

DOCKET NO. 255-SE-0420

**STUDENT, B/N/F PARENT,
Petitioner**

v.

**KATY INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by next friend Parent (collectively, Petitioner), brings this action against the Katy Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. The main issue in this case is whether the District denied Student a free, appropriate, public education (FAPE) during the relevant time period.

The Hearing Officer concludes the District provided Student with a FAPE reasonably calculated to allow Student to make progress in light of Student’s unique circumstances.

II. PROCEDURAL HISTORY

A. Legal Representation

Student was originally represented by Student’s mother, ***. On September 28, 2020, Melissa Marteeny Pena with Lone Star Legal Aid began representing Petitioner. The District was represented throughout this litigation by its legal counsel, Alaina Smith and Kevin Christiansen, from the District’s Office of General Counsel.

III. DUE PROCESS HEARING

The due process hearing was conducted via the Zoom videoconferencing platform on February 10-11, 2021. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by Student's legal counsel, Leslie Burgoyne and Melissa Marteeny Pena from Lone Star Legal Aid. ***, Student's mother, also attended the due process hearing. At Parent's request, the hearing was an open hearing and each party had observers present.

Respondent continued to be represented by its legal counsel, Alaina Smith and Kevin Christiansen. In addition, ***, the Special Education Director for Compliance for the District, attended the hearing as the party representative. Both parties filed timely written closing briefs. The decision in this case is due on April 15, 2021.

IV. ISSUES

A. Petitioner's Issues

Petitioner raises the following IDEA issues for decision in this case:

Child Find

- Whether Respondent failed to timely identify Student as a student with a disability in need of special education services.

FAPE

- Whether Respondent denied Student a FAPE.
- Whether Respondent denied Student a FAPE by failing to timely develop an appropriate Individualized Education Program (IEP) for Student, including appropriate academic and social/emotional goals and related services.
- Whether Respondent failed to implement Student's IEP.
- Whether Respondent denied Student a FAPE by failing to timely provide special education and related services.
- Whether Respondent denied Student a FAPE by failing to provide all supplemental aids and services related to autism.
- Whether Respondent denied Student a FAPE by failing to provide needed assistive technology (AT).

- Whether Respondent denied Student a FAPE by failing to provide needed speech therapy services.

Procedural Issues

- Whether Respondent failed to provide Student's parent with required prior written notice (PWN).

B. Respondent's Legal Position and Additional Issues

Respondent generally and specifically denies the factual allegations stated in Student's Complaint. The District contends it provided Student with a FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief. Additionally, Respondent raised the affirmative defense of the statute of limitations.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following items of relief:

- Compensatory education services for Student.
- An Order requiring Respondent to adopt the August ***, 2019 Independent Educational Evaluation (IEE).
- An Order requiring Respondent to develop an IEP based upon the August ***, 2019 IEE.
- Compensatory speech services provided by an independent therapist.
- Compensatory occupational therapy (OT) services provided by an independent therapist.
- An order requiring Respondent to fund Student's placement at the *** in ***.
- An order requiring Respondent to implement the recommendations of the AT IEE.
- Services for Student from a certified academic language therapist.
- An order requiring Respondent to find that Student is a student with an Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD).

VI. FINDINGS OF FACT

ABOUT STUDENT

1. Student is a *** year old *** grade Student who attends *** in the District. Student is eligible for special education services under the categories of autism, speech impairment in the areas of fluency, receptive, expressive, and pragmatic language, and specific learning disability (SLD) in the areas of math calculation, math problem solving, reading comprehension, and basic reading with a condition of dyslexia.¹
2. Student has strengths in the areas of: verbalizing meaningful concepts, thinking about verbal information, and expressing ***self using words; detecting the underlying conceptual relationship among visual objects and using reasoning to identify and apply rules; long-term storage and retrieval accuracy and fluency; visual-spatial reasoning, integration and synthesis of part-whole relationships, attentiveness to visual detail, and visual-motor integration; and speed and accuracy of visual identification, decision-making, and decision implementation.²
3. Student has weaknesses in the areas of ***. Student struggles with ***.³
4. Student can ***. Strengths include generating ideas, using a graphic organizer, and putting ideas in chronological order, but Student struggles with elaboration in Student's writing.⁴
5. Student has strengths in ***. Student struggles with ***.⁵
6. Student has age appropriate articulation and appropriate voice across all vocal parameters. Student can ***. Student is able to ***. Student needs to work on ***.⁶
7. Student began attending school in the District at the start of the 2017-18 school year as a ***.⁷

STUDENT'S * GRADE YEAR**

8. On August ***, 2018, at the beginning of Student's *** grade year, the District began providing Student Response to Intervention (RTI) services. On September ***, 2018,

¹ Joint Exhibit (JE) 85 at 1-2.

² JE 85 at 3.

³ JE 85 at 3-4.

⁴ JE 85 at 3-4.

⁵ JE 85 at 3-4.

⁶ JE 85 at 2.

⁷ JE 41 at 2.

District staff met with Student's mother to discuss Student's struggles with reading and writing and strategies to improve Student's performance in these areas.⁸

9. On November ***, 2018, the District proposed a Full Individual Evaluation (FIE) to determine whether Student had a disability and a need for special education services. The District proposed evaluating Student in the areas of speech and communication, health, gross and fine motor, emotional and behavioral, psychological status, intellectual, adaptive behavior, academic performance, and AT. Student's Mother signed consent for the District to conduct the FIE on November ***, 2018.⁹
10. On January ***, 2019, the District completed the FIE. The evaluators determined Student exhibited adequate gross and fine motor coordination in the school environment, displayed verbal comprehension abilities in the average range, showed very weak ability to acquire, remember, and retrieve knowledge about the world around Student, showed weak understanding of practical knowledge, displayed age appropriate categoric reasoning skills, had very low working memory, and had significant weaknesses in listening skills. Student displayed a pattern of strengths and weaknesses in cognitive functioning. Student had strengths in verbal comprehension, fluid reasoning, and long term retrieval and processing speed with weaknesses in short term memory, auditory processing, and visual processing. Student's noted weaknesses had an impact on Student's reading, math computation, and written expression abilities. Student demonstrated adaptive behavior skills consistent with Student's cognitive functioning and could meet the demands of Student's environment. Student did not display a need for more specialized technology services or devices. Student exhibited difficulties with reading comprehension and writing and struggled with basic math operations and math problem solving.¹⁰
11. On February ***, 2019, the District convened an Admission, Review, and Dismissal (ARD) committee meeting to review the FIE. The ARD committee determined Student met eligibility criteria for a SLD in the areas of math calculation and math problem solving and needed special education services. The ARD committee developed math goals focusing on ***. Student was provided *** of math instruction in the resource setting and accommodations including checks for understanding, math manipulatives, visual aids, and proximity control in all subject areas.¹¹
12. The District provided Student's mother with a copy of the IDEA procedural safeguards and a PWN for the IEP and services developed at the ARD committee meeting.¹²

⁸ JE 3; JE 4; Transcript (TR) at 214.

⁹ JE 5; JE 6.

¹⁰ JE 12; JE 13.

¹¹ JE 14; JE 16; TR at 554.

¹² JE 14; JE 16.

13. *** students learn to read at different rates. A student who struggles to read in *** and *** grade is not necessarily a student with a disability.¹³
14. On March ***, 2019, Student's mother wrote a letter to the District requesting an ARD committee meeting to discuss Student's progress on Student's IEP goals and Student's proposed *** in *** grade.¹⁴
15. On March ***, 2019, the District noticed a FIE to conduct a psychological evaluation of Student at Student's mother's request. On March ***, 2019, Student's mother signed written consent for the District to conduct the psychological evaluation.¹⁵
16. On April ***, 2019, the District issued an FIE report on the psychological evaluation. The evaluator concluded Student did not engage in behaviors that adversely effect Student or other children in the school environment, experience emotional distress, or complain of physical symptoms. The evaluator determined Student could sustain attention and adapt to change in the school environment and had the social skills necessary to interact successfully with others at school. The evaluator also concluded Student struggled with ***. The evaluator determined Student's desire to *** provokes ***, but this behavior does not impede Student's ability to function appropriately in an educational setting. Student displayed age-appropriate communication and social skills. The evaluator concluded Student did not meet eligibility criteria as a student with an emotional disturbance. The evaluator also indicated Student did not display symptoms of ADHD in the school environment and lacked a medical diagnosis of ADHD, and therefore did not meet eligibility criteria for an OHI. The evaluator recommended a speech evaluation to determine whether Student had a language disability.¹⁶
17. On May ***, 2019, the District convened an ARD committee meeting to conduct a Review of Existing Evaluation Data (REED) for Student. The committee reviewed Student's January ***, 2019 and April ***, 2019 FIEs and Student's school performance. Student was struggling with written expression and continued to have deficits in working memory and auditory processing. The ARD committee added *** of in class support in *** and *** of in class support for math to Student's schedule of services. The District offered to provide Extended School Year (ESY) services to Student in *** to address Student's struggles with the critical skill of writing.¹⁷
18. The ARD committee reviewed the findings of the April ***, 2019 psychological evaluation and determined a speech and language evaluation was needed to assess Student in the areas of articulation, language syntax, semantics, morphology, pragmatics, and voice and

¹³ TR at 403-404.

¹⁴ JE 17.

¹⁵ JE 18; JE 19.

¹⁶ JE 22.

¹⁷ JE 26 at 3, 10, and 13; JE 27; TR at 562-564.

- fluency. Student's Mother consented to the speech evaluation on May ***, 2019. The District provided Student's Mother with PWN for all proposals and changes at the ARD committee meeting.¹⁸
19. On May ***, 2019, *** completed an independent AT evaluation of Student, issuing a report on May ***, 2019. Ms. *** recommended using a computer or tablet loaded with specific software for Student to use to complete homework, use of the *** program for assistance with executive functioning, access to a keyboarding program to learn keyboarding skills, and a graphic organizer computer program like ***.¹⁹
 20. During Student's *** grade year, Student was consistently well-behaved, hard working, and organized. Student made significant progress in reading and struggled with math. By the end of *** grade, Student was on grade level for reading.²⁰
 21. During the summer of 2019, the District delivered ESY services to Student addressing ***.²¹
 22. Dr. *** conducted an IEE between May and July 2019, issuing a report on August ***, 2019. Dr. *** evaluated Student to determine eligibility for special education services under the categories of SLD, OHI, and emotional disturbance. She concluded Student met eligibility criteria for an SLD in basic reading skills, reading comprehension, math calculation, and math problem solving based upon Student's patterns of strengths and weaknesses in cognitive abilities and unexpected underachievement. She also indicated Student displayed the primary characteristics of dyslexia, including weaknesses in basic reading skills, ***, and deficits in the cognitive abilities associated with dyslexia, including phonological awareness, orthographic awareness, and memory. Dr. *** determined Student required special education services to address Student's identified SLDs. She further indicated Student's deficits in language were present in the District's initial FIE.²²
 23. Dr. *** further concluded Student did not meet eligibility criteria for an OHI for ADHD because Student did not display attention or executive functioning deficits in a school setting and was able to focus on tasks in a one-on-one testing situation. She concluded Student did not meet criteria for an emotional disturbance because Student did not have an inability to learn which is not explained by intellectual, sensory, or health factors, did not have an inability to build or maintain satisfactory interpersonal relationships, did not have inappropriate types of behaviors or feelings under normal circumstances, did not display a

¹⁸ JE 25; JE 26 at 16 and 18; JE 28.

¹⁹ JE 34 at 1, 10, 13.

²⁰ TR at 425-429 and 431-432; JE 4; JE 9; JE 23; JE 24.

²¹ JE 35; JE 36.

²² TR at 52-54 and 57-58. JE 41 at 1, 2, 18, 19, 20, 21, and 22.

pervasive mood of unhappiness or depression, and did not tend to develop physical symptoms or fears associated with personal or school environment.²³

24. Dr. *** recommended Student be evaluated for autism because Student displayed developmental delays in various areas of functioning, including language, social communication, social interaction, learning, emotional regulation, and daily living skills. Student was also observed to *** in school and community settings and may isolate ***self. She recommended evaluations in the areas of speech and language and OT to further explore these noted deficits.²⁴
25. Finally, Dr. *** recommended Student be educated in Student's least restrictive environment (LRE), continue to receive services for Student's SLD in math calculation and math problem solving, be identified and receive special education services for SLDs in basic reading, dyslexia, and reading comprehension, receive counseling services to address Student's ***, receive social skills instruction, receive academic remediation in all core areas of instruction, receive one-on-one or small group instruction for reading, writing, and math, and be provided with low tech AT.²⁵

STUDENT'S *** GRADE YEAR

26. On August ***, 2019, Student's ARD committee reconvened to conclude the May ***, 2019 meeting. The ARD committee reviewed ***'s AT evaluation and Dr. ***'s IEE. Student's mother requested evaluations for autism and OT. The District offered to begin dyslexia services for Student. The meeting ended without consensus.²⁶
27. On September ***, 2019, the District reconvened Student's ARD committee. Dr. *** attended this meeting and reviewed the findings of her evaluation for the committee. The ARD committee added eligibility categories in the areas of SLD for basic reading with the condition of dyslexia and reading comprehension. Student's schedule of services was changed to include *** of math in the resource setting, *** of in class support for math, *** of in class support for ***, and *** of dyslexia intervention in the special education setting.²⁷
28. The ARD committee developed two math goals, ***, and two reading goals, one addressing improving Student's reading instructional level and one for increasing comprehension skills. Student's IEP included the accommodations of check for understanding, chunking assignments, extra time, manipulatives, oral administration, preferential seating, ***. The ARD committee determined additional evaluations were

²³ JE 41 at 1, 2, 18, 19, 20, 21, and 22.

²⁴ TR at 59-60; JE 41 at 1, 2, 18, 19, 20, 21, and 22.

²⁵ JE 41 at 1, 2, 18, 19, 20, 21, and 22.

²⁶ JE 43; JE 44 at 1-2; JE 49 at 18-19.

²⁷ JE 49 at 15.

necessary in the areas of autism and OT. Student's Mother signed written consent for these evaluations.²⁸

29. The District provided Student's mother with a copy of the IDEA procedural safeguards on August ***, 2019 and September ***, 2019. The District provided PWN to Student's mother on September ***, 2019 detailing the added eligibility categories, the proposed evaluations, and the updated math and reading goals, schedule of services, and accommodations.²⁹
30. During September and October of 2019, the District conducted an autism and speech and language evaluation, issuing a report on October ***, 2019. The evaluators determined Student exhibited variable inattention, distractibility, impulsivity, and fidgeting, but not to a clinically significant level. Student also experienced *** associated with changes in the environment and social situations.³⁰
31. The evaluators observed Student displayed abnormal or stereotyped ***. Student did not engage in repetitive speech. Student exhibited abnormal difficulty with change in routine and environment, causing Student distress and frustration. Student exhibited an excessive interest in or amassed excessive knowledge in topics of interest, such as ***. Student's interest was abnormal in intensity, focus, and preoccupation for Student's age and stage of development. Student overreacted to *** and had a limited ***. Student demonstrated behaviors consistent with an autism spectrum disorder, including persistent deficits in social communication and social interaction, restrictive, repetitive patterns of behavior, interests, and activities. The evaluators concluded Student met the eligibility criteria for autism.³¹
32. The evaluators determined Student's conversational speech is intelligible across environments and Student did not have an articulation disorder. According to the evaluators, Student displayed a mild disabling fluency condition. The evaluators concluded Student had a language disorder, evidenced by weaknesses in the areas of ***. Student's language disorder impacts Student's ability to communicate effectively with teachers and peers and Student's fluency disorder impacts Student's willingness to participate verbally in school activities.³²
33. During October 2019, the District completed an OT evaluation, issuing a report on October ***, 2019. The evaluator observed that Student could sit and move independently to participate in learning activities at school and could independently navigate and transition to destinations at school. Student was able to independently *** and could

²⁸ JE 49 at 2, 19-20; JE 51.

²⁹ JE 49 at 2, 22; JE 52; JE 53.

³⁰ JE 55 at 1-3, 6, 7, 8, 12, 18, and 19.

³¹ JE 55 at 1-3, 6, 7, 8, 12, 18, and 19.

³² JE 55 at 1-3, 6, 7, 8, 12, 18, and 19.

- independently manage Student's school materials. Student participated in writing tasks and produced legible handwriting. Student did not have sensory processing differences impacting Student's participation in school, but had difficulty with motor planning skills. The evaluator concluded Student did not need OT to benefit from Student's education.³³
34. On November ***, 2019, the District convened Student's ARD committee to review the autism, speech and language, and OT evaluations. Shortly before the meeting was scheduled to start, Student's mother notified the District that she was unable to attend the meeting. The District tabled the meeting until she could attend.³⁴
35. On December ***, 2019, the District reconvened Student's ARD committee with Student's mother in attendance. The ARD committee determined Student qualified for special education services for an autism spectrum disorder and a speech impairment and added these eligibility categories. The ARD committee also determined Student did not qualify for OT services, because Student could independently access school activities. Student's mother disagreed with the committee's determination on OT services.³⁵
36. The ARD committee developed speech therapy goals addressing fluency, expressive language, and receptive language, a basic reading goal, a reading comprehension goal, a reading fluency goal, a math calculation goal involving ***, and a math calculation goal involving ***. The ARD committee set a schedule of services for Student, including *** of special education math instruction, *** of special education dyslexia instruction, *** of *** in class support, *** of math in class support, and *** of speech therapy ***. The ARD committee also completed the autism supplement.³⁶
37. Student's mother received a copy of the procedural safeguards notice and a PWN describing the eligibility and service determinations on the same day as the ARD committee meeting.³⁷
38. Student's grades for the first semester of the 2019-20 school year were ***. Student was noted to be on grade level for independent reading, one month behind grade level expectation for instructional reading, and making progress on Student's math goals. While reading, Student could identify characters, setting, problem/solution in a story, but required support in making predictions and inferences. Student's *** and Student could ***. Student was able to ***. When given a prompt, Student could ***.³⁸

³³ JE 58 at 1-2, 7; TR at 497-498.

³⁴ JE 61 at 24.

³⁵ JE 61 at 1, 8-15, 22, 24-27, 29, and 34; TR at 239.

³⁶ JE 61 at 1, 8-15, 22, 24-27, 29, 34.

³⁷ JE 62.

³⁸ JE 66 at 4, 5, 30.

39. As of February ***, 2020, Student was able to ***. Student still needed to work on ***. Student was also noted to be attentive in class, hard-working, and was beginning to interact more with peers. Student interacted well with peers in a small group setting and encouraged others when faced with a difficult task.³⁹
40. On February ***, 2020, the District reconvened Student's ARD committee to address the December ***, 2019 meeting that ended without consensus. Student's mother raised concerns related to Student requiring remedial speech therapy, Student not initially receiving dyslexia services, Student's goals not addressing important components, Student's *** not being addressed through direct counseling, a disagreement with the results of the OT evaluation, a need for Student's attention issues to be addressed, a need for AT in Student's set of services, and a request for Applied Behavior Analysis (ABA) therapy for Student.⁴⁰
41. At the February ***, 2020 ARD Committee meeting, the District proposed providing Student with *** speech therapy sessions and *** dyslexia sessions to address Student's mother's concern related to a need for remedial services. Student's mother initially declined the offer of the compensatory dyslexia services. Incorporating input from Student's mother, the ARD committee adopted two speech therapy goals for fluency, two speech therapy goals for language, five reading goals, two math goals, and a writing goal.⁴¹
42. The ARD committee recommended the following accommodations: break down assignments into smaller chunks, check for understanding, repeat important directions, ***, preferential seating, proximity control, ***. Student's schedule of services included *** of special education math, *** of special education dyslexia services, *** of *** in class support, *** of math in class support, *** of speech therapy ***, *** of speech therapy for *** compensatory sessions, and consultative psychological services.⁴²
43. The District provided a copy of the procedural safeguards notice to Student's mother in advance of the meeting on January ***, 2020. The District provided PWN for all decisions made at the ARD committee meeting on February ***, 2020.⁴³
44. The COVID-19 global pandemic changed the delivery of all education services statewide, including special education services, beginning in March of 2020. The District did not deliver any in-person education services for the remainder of the 2019-20 school year.⁴⁴

³⁹ JE 66 at 2 and 6.

⁴⁰ JE 66 at 28-34.

⁴¹ TR at 285 and 357-358; JE 66 at 9-19 and 28-34.

⁴² JE 69 at 20-21; JE 66 at 26.

⁴³ JE 66 at 2; JE 69.

⁴⁴ JE 115; JE 116; JE 117; JE 118; JE 119; JE 120; JE 121; JE 122; JE 123.

45. On April ***, 2020, Student's mother consented to the delivery of speech therapy through a virtual videoconference platform. She was informed of the limitations and confidentiality risks associated with the delivery of virtual group speech therapy services.⁴⁵
46. Student's Mother withdrew consent for speech therapy services on April ***, 2021 due to privacy concerns related to virtual services.⁴⁶
47. The District offered to provide individual virtual speech therapy to Student to address Student's Mother's privacy concerns related to virtual group speech therapy, but this offer was rejected.⁴⁷
48. Student's progress in speech has been limited by not participating in direct speech therapy at school. The District has been unable to update Student's speech therapy goals since consent for these services was withdrawn in April 2020.⁴⁸
49. On May ***, 2020, the District convened Student's ARD committee to address services being provided during the COVID-19 global pandemic. Student's mother expressed concerns related to the *** program being utilized as part of virtual instruction, the delivery of virtual speech therapy services, a potential need for ESY services, and Student's access to AT. The District explained Student was able to successfully use the *** program in school prior to COVID-19 and that it offers built in accommodations. The District also offered to provide instructional materials in alternative formats and to deliver Student's dyslexia instruction in the morning, afternoon, or evening. The District explained informed consent had been given for the virtual group speech therapy services and that Student had not demonstrated a need for ESY through regression during school breaks. The District offered to conduct an AT evaluation and detailed Student's current access to AT.⁴⁹
50. The District provided Student's Mother with PWN for the determinations made at the ARD committee meeting and a copy of the IDEA procedural safeguards notice.⁵⁰

STUDENT'S * GRADE YEAR**

51. For the 2020-21 school year, Student is receiving all of Student's instruction virtually.⁵¹
52. On October ***, 2020, *** completed an independent OT evaluation, issuing a report on October ***, 2020. Ms. *** determined Student has delays in ***. Ms. *** recommended

⁴⁵ JE 70; TR at 388-389.

⁴⁶ Respondent's Exhibit (RE) 10; JE 73 at 7.

⁴⁷ RE 14; TR at 353-354; JE 73 at 14.

⁴⁸ TR at 138 and 365-367.

⁴⁹ JE 73 at 5-9.

⁵⁰ JE 75; JE 73 at 13.

⁵¹ TR at 396.

- OT services to address these deficits and the use of ***. Although Ms. *** indicated Student had deficits requiring OT interventions, Student's actual scores on the OT assessment measures all fell in the average range.⁵²
53. As of November ***, 2020, Student, when given a grade level text, direct instruction, and repeated practice, was able to read ***. Student's target on this goal was ***. Student, when given direct instruction in a systematic, explicit, and intensive reading intervention program, was able to ***. Student's target on this goal was ***. Student, when given direct instruction and a model or manipulatives, was able to identify the correct operation to solve the problem with ***. Student's target on this goal was ***. Student, when given direct instruction and ***, was able to ***. Student's target on this goal was ***. Student, when given direct instruction, ***. Student's target on this goal was ***.⁵³
54. As of November ***, 2020, Student, when given direct instruction and supplemental aids, was able to ***. Student's target on this goal is ***. Student could ***. Student's target on this goal is ***.⁵⁴
55. On November ***, 2020, Student's ARD committee met for Student's annual meeting. Student's mother requested that Student be identified as having an OHI for ADHD. The District provided her with an OHI form for Student's physician to complete to consider the identification request.⁵⁵
56. Student's mother also expressed concern about Student's reading level and requested direct counseling services. The District reviewed the data underlying Student's reading level and indicated a counseling evaluation would need to be conducted to determine whether direct counseling services were necessary.⁵⁶
57. The District provided Student's mother with a notice of IDEA procedural safeguards at the November ***, 2020 ARD committee meeting.⁵⁷
58. *** completed an independent speech and language evaluation of Student, issuing a report on December ***, 2020. The District, however, did not receive the report until December ***, 2020. Ms. *** observed Student does not have the typical communication profile of a child with an autism spectrum disorder or a specific language disorder. She concluded Student met criteria for a speech and language disorder with weaknesses in the areas of

⁵² Petitioner's Exhibit (PE) 27 at 1, 7 and 9; TR at 499-502.

⁵³ JE 85 at 4-5.

⁵⁴ JE 85 at 5.

⁵⁵ JE 82.

⁵⁶ JE 85 at 31-34.

⁵⁷ JE 85 at 47.

- ***. She determined Student generates vocal qualities similar to Student's same aged peers, and does not demonstrate disfluent behaviors related to ***.⁵⁸
59. According to Ms. ***, Student does have expressive language deficits causing significant difficulty with ***. Student also has deficits in Student's expressive, receptive, and pragmatic language, which impact Student's classroom performance and impede Student's social and emotional development.⁵⁹
60. Ms. *** recommended Student receive *** of direct speech therapy *** grading period and *** indirect *** consult sessions each ***. Ms. *** also recommended the District discontinue working with Student on *** and instead focus more on expressive language and pragmatics.⁶⁰
61. On December ***, 2020, Student's annual ARD committee meeting reconvened. The committee conducted a REED and determined psychological and AT evaluations were necessary. Student's mother consented to these evaluations. Based upon new behaviors Student exhibited during virtual instruction, the committee also agreed a functional behavior assessment (FBA) should be conducted and a behavior intervention plan (BIP) developed following completion of the FBA. At Student's mother's request, the District added *** to Student's accommodations.⁶¹
62. *** completed an independent review of Student's education records, issuing a report on January ***, 2021. Ms. *** indicated Student's initial FIE showed Student has dyslexia and an SLD in written expression, as well as the SLD for math the District identified. She noted the FIE indicated Student had deficits in expressive and receptive language, oral language, verbal ability, short term memory, and auditory processing.⁶²
63. On January ***, 2021, Student's annual ARD committee meeting reconvened again. The committee determined additional evaluations in the areas of cognition, adaptive behavior, achievement, dysgraphia, vision, and hearing were necessary. Student's mother consented to these evaluations. The committee reviewed IEEs for speech and OT. The District recommended adopting the OT IEE accommodation recommendations of ***, but not the recommendations of school-based OT services. Student's mother disagreed with the District not providing OT at school.⁶³
64. The District currently provides Student with the following accommodations: ***.⁶⁴

⁵⁸ PE 29 at 4 and 23; TR at 115 and 369.

⁵⁹ PE 29 at 23; TR at 107-108.

⁶⁰ PE 29 at 23-24; TR at 118-121.

⁶¹ JE 85 at 35-37.

⁶² TR at 151-156; PE 30.

⁶³ JE 85 at 37-40; JE 86; JE 87.

⁶⁴ JE 85 at 20-21.

65. The District provides Student with the following attention and executive functioning supports: a ***, frequent breaks, proximity control, and reminders to stay on task.⁶⁵
66. The District provides Student with AT in the form of ***, access to an iPad, and use of a computer.⁶⁶
67. Student requires specialized instruction and methodology in small groups outside the general education classroom for math, dyslexia, and speech. Student receives *** of special education dyslexia instruction, *** of special education math instruction, *** of in class support in ***, and *** of in class support in math. The District offered to resume providing *** speech therapy sessions per grading period and an additional *** compensatory speech sessions, but Student's Mother declined the resumption of speech therapy.⁶⁷
68. For the fall semester of the 2020-21 school year, Student's grades were ***. Student *** due to a lack of participation in the asynchronous instruction.⁶⁸
69. During the fall of the 2020-21 school year, Student attended approximately ***% of Student's classes. Student's inconsistent attendance limited Student's progress on Student's IEP goals.⁶⁹

VII. DISCUSSION

Petitioner raises several issues challenging the District's delivery of special education services to Student. First, Petitioner takes issue with the timeliness of the District's initial identification of Student as a child with a disability in need of special education services and with the District's identification of all of Student's IDEA disability classifications. Petitioner also takes issue with the appropriateness of the special education services provided to Student and the District's provision of PWN for all decisions made by Student's ARD committee.

A. Burden of Proof

⁶⁵ JE 85 at 21.

⁶⁶ JE 85 at 21.

⁶⁷ JE 85 at 24 and 27.

⁶⁸ JE 85 at 5.

⁶⁹ JE 85 at 4.

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁷⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). 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. *Id.*

B. Child Find Under the IDEA

Petitioner alleges the District violated its Child Find obligation to Student by failing to identify Student for special education services in a timely manner. The IDEA's Child Find provisions guarantee access to special education for students with disabilities. 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.111. 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 “[c]hildren 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.R.*, 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008).

Here, Petitioner contends Student’s struggles with reading, writing, and math in *** and into *** grade were indicators Student had a disability, triggering the District’s Child Find obligation. 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.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. Haw. 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.R.*, 567 F. Supp. 2d at 950.

The analysis for resolving a Child Find issue is two-fold: first, did the school district have

⁷⁰ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009).

reason to suspect the student has a disability *and* suspect the student may need special education and related services. *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). The threshold for suspicion is relatively low. The inquiry is not whether the student actually *qualifies* for special education but instead whether the student should be *referred* for a special education evaluation. *Woody*, 178 F. Supp.3d at 467.

Here, Student did struggle with reading, writing and math during *** and into *** grade. In fact, the District recognized Student's struggles, informing Student's mother of these concerns and initiating RTI services at the beginning of Student's *** grade year. There is no question the District suspected Student had a disability and may need special education services early in the 2018-19 school year. Petitioner, however, presented no evidence that Student's struggles the prior year in *** were significant or outside the typical variable abilities of *** age children. Thus, the evidence does not support a conclusion the District had reason to suspect Student had a disability and was in need of special education services prior to the fall of the 2018-19 school year.

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); *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 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. *Krawietz*, 900 F.3d at 676.

Here, the District's Child Find duty was triggered in October 2018, when RTI interventions did not remedy Student's struggles in math and ***. While it is true Student struggled during ***, Student's deficits in reading, writing, and math were not significantly outside the range for the spectrum of children in ***. Children do not learn to read, write, and do math at the same rate, at the same time, or at a steady, even pace. As such, the District did not have a Child Find duty to Student in ***.

The District timely engaged in proactive steps to attempt to address Student's difficulties. When the District recognized Student's struggles, it initiated RTI services in August 2018 and met with Student's mother the following month. Once the District recognized these efforts were not resolving Student's difficulties, it convened an ARD committee meeting and obtained parental consent to evaluate Student for special education services in November. Ultimately, the District produced a FIE report and found Student eligible for special education services, putting an IEP and set of services in place for Student early in the second semester of Student's *** grade year. The District did not violate its Child Find duty to Student. It referred Student for an FIE upon suspecting Student had a disability and a need for special education services, determined Student eligible for special education services just three months after having notice Student may be a child with a disability and while it was providing RTI services and conducting a FIE. *Krawietz*, 900 F.3d at 676; *O.W.*, 961 F.3d at 793; *Woody*, 178 F. Supp. 3d at 468.

C. Additional Eligibility Categories

Petitioner contends the District failed to timely identify Student as having a SLD for basic reading related to dyslexia and an OHI for ADHD. An eligibility determination is made on the basis of an evaluation that meets IDEA criteria and a finding a student meets one or more of thirteen eligibility classifications, and by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A); 34 C.F.R. §§ 300.8(a)(1), (c)(1)-(13); 34 C.F.R. §§ 300.304-300.306; 19 Tex. Admin. Code § 89.1040(c)(1)-(13).

1. SLD in Reading

Petitioner asserts the District should have identified Student as having a SLD in reading in January 2019 based upon the findings of the initial FIE. Eligibility for services under the IDEA is a two-pronged inquiry: (1) whether the student has a qualifying disability, and (2) whether, by reason of that disability, the child needs IDEA services. *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 208 (5th Cir. 2019) (citing 20 U.S.C. §§ 1401(3), 1414(d)(2)(A)). In making its eligibility determination, the ARD committee must “[d]raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior.” 34 C.F.R. § 300.306(c)(1)(i). Thus, the question here is whether in January 2019, based upon the FIE and information from Student’s educators and parents, the ARD committee should have determined Student had a SLD in reading and had a need for special education services to address this SLD.

IDEA defines a specific learning disability as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to . . . read, write, [or] spell . . ., including conditions such as . . . dyslexia.” 34 C.F.R. § 300.8(c)(10). A student may qualify with a specific learning disability in one or more of eight areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving. 34 C.F.R. § 300.309(a)(1).

The evidence showed Student exhibited characteristics of an SLD in reading comprehension and basic reading with the condition of dyslexia in January 2019 when the initial FIE was completed. Student displayed a pattern of strengths and weaknesses in cognitive abilities and unexpected underachievement. As Dr. *** indicated in her August 2019 IEE, this pattern of strengths and weaknesses indicating an SLD in reading was present in the evaluation data from the January 2019 FIE. The evidence clearly indicates Student had a qualifying disability, an SLD in reading, based upon the District's January 2019 FIE.

However, to have been eligible for special education services in January of 2019 in this area, Student must also have demonstrated a need for special education services. *Lisa M.*, 924 F.3d at 208. Here, Petitioner did not prove Student had a need for special education services to address Student's SLD in reading in January 2019. While Student was assessed to have reading deficits, Student was able to maintain reading levels in the average range for a child in *** grade. Student's teachers indicated Student made progress in reading during the 2018-19 school year and finished the year reading at grade level. Thus, the District did not fail to timely identify Student as having a SLD for reading, because Student did not demonstrate a need for special education services in this area. *Id.*

2. OHI for ADHD

Petitioner contends Student is eligible as a student with an OHI due to ADHD and requires specially designed instruction under the IDEA as a result. An OHI is defined as having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that: (i) is due to chronic or acute health problems such as asthma, attention deficit disorder or ADHD, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (ii) *adversely affects a child's educational performance*. 34 C.F.R. § 300.8(c)(9)(i)-(ii) (emphasis added).

As of the date Petitioner filed Student's Complaint, and even as of the date of Student's Amended Complaint, Petitioner had no evaluation indicating Student had an OHI effecting Student's educational performance. In fact, Petitioner's own expert, Dr. ***, concluded Student was not eligible

for special education services under OHI for ADHD, finding Student displayed no attention or executive functioning deficits in a school setting and was able to focus on tasks in a one-on-one testing situation. Dr. ***'s evaluation is consistent with the District's April ***, 2019 evaluation, which found that Student does not display symptoms of ADHD at school and is able to sustain attention in a school environment. In addition, Student's teachers repeatedly reported that Student is attentive, follows directions, and is well-behaved at school. In sum, Petitioner presented no evidence that the District failed to timely identify Student under OHI for ADHD. 34 C.F.R. § 300.8(c)(9)(i)-(ii); *Lisa M.*, 924 F.3d at 208.

D. Duty to Provide FAPE

The purpose of the IDEA is to ensure that 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). 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), 300.201; Tex. Educ. Code § 29.001. Petitioner alleges the District violated this duty by failing to provide appropriate services for Student for reading, speech, autism, OT, and AT.

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, 188-189, 200-201, 203-204 (1982). To determine whether the District has provided a program that meets Student's unique needs, a Hearing Officer must analyze:

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

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997). Even after the Supreme Court’s 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit in *Michael F. E.R. by 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 Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

Petitioner asserts the District failed to develop an IEP and program based upon Student’s needs and the evaluations of Student. For Student’s IEP to be determined appropriate, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(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 Ind. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The basic inquiry in this case is whether the IEP developed by the district “was reasonably calculated to enable [Student] to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017).

a. Reading and ***

The District recognized Student struggled with reading and *** in *** grade, even with Student’s ability to stay on grade level for reading. To address these early struggles, the District provided accommodations for Student in all classes as part of Student’s initial IEP and ESY services for the critical skill of writing in the summer after *** grade. Once Student was identified

with an SLD in reading, the District began providing special education dyslexia services, along with special education support during Student's general education *** class time. The District based Student's reading and *** services on the initial FIE, Dr. ***'s IEE, input from Student's teachers, and input from Student's mother. The District even provided extra compensatory dyslexia services to address Student's mother's request for remedial services.

b. Speech

The District recognized Student may have a speech and language disorder near the end of Student's *** grade year. On May ***, 2019, the District received consent, conducted an evaluation, and determined Student needed speech therapy on October ***, 2019. Both the District and the IEE speech therapist determined Student has a language disorder requiring therapy, but disagreed about whether Student had a mild *** disorder. Since the District's speech services focused significantly on Student's language disorder, its speech program for Student was appropriate, regardless of whether the *** disorder is present. The District provided direct speech services to Student for a portion of Student's *** grade year, but was not allowed to continue services after April 2020 due to revocation of consent. As with dyslexia, the District made compensatory speech services available to address Student's mother's request for remedial services. The District has even offered to provide one-on-one speech services to Student to address Student's mother's privacy concerns, but this offer has been declined. Because Student's mother continues to withhold consent for services, the District has been unable to update Student's speech and language goals.

c. Autism

Student's autism characteristics have a subtle presentation in the school environment. During *** and *** grade, Student was well-behaved, attentive, and socially interactive with Student's peers, while appearing somewhat introverted. Neither the District nor Student's mother suspected Student had autism during this time frame. When Dr. ***, at the beginning of *** grade, suggested Student may be on the autism spectrum, the District conducted an autism evaluation in September and October of 2019. Once the District determined Student indeed met criteria as a

student with autism, it began providing services in December of 2019 to address this area, including the ARD committee completing the autism supplement.

d. OT

Student's mother has repeatedly requested OT services at school for Student. However, as the District's OT evaluation concluded, Student is able to sit and move independently to participate in learning activities at school, independently navigate and transition to destinations at school, independently manipulate ***, and is able to independently manage Student's school materials. Even the IEE OT evaluator did not assess Student to have deficits requiring OT services. The District, nonetheless, utilized the recommendations of a *** made by the IEE. In sum, Student has no OT needs for the District to address.

e. AT

Student is an *** student who has been provided access to a computer, an iPad, *** technology. The District's AT specialist has participated in Student's ARD committee meetings and AT is incorporated throughout Student's IEP. Student has no unaddressed AT needs.

2. Least Restrictive Environment

The IDEA requires that a student with a disability 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." 34 C.F.R. § 300.114(a)(2)(i)(ii). Curiously, Petitioner argues both that Student requires more one-on-one and small group pull out instruction for dyslexia, speech, and OT and at the same time Student is not being educated in Student's LRE.

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 Ed., 874 F. 2d 1036, 1048 (5th Cir. 1989).

To assist Student in the general education classroom the District provides *** of in class support in ***, and *** of in class support in math, along with numerous accommodations for assignments, assessments, and attention. To address Student's identified disabilities, Student requires specialized instruction and methodology in small groups outside the general education classroom for math, dyslexia, and speech. Student receives *** of special education dyslexia instruction, *** of special education math instruction, and the District is prepared to provide speech therapy. The District is mainstreaming Student to the maximum extent appropriate and only removing Student from the general education classroom for less than an hour a day to address Student's deficits. The District is educating Student in Student's LRE. 34 C.F.R. § 300.114(a)(2)(i)(ii); *Daniel R.R.*, 874 F. 2d at 1048.

3. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), *aff'd* 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome, because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a

school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

The evidence showed Student's program was developed in collaboration with the key stakeholders, including Student's mother. The District convened countless ARD committee meetings during Student's ***, and *** grade years to gather input from Student's mother. The District completed multiple evaluations requested by Student's mother, modified IEP goals based upon her input, and added accommodations she requested. The District reviewed and considered multiple IEEs, adding eligibility for an SLD in reading with the condition of dyslexia as the result of Dr. ***'s IEE. The District also utilized the IEE OT recommendations of a ***. In addition, the District made compensatory speech and dyslexia services available for Student to address Student's mother's concerns about the timeliness of the initiation of special education services. Finally, Student's ARD committee included professionals with expertise in reading, speech, OT, AT, and psychological services.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 812-13 (5th Cir. 2012). Here, Student made steady progress in reading while receiving services from the District. At the end of *** grade Student was on grade level for reading, at the end of the first semester of *** grade, Student was on grade level for independent reading, and only one month behind grade level for instructional reading. As of November ***, 2020, Student had exceeded Student's IEP goal expectation for rate of reading and ***. Student also made steady progress in math each school year. As of November ***, 2020, Student was exceeding Student's IEP goal expectation for Student's math *** goal and exceeding Student's IEP goal expectation for Student's IEP goal related to ***.

As of February ***, 2020, Student was beginning to interact more with peers, interacting particularly well in small groups, and was encouraging to others when they are faced with a difficult task. The District has had difficulty tracking Student's progress on peer interaction after

this date because Student has been exclusively engaged in virtual instruction.

Student's mother withdrew consent for speech therapy services just four months into the initiation of services. Student made progress in this short period of time and Student's progress cannot be currently assessed since the District speech pathologist is unable to work with Student. While Student's disability may not have been remediated, Student has received overall educational benefit, which is IDEA's statutory goal. *Klein Independent School District v Hovem*, 690 F.3d 390, 398 (5th Cir. 2012)

5. IEP Implementation

Petitioner alleges the District failed to implement Student's IEP. When determining whether a school district failed to adequately implement a student's IEP, a hearing officer must determine whether a FAPE was denied by considering under the third Michael F. Factor whether there was a significant or substantial failure to implement the IEP and whether, under the fourth Michael F. factor, there have been demonstrable academic and nonacademic benefits from the IEP. *Spring Branch Independent School District v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020). To prevail on Student's claim under IDEA, Petitioner must show more than a diminimus failure to implement all elements of Student's IEP, and, instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Houston Ind. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000). The evidence showed the District implemented Student's IEP with fidelity. Student received Student's resource math instruction, special education dyslexia interventions, in-class support for *** and math, and the accommodations set out in Student's IEP. The District delivered Student's speech therapy as set forth in the IEP, until Student's mother withdrew consent. As detailed above, Student made progress under Student's IEP and made academic and nonacademic benefit. In this case, Petitioner failed to prove the District did not implement material portions of the IEP. *Bobby R.*, 200 F. 3d at 349; *O.W.*, 961 F.3d at 796.

6. FAPE Conclusion

The District developed a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs. *Endrew F.*, 137 S. Ct. 988. Student's IEP and program were developed using District evaluations, IEEs, input from teachers and Student's mother, and placed Student in Student's LRE, taking into account Student's need for specialized instruction for reading and math. Student's mother, as well as key stakeholders from the District and outside of the District, provided input to develop Student's program and Student made progress in reading, math, speech, and with social skills. A review of the overall educational program shows Student was provided a FAPE and made progress with the program as it was developed. *Michael F.*, 118 F. 3d at 253; *Per Hovem*, 690 F. 3d at 391.

E. Procedural Requirements

Petitioner alleges the District violated Student's procedural rights under the IDEA. Liability for a procedural violation only arises if the procedural deficiency impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

Petitioner alleges that the District failed to provide PWN to Student's Mother as required under the IDEA. The evidence showed, however, that the District provided both PWN and Notice of Procedural Safeguards to Student's Mother upon all occasions required under the IDEA during the relevant time period. 34 C.F.R. §§ 300.503(a), 300.504(a). As such, the Hearing Officer concludes that the District did not commit a procedural violation of the notice requirements under the IDEA as alleged by Petitioner.

VIII. CONCLUSIONS OF LAW

1. 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); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993).
2. Student was provided a FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. 176; *Andrew F.*, 137 S. Ct. 988.
3. Petitioner did not meet Student's burden of proving that Respondent failed to timely evaluate and identify Student as a student with a specific learning disability. *Schaffer ex rel. Schaffer v. Weast, supra*; 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.8 (a)(1); 300.111(a)(c)(1); *El Paso Indep. Sch. Dist. v. Richard R., supra*.
4. Petitioner did not meet Student's burden of proving that Respondent denied Student a FAPE by failing to identify Student as a student with OHI. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.8 (a)(1).
5. Petitioner did not meet Student's burden of proving that Respondent failed to comply with student and parental procedural rights under the IDEA related to the provision of Prior Written Notice or Notice of Procedural Safeguards. *Schaffer*, 546 U.S. at 62; 34 C.F.R. §§ 300.503(a); 300.504(a).

IX. ORDERS

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

SIGNED April 15, 2021.



Steve Elliot
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE 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. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code §§ 2001.144(a), (b).