-16; JE-43 at 3; Tr. at 84

comprehend literal and inferential information from reading passages, use math vocabulary such as more and most, use correct subject verb agreement in a sentence, spell, decode unfamiliar words, ***.⁴¹ The evaluation was completed in June 2018.⁴²

31. The June 2018 FIE included classroom observation. During the observation period, Student was asked to complete a handout requiring completing sentences using words from ***. Student was observed to have great difficulty decoding and reading most of the words ... “[Student] struggles greatly with reading words.”⁴³
32. Student was administered the Woodcock-Johnson IV Test of Academic Achievement during the 2016 FIE and again during the 2018 FIE. Comparison of the weighted scores for Basic Reading, Reading Comprehension, Math Calculation Skills, Math Problem Solving, and Written Expression reveals slight improvement in 2018.⁴⁴ Basic Reading = Very Low; Reading Comprehension = Very Low; Math Calculation Skills = Very Low; Math Problem Solving = Low; Written Expression = Below Average; and Spelling = Very Low. Comparing the 2016 to 2018 evaluations weighted scores these areas of assessment reveal Student made some, minimal academic progress.⁴⁵
33. The 2018 FIE was completed June ***, 2018 concluded Student was eligible for special education as a student with an SLD in the areas of Basic Reading, Reading Fluency, Reading Comprehension, Math Calculations, and Written Expression.⁴⁶
34. The 2018 FIE used a variety of assessment tools and strategies, did not use a single measure as the sole criterion to determine eligibility for special education, used technically sound testing instruments, was not discriminatory, was administered in Student’s native language, were valid and reliable, administered by trained and knowledgeable personnel, administered in accordance with the test instrument instructions, applied the appropriate exclusionary factors, was tailored to assess specific areas of need, assessed all areas of suspected disability, was sufficiently comprehensive, and provided relevant information to the ARD Committee in order to develop an IEP.⁴⁷
35. Student’s 2018 State of Texas Assessments of Academic Readiness (STAAR) Exam results were released in summer 2018. Student failed to meet grade level expectations in Reading and Mathematics.⁴⁸ Specifically, Student scored a ***% in *** and ***% in

⁴¹ JE-8 at 47.

⁴² JE-8.

⁴³ JE-8 at 48.

⁴⁴ Compare JE-5 at 25 (Weighted Score Colum) with JE-8 at 48 (Weighted Score Colum).

⁴⁵ JE-8 at 48.

⁴⁶ JE-3 at 3.

⁴⁷ JE-8.

⁴⁸ JE-43 at 3;

***.⁴⁹

36. After the 2017-2018 school year ended, Student attended private summer school at ***. Student's summer school teacher wrote, "I was blown away with [Student's] passion for reading! [Student] amazes me daily with [Student's] agility and courage. I have loved teaching [Student]." The teacher observed Student's reading comprehension was on grade level, but Student was an insecure writer and struggled with organization when writing, continued to periodically demonstrate spacing problems while writing, continued having difficulty with mathematical places and values, and still used Student's ***.⁵⁰
37. Petitioner requested an Independent Educational Evaluation (IEE) on July ***, 2018 and again on August ***, 2018. The District denied both requests because school personnel were unavailable over the summer and the Admissions Review and Dismissal (ARD) Committee still needed to convene to propose an initial Individualized Educational Program (IEP).⁵¹
38. On August *** 2018, a private evaluation was conducted by ***. Student was diagnosed with *** (not otherwise specified), Attention Deficit Hyperactivity Disorder (ADHD) (inattentive type), ***, Reading Disorder, Mathematical Disorder, and *** (not otherwise specified).⁵²
39. The ARD Committee convened on August ***, 2018 to review the June 2018 FIE. During the meeting Parents requested a private placement. The District declined the private placement request and noted, at the time, Student had not yet received special education services.⁵³
40. The ARD Committee meeting of August ***, 2018 ended in disagreement and was scheduled to reconvene on September ***, 2018.
41. Prior to the September ***, 2018 ARD Committee meeting, Parents provided the District with notice they disagreed with the proposed IEP, would not attend the September *** meeting, and were unilaterally withdrawing Student and enrolling Student in a private school.⁵⁴ Parents unilaterally withdrew Student from the District soon after the August ***, 2018 ARD Committee meeting.⁵⁵

⁴⁹ JE-12 at 127.

⁵⁰ JE-29; Tr. at 91-92.

⁵¹ JE-43 at 3; Tr. at 92.

⁵² JE-43 at 3.

⁵³ JE-43 at 3-4; Tr. at 95

⁵⁴ Tr. at 107, 134-35, 270

⁵⁵ JE-12 at 147-48; Tr. at 38-39

42. The September ***, 2018 ARD Committee meeting proceeded without Parents in attendance. The District members of the ARD Committee agreed to the District's proposed initial IEP.⁵⁶ The proposed IEP contained measurable annual goals with benchmarks in Language Arts, Mathematics, Handwriting, and Spelling.⁵⁷ The IEP proposed placing Student in both the general and special education (general education setting for Science, Social Studies, and "ancillary time" and special education for Math, Art, Music, ***, ***, and Lunch).⁵⁸ An extensive set of accommodations were included in the proposed IEP.⁵⁹ Direct dyslexia services were to be provided 4 times per week for 50 minutes per session.⁶⁰
43. Parents never consented to the initial provision of special education.⁶¹
44. Student made some, de minimis academic progress between Student's *** and *** years as demonstrated by evaluation data, teacher testimony, STAAR Exam, the High Frequency Reading assessments, and the *** Measures of Academic Progress (MAP) assessment.⁶²
45. Student began attending private *** at *** (***) at the beginning of the current 2018-2019 school year. At the start of the school year, *** administered the MAP standardized assessment which determined Student was in the bottom 3rd percentile for reading and the bottom 10th percentile in math when compared to Student's same age peers.⁶³

VII. DISCUSSION

A. Duty to Provide FAPE

The seminal issues in this case are whether the District timely and adequately evaluated Student and proposed an appropriate initial IEP. Under the IDEA, the District has a duty to provide a free appropriate public education to all children with disabilities residing within its jurisdictional

⁵⁶ JE-12 at 147-48.

⁵⁷ JE-12 at 131-33.

⁵⁸ JE-12 at 138-31.

⁵⁹ JE-12 at 129-30, 140.

⁶⁰ JE-12 at 140.

⁶¹ JE-43 at 4.

⁶² Compare weighted score columns, JE-5 at 25 with JE-8 at 48; Tr. at 454-55 (explaining the weighted scores on the Woodcock-Johnson IV Achievement Test are the only statistical valid measure of academic progress on that instrument).

⁶³ Tr. at 205-06.

boundaries between the ages of 3 and 21. 34 C.F.R. § 300.101(a). The evidence showed, during all relevant time periods, Student was a child with a disability residing within the District's jurisdiction. The District therefore had a duty to serve Student under IDEA.

A free, appropriate public education means special education and related services, and specially designed, personalized instruction with sufficient support services to meet the unique needs of the child 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).

B. Statute of Limitations

Respondent asserts the one-year statute of limitations (SOL) should be applied to limit Petitioner's claims and requests dismissal of all claims and requests for relief arising outside the one-year limitations period. 19 Tex. Admin. Code § 89.1151(c).

Petitioner argues Student was not properly evaluated in January 2016 and the January ***, 2016 ARD Committee erred by not identifying Student as a student with a SLD entitled to special education services. Petitioner did not state a position on the SOL.

IDEA provides a parent must request a due process hearing within two (2) years of the date the parent knew, or should have known, about the alleged action that forms the basis of the complaint. However, the two-year statute of limitations may be more or less if the state adopts an explicit time limitation for filing a request for due process hearing. 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.511(e); 300.507(a)(2). Texas has adopted such an explicit time limitation -- a parent must file a request for due process hearing within one (1) year of the date the complainant knew, or should have known, about the alleged action that forms the basis of the complaint. 19 Tex. Admin. Code § 89.1151(c); *Tex. Advocates Supporting Kids With Disabilities*, 112 S.W.3d 234 (Tex. App.—Austin 2003, no pet.).

IDEA allows two very narrow exceptions to its time limitations. Petitioner did not plead, present evidence, or argument on either SOL exception. 19 Tex. Admin. Code § 89.1151 (d)(1)-(2). Student has the burden of proving one of these exceptions tolled the one-year statute of limitations. *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918, 945 (W.D. Tex. 2008), *rev d in part on other grounds*, *El Paso Indep. Sch. Dist. v. Richard R.*, 591 F.3d 417 (5th Cir. 2009). Petitioner did not do so.

Petitioner's original complaint was filed January 3, 2019 and the Amended Complaint was filed February 1, 2019, and neither filing asserted an exception to the SOL. Prior to the hearing, the Parties agreed the accrual date, or "known or should have known" date, was January 3, 2018.⁶⁴

The party seeking relief under the IDEA bears the burden of proof.⁶⁵ The District raised the affirmative defense of the SOL and the District bears the initial burden to present sufficient facts of the accrual date.⁶⁶ The District requested relief in the form of a dismissal. If the District meets its initial burden, the burden of proof then shifts to Petitioner to prove by a preponderance of the evidence one of the enumerated exceptions to the one-year SOL.⁶⁷

The evidence shows Parents were informed Student was not eligible for special education as a student with an SLD on January ***, 2016, and they were provided Prior Written Notice of Petitioner's procedural rights to challenge that decision. Therefore, any claims that arose on January ***, 2016 expired by January ***, 2017. Petitioner's Complaint was not filed until January 8, 2019, almost two years later. *See, Doe v. Westerville City Sch. Dist.*, 50 IDELR, 132, p. 5-6 (D.C. Ohio 2008).

⁶⁴ Order Nos. 3 and 5.

⁶⁵ *Schaffer v. Weast*, 546 U.S. 49, 61 (2005).

⁶⁶ *Matter of Hinsley v. Boudloche*, 201 F.3d 638, 645 (5th Cir. 2000) ("Under Texas law, a party defending on ground of statute of limitations bears the burden of proof on this issue.").

⁶⁷ *G.I. v Lewisville Independent School District*, 2013 WL 4523581, *8-9, Case No. 4:12cv385 (E.D. Tex. Aug. 13, 2013) ("If a parent brings a complaint based on allegations that fall outside the limitations period, the parent bears the burden to first establish an exception to the limitations period."). *See also Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540, 46706 (Aug. 14, 2006).

The failure to identify Student's SLD was a continuing Child Find violation that existed until Student was properly identified and offered special education and an IEP was proposed by the August ***, 2018, ARD Committee. However, by *** (2016-2017 school year), the evidence showed Student was in need of special education services and the District had a continuing Child Find duty to re-evaluate Student. It was not until Student's *** teacher referred Student again in March 2018 that a second special education evaluation was completed in June 2018. Child Find claims from January 4, 2018 through August 14, 2018, remain cognizable and are not barred by the SOL.

C. Child Find

1. Failure to Properly Evaluate and Identify

The threshold issue in this case is whether the District failed to conduct a timely evaluation to identify Student as a student with a disability eligible for special education services under the IDEA. The school district has an *affirmative duty* to identify, locate, and evaluate all children with disabilities residing within its jurisdiction that may need special education. *See* 20 U.S.C. § 1412(a)(3); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp.2d 918, 949-50 (W.D. Tex. 2008). This affirmative duty is known as a school district's "Child Find" obligation. 20 U.S.C. § 1412(a)(3). Under Texas law, a special education referral is required as part of the school district's overall regular education referral or screening system for students experiencing difficulty in the regular classroom. 19 Tex. Admin. Code § 89.1011.

The "Child Find" obligation is triggered when the school district has reason to suspect the student has a disability and reason to suspect the student is in need of special education services. 34 C.F.R. §§ 300.8(a)(1); 300.111(c)(1) ("Child find also must include . . . children suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade . . .").

It is settled that the IDEA does not penalize school districts for failing to timely evaluate students who do not actually need special education. *D.G. v. Flour Bluff Independent School*

District, 481 Fed. Appx. 887 (5th Cir. 2012). A failure to timely evaluate for special education is not actionable unless the student is ultimately determined to be eligible for special education services. In this case, the District determined Student was eligible for special education services in August 2018. The question is whether Student should have been found eligible for special education as a student with an SLD sometime prior to August 2018.

The District completed an initial FIE in 2016 and determined Student did not need special education as a student with an SLD. In June 2018, the District re-evaluated Student and reached the opposite conclusion. The District convened an ARD Committee meeting on August ***, 2018 to review and discuss the results of the re-evaluation, identified Student as eligible for special education services as student with a learning disability and dyslexia, and offered Student special education services. 19 Tex. Admin. Code § 89.1011(d). There is no real dispute Student is now properly identified as a student with a disability in need of special education services under the IDEA. However, the parties disagree as to whether the District should have conducted the FIE at an earlier point in time and whether Student should also be identified as a student with dysgraphia and dyscalculia as additional eligibility categories under the IDEA.

2. Specific Learning Disability

To qualify for special education services, a student must first be identified as a student with one or more of 13 categories of disability established by the IDEA. 34 C.F.R. § 300.8. The eligibility classification at issue in this case is a Specific Learning Disability. 34 C.F.R. § 300.8(c)(10). An SLD is a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, and requires special evaluation procedures. 34 C.F.R. §§ 300.8(c)(10)(i). If the required procedures are utilized and the student is identified as having an SLD, the student still will not be eligible for special education services until an ARD Committee makes an additional determination the student's SLD requires special education and related services (*i.e.*, not all students with an SLD require special education). There is no dispute Student meets criteria as a student with an SLD in need of special education. The procedures used to evaluate Student's SLD in both 2016 and 2018 are also not in dispute.

3. Need for Special Education Services

In this case, Student was identified as having dyslexia and received Section 504 services to accommodate Student's disability since 2016. Dyslexia is specifically listed in the federal regulations as a type of disability that may lead to eligibility for special education services as a student with a specific learning disability. 34 CFR § 300.308(c)(10)(i). The evidence showed the District was clearly aware Student had a disability as early as the 2015-2016 school year.

The District maintains Student achieved passing grades and advanced from grade to grade due to effective accommodations. However, even with the provision of services under Section 504, Student's reading and math levels lagged significantly behind Student's same aged peers and Student made no meaningful progress in reading and math in *** through **. The District documented Student's reading and math struggles in Student's Section 504 records, in both FIEs, and on the High Frequency Word Evaluations. Student's continued academic difficulties were clearly evident on Student's 2018 STAAR Exam.

Based upon Student's continued struggles with reading and math after the January 2016 FIE, the District had reason to suspect Student may be in need of special education services at the beginning of the 2017-2018 school year. The evidence showed the District should have initiated the special education reevaluation prior to June 2018.

Student's performance on the 2018 STAAR Exam buttresses the *** teacher/tutor's opinion Student made no discernable academic progress during *** and **. As stated by the Texas Education Agency, the purpose of the STAAR Exam is:

STAAR tests show whether a student has mastered specific knowledge of a core subject at a certain grade level. Test results should provide parents assurance that their child is prepared to enter the next grade level within their school district or any other Texas district. Finally, the results provide educators and administrators

with uniform information about where to focus resources—especially in the core subjects being taught.⁶⁸

Student scored ***% in *** and ***% in *** on the 2018 STAAR Exam. These are the same subjects identified as areas of need in both the 2016 and 2018 evaluations. Student's 2018 STAAR Exam results demonstrated Student had not mastered *** knowledge of these core subjects and Student was not prepared for ***.

4. Other Alleged Child Find Violations

In addition to Student's SLD, Petitioner alleged Child Find violations for failing to timely identify Student's special education eligibility for Dyslexia, Dyscalculia, Dysgraphia, Unspecified ***, ***, ***, Attention Deficit Hyperactivity Disorder (ADHD (inattentive)), and Other Health Impairment (OHI).

a. Dyslexia

The District's Child Find obligation includes identifying whether Student required special education for Student's dyslexia and related disorders. A student with dyslexia has a disability under the IDEA if he or she meets the criteria for an SLD and, because of dyslexia or a related disorder, needs special education. This is a determination for the ARD Committee. 19 Tex. Admin. Code § 89.1011(d). In Texas, all students who are identified with dyslexia or a related disorder *and* who require special education services because of dyslexia or a related disorder should be served under the IDEA as students with an SLD.⁶⁹

The June 2018 FIE qualified Student for special education, affirmed the dyslexia identification, and contained an extensive list of dyslexia accommodations.⁷⁰ Any claims

⁶⁸ Texas Education Agency, STAAR -- Student Testing Program Guide, available at: <https://tea.texas.gov/staar/student-testing.pdf> (last visited May 6, 2019).

⁶⁹ Dyslexia Handbook at 33.

⁷⁰ JE-5 at 31-32, JE-8 at 47-48.

pertaining to Student's identification as a student with dyslexia prior to January 2018 are, however, outside the one-year SOL. 19 Tex. Admin. Code § 89.1151.

b. Dysgraphia and Dyscalculia

Petitioner asserts Student's dysgraphia and dyscalculia, as related dyslexia disorders, support Petitioner's claim the District failed to timely identify Student's SLD beginning in 2016.

In general terms, dysgraphia is a writing disorder and is considered a related disorder to dyslexia. Dysgraphia is a disorder impacting motor and language skills needed for writing.⁷¹ Dyscalculia is another dyslexia related disorder and is a condition affecting the brain making it difficult for someone to do mathematical calculations.⁷²

Parents complain Student did not receive any services for Student's dysgraphia and dyscalculia. Texas Education Code § 38.003(b) states, "In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia *or a related disorder*" (emphasis added).

Student's dysgraphia was originally identified in the November ***, 2014 ***, Neuropsychological Evaluation.⁷³ Students who need special education services because of dysgraphia must be evaluated under the IDEA. If the District or school suspects that a student needs interventions and accommodations specific to dysgraphia, rather than special education services, the student can then be evaluated under Section 504.⁷⁴

The 2016 FIE did not address Student's dysgraphia and dyscalculia. On September ***, 2017, the Section 504 Committee added eligibility for 504 services due to dysgraphia and

⁷¹ Dyslexia Handbook at 59.

⁷² Cambridge Advanced Learner's Dictionary & Thesaurus, available at <https://dictionary.cambridge.org/us/dictionary/english/dyscalculia> (last visited Apr. 25, 2019).

⁷³ JE-7 at 035; JE-8 at 045; JE-10 at 082.

⁷⁴ Texas Education Agency (TEA or Agency), 2018 Dyslexia Handbook (Dyslexia Handbook) at 62.

dyscalculia.⁷⁵ The proposed August 2018 IEP identified Student as a student with dyslexia, but did not separately identify Student's dysgraphia and dyscalculia. However, the proposed schedule of services provided special education support in Handwriting for 40 minutes 4 times per week with numerous handwriting accommodations, and math instruction for 75 minutes 4 times per week. The proposed IEP also contained measurable Handwriting and Math goals and objectives to measure progress.

Therefore, because Student's handwriting and math calculation needs are addressed in the proposed August 2018 IEP, there is no need to specifically identify Student as a student with dysgraphia and/or dyscalculia. Those conditions fall within the SLD eligibility category and Student has been identified as a student with a SLD. 34 C.F.R. § 300.8(c)(10).

c. ADHD (Inattentive), *, Unspecified ***, ***, and OHI.**

The 2016 FIE concluded Student did not exhibit significant emotional, behavioral, or attentional problems although Student's attention was below average. The District never evaluated Student for ADHD and the 2016 FIE did not consider attention deficits because it was focused on Student's academic strengths and weaknesses. There was no reason to suspect an attention issue in 2016 until August *** 2018 when the *** diagnostic evaluation diagnosed Student with inattention, learning difficulties, and ***.⁷⁶

Petitioner did not meet Petitioner's burden of showing *** was a suspected area of disability or need prior to August *** 2018—the date of the *** evaluation. *Schaffer*, 546 U.S. 49.

As to the District's alleged failure to identify the *** diagnosed in the 2018 *** evaluation, there is insufficient evidence to support a Child Find violation. The preponderance of the evidence

⁷⁵ JE-39 at 290.

⁷⁶ JE-9 at 075.

does not support a finding *** was a suspected area of disability prior to 2018.⁷⁷ The same is true as to the eligibility as a student with an OHI. Petitioner did not meet Petitioner's burden of proof on this issue. *Schaffer*, 546 U.S. 49.

D. Failure to Provide a FAPE

The second major issue is whether the District failed to propose an IEP that was objective and measurable and demonstrated academic and non-academic progress. Once identified as student eligible for special education, it necessarily follows an IEP was required to address all areas of need. 34 C.F.R. § 300.323(c). Because the District did not complete a second FIE until June 2018 and did not propose an IEP until August 2018, Student was denied the benefit of an IEP from January 2018 through August ***, 2018.

The District must have in effect an IEP for each child with a disability 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, a child's IEP also includes a description of the related services, supplementary support and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, and, the duration and frequency of the services and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a).

Having found a Child Find violation beginning in January 2018, it follows that without an IEP to address Student's unique circumstances Student was denied a FAPE from January 2018 until August ***, 2018. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

The District's June 2018 FIE and the proposed August ***, 2018 IEP correctly identified Student's SLD and dyslexia, and offered accommodations to address Student's dysgraphia and

⁷⁷ See Tr. at 324. In ***, Student was "doing great socially ... and emotionally."

dyscalculia. The proposed IEP offered individualized special education designed to facilitate academic and non-academic progress. The District's proposed August 2018 IEP is reasonably calculated to provide Student a FAPE. *Rowley*, 458 U.S. 176.

The proposed IEP addresses all areas of need and describes Student's present level of achievement, including explaining "how the child's disabilities affect the child's involvement and progress in the general education curriculum."⁷⁸ 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa). It 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.⁷⁹ 20 U.S.C. §§ 1414(d)(1)(A)(i)(II), (IV). The instruction and services were designed to facilitate "progress in the general education curriculum."⁸⁰ 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb).

However, the preponderance of the evidence established that from January 2018 through August ***, 2108, the District failed to draft and implement an IEP that was objective and measurable and designed to provide Student with an opportunity for academic and non-academic progress. Student was not offered an IEP until August ***, 2018. *Rowley*, 458 U.S. 176 (1982); *Andrew F.*, 137 S. Ct. 988 (2017). Petitioner met their burden of proof on this issue for that limited time period. *Schaffer*, 546 U.S. 49.

E. District's Counterclaim

1. Petitioner's Right to an IEE at Public Expense

The parent of a child with a disability under the IDEA is entitled to an independent educational evaluation (IEE) at school district expense if the parent disagrees with the school district's evaluation, so long as the IEE meets reasonable school district criteria. 34 C.F.R.

⁷⁸ JE-11 at 097.

⁷⁹ JE-11 at 098-101.

⁸⁰ JE-11 at 102-11; Tr. at 540-45.

§§ 300.502(a)(1)-(3), (b)(1). However, a school district may challenge the parent's request for an IEE at school district expense by requesting a due process hearing to show its evaluation was appropriate under IDEA. If the school district's evaluation is appropriate, the parent still has the right to the IEE but not at public expense. 34 C.F.R. § 300.502(b)(2)(i), (3).

2. Limitations on Parental Right to a Publicly Funded IEE

In this case, the District filed a counterclaim to defend the June 2018 FIE. The credible evidence showed the District's 2018 FIE was appropriate under the IDEA and met all of the regulatory requirements. *See*, 34 C.F.R. §§ 300.300, .301, .304, .306. The 2018 FIE also included a review of existing evaluation data as required. 34 C.F.R. § 300.305. The 2018 FIE met the specific additional regulatory requirements for determining whether Student met eligibility criteria as a student with a learning disability. 34 C.F.R §§ 300.307, .309, .310.

The District's counterclaim asserts the June 2018 FIE was an appropriate assessment and Parents are not entitled to a publicly-funded IEE. Having reviewed the 2018 FIE in detail, the Hearing Officer concludes the 2018 FIE was an appropriate assessment. The District met its burden of proving its 2018 FIE was an appropriate assessment and its proposed IEP offered a FAPE. Petitioner is not entitled to an IEE at public expense. *Schaffer*, 546 U.S. 49.

F. Private Placement and Reimbursement

Petitioner seeks reimbursement for accrued tuition, fees, and transportation costs to *** and an order prospectively placing Student at *** for the 2019-2020 school year. A private placement is a placement that is not a school district program, campus, or facility. It can be a private school, a non-public charter school, or a therapeutic day program or school. The private placement can be non-profit or for profit. The private placement may or may not be within the jurisdictional boundaries of the public school district. *See* 34 C.F.R. § 300.325.

A student with a disability may be placed in a private placement in several ways. The private placement methods relevant to this case are:

- a. By the ARD Committee when it determines that the school district cannot provide the student with a FAPE at any school district campus, program, or placement. This kind of placement is called a “private placement by a public agency.” 34 C.F.R. § 300.325.
- b. By the student’s parents – this is called “a unilateral private placement” – referring to the parents making a unilateral decision the student needs the private school placement as opposed to the ARD Committee making the placement decision. It is this type of “unilateral” placement that is the subject of “reimbursement” as a remedy.

1. Reimbursement

Reimbursement is an equitable form of relief. This may include not just the tuition, but other fees (such as application fees, assessment fees), the costs of related services (if not covered by tuition), supplies, transportation, etc. *Sch. Committee of Town of Burlington, Mass. v. Dept. of Educ. Of Mass.*, 471 U.S. 359 (1985) (establishing the parental right to reimbursement for a private school placement as an equitable remedy under the IDEA) and stating:

“Reimbursement merely requires [the school district] to belatedly pay expenses it should have paid all along and would have borne in the first instance had it developed a proper IEP. Such a *post hoc* determination of financial responsibility was contemplated by the legislative history.” *Sch. Committee of Town of Burlington, Mass*, 471 U.S. at 370-371.

The Supreme Court in *Burlington* cautioned that parents who make a unilateral private placement decision assume the financial risk of not being reimbursed:

“... [P]arents who unilaterally change their child’s placement during the pendency [of a due process hearing] do so at their own financial risk. If the courts ultimately determine that the IEP proposed by the [District] was appropriate, the parents would be barred from obtaining reimbursement for any interim period in which their child’s placement violated the IDEA. *Burlington*, 471 U.S. at 373-374.

2. Two Part Test for Reimbursement

The *Burlington* case established a two part test for determining whether an award of reimbursement is an appropriate form of equitable relief in a given case.

First, was the District's IEP with placement in the public school appropriate? In other words, did it provide a FAPE? If "Yes," the inquiry ends and parent is not entitled to reimbursement. In this case, the answer is "Yes" after August ***, 2018.

Second, if "No," then the Hearing Officer must determine whether the private placement was appropriate. The answer was "No" from January ***, 2018 through August ***, 2018. However, private tuition was not incurred until August ***, 2018 – two weeks after Student was offered an appropriate IEP.

a. First Prong: Was the School District's Program Appropriate?

The first prong of the reimbursement analysis asks whether the District proposed or provided Student with an appropriate program. The failure to properly identify Student's disabilities and offer an adequate IEP prior to August 2018 was a denial of FAPE. The absence of an IEP from January 2018 through August ***, 2018 resulted in an inadequate and inappropriate educational program for Student during this time period. 34 C.F.R. §§ 300.22, 300.323(a).

3. The Four Factors Test

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

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

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).

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 for reimbursement purposes. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). Application of the four factors to the evidence in this case supports the conclusion that the school district's proposed program was appropriate.

First, the proposed IEP was individualized on the basis of the Student's 2018 FIE and performance. The IEP included measurable goals and objectives, and extensive dyslexia services and accommodations designed to address needs identified in the 2018 FIE.

Second, the District's proposed program was to be delivered in the least restrictive environment that placed Student in a mix of special and general education classes. 34 C.F.R. § 300.114.

Third, the services were to be provided in a coordinated, collaborative manner by both special education and general education staff.

Fourth, the evidence showed the proposed IEP was reasonably calculated to provide Student a meaningful educational benefit. *Rowley*, 458 U.S. at 188-189, 200-201, 203-204 (1982); *Andrew F.*, 137 S. Ct. 988, 1000 (2017).

For reasons previously discussed, the Hearing Officer determined the District's June 2018 FIE and proposed August ***, 2018, IEP correctly identified Student's SLD and dyslexia, offered appropriate dysgraphia and dyscalculia accommodations, and offered individualized special education designed to facilitate academic and non-academic progress and is it is reasonably calculated to provide a FAPE. In August 2018, Student was withdrawn from the District and enrolled in *** after an appropriate FIE was completed and after being offered a suitable IEP. Therefore, Petitioner did not meet Petitioner's burden for reimbursement of *** tuition for the 2018-2019 school year or prospectively for the 2019-2020 school year and beyond. 34 C.F.R. § 300.325; *Sch. Committee of Town of Burlington, Mass.*, 471 U.S. at 370-371.

4. Private Tuition is Not Reimbursable

As previously discussed, the relevant time period for the amended complaint is January 2018 through August ***, 2018. Student enrolled in *** on August ***, 2018, after the District proposed an appropriate IEP offering a FAPE. Student's right to tuition reimbursement ended when Student was properly identified for special education and offered an appropriate IEP. *Rowley*, 458 U.S. 176 (1982); *Sch. Committee of Town of Burlington, Mass.*, 471 U.S. at 370-371.

G. The Scope of Reimbursement

The District failed to timely and properly evaluate and identify Student's SLD and dyslexia prior to the June 2018 reevaluation. The 2016 identification errors led to a failure to provide Student with special education during the relevant time period until the District proposed an appropriate IEP that offered a FAPE in August 2018. The statute of limitations limits the reimbursable period from January ***, 2018 through August ***, 2018. All claims for tuition reimbursement accrued prior to January ***, 2018, are time barred. 19 Tex. Admin. Code § 89.1151(c).

Parents seek reimbursement for the following:

1. 2017-2018 *** (Summer School) – \$*** (Reimbursable);
2. Dr. ***, 2018 *** IEE – \$*** (Reimbursable);
3. 2018-2019 *** tuition – \$*** (Not Reimbursable);
4. 2018-2019 *** Summer School – \$*** (Not Reimbursable)
5. 2019-2020 *** tuition – \$*** (Not Reimbursable); and
6. School Uniforms – *** (Not Reimbursable).

Total Reimbursement Claimed: \$***

Total Reimbursement Awarded: \$***.

H. Other Requested Relief

Petitioner seeks reimbursement for private tutoring. Student's *** teacher was privately engaged by Parents to tutor Student during *** and ***. Parents paid the teacher \$*** per hour for tutoring. Petitioner did not provide any proof of payment and the teacher could not accurately testify to the time periods she tutored or the number of times she tutored. The evidence was insufficient to support reimbursement for tutoring.

Petitioner seeks an order directing the District to provide necessary private therapeutic services to meet its FAPE obligation. Petitioner never specified what private therapeutic services are necessary and presented no evidence to support this request for relief.

Petitioner seeks an order authorizing an IEE. The District prevailed on its counterclaim and showed, by a preponderance of the evidence, the 2018 FIE was appropriate and the proposed IEP was reasonably calculated to offer a FAPE. Petitioner's request for an IEE at public expense must be denied. 34 C.F.R. § 300.502(b)(3).

Finally, Petitioner requests reimbursement for private summer school at *** for summer 2019. As discussed, Student has now been properly identified for special education and an appropriate IEP has been offered. Reimbursement for private summer school at *** is not authorized. *Sch. Committee of Town of Burlington, Mass.*, 471 U.S. at 370-371.

VIII. CONCLUSIONS OF LAW

1. The District is a Local Education Agency responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding, and the District is required to provide each disabled child with a FAPE pursuant to the IDEA, 20 U.S.C. §§ 1400 *et seq.*
2. Student, by next friends, Parents, (collectively, Petitioner) bears the burden of proof on all issues raised in the complaint. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The District bears the burden of proof on all issues raised in Respondent's Counterclaim. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).

4. The District violated its Child Find obligation by improperly evaluating, and failing to identify, Student as a student in need of special education for Student's specific learning disorder, dyslexia, dysgraphia, and dyscalculia. The relevant time period for the Child Find violation began January ***, 2018, and was cured on August ***, 2018, after Student was properly evaluated, identified, and offered an appropriate IEP. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111.
5. Student was denied an appropriate, individualized IEP crafted to foster academic and non-academic progress from January ***, 2018, through August ***, 2018. Consequently, Student was denied a FAPE during this time period. 20 U.S.C. § 1414(d)(1)(A), (d)(2)(A), (d)(6); 34 C.F.R. §§ 300.320, .323(a); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).
6. The District's June ***, 2018 reevaluation was appropriate and the IEP proposed on August ***, 2018, if implemented as drafted, offered Student a FAPE. The District prevails on its counterclaim and Student is not entitled to an IEE at public expense. 20 U.S.C. § 1415(d)(2)(A); 34 C.F.R. §§ 300.301-.305, .502(b)(3).
7. Petitioner is not entitled to reimbursement for the out-of-pocket cost incurred by Student's parents for private school placement because Respondent offered an appropriate IEP on August ***, 2018 and the cost of private tuition was not incurred until after that date. 34 C.F.R. § 300.148(c); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).
8. Petitioner's claims arising outside the one year statute of limitations in Texas are barred. 19 Tex. Admin. Code § 89.1151(c).
9. Petitioner is not entitled to reimbursement for tutoring or an order mandating unspecified private therapeutic services. 34 C.F.R. § 300.148(b).
10. Petitioner is not entitled to reimbursement for 2019 summer school at ***. 34 C.F.R. § 300.148(b); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

IX. ORDERS


Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **GRANTED IN PART AND DENIED IN PART** as follows:

1. The District shall reimburse Petitioner for Petitioner's out-of-pocket costs of summer school at *** in the amount of \$***.

2. The District shall reimburse Petitioner in the amount of \$*** for the 2018 *** IEE.
3. The total out of pocket costs of reimbursement shall be paid within 30 school days from the date of this Decision.
4. The ARD Committee shall convene within 30 school days from the date of this decision to implement Student's IEP and this Final Decision.

All other requests for relief not specifically state in these Orders is hereby **DENIED**.

SIGNED May 24, 2019.


David A. Berger
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20. U.S.C. § 1415(i)(2); 19 Tex. Admin. Code § 89.1185(n).