

DOCKET NO. 265-SE-0520

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

v.

**GEORGETOWN 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, ***, b/n/f Parent (collectively Petitioner) brings this action against the Georgetown Independent School District (Respondent or District) under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400-1482 (IDEA) 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) as a result of campus closures due to the COVID-19 pandemic. The Hearing Officer concludes the District failed to make every effort to implement Student’s Individualized Education Program (IEP) during the relevant time period, resulting in a denial of a FAPE.

II. LEGAL REPRESENTATION

Student was represented throughout this litigation by Student’s legal counsel, Jordan McKnight with the Law Offices of Jordan McKnight, and education advocate Bonnie Garza. The District was represented throughout this litigation by its legal counsel, Jessica Witte with the Thompson and Horton law firm.

III. DUE PROCESS HEARING

The due process hearing was conducted on September 29 and 30, 2020. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel, Jordan McKnight, who was assisted by education advocate Bonnie Garza. In addition, Student's Mother, ***, attended the due process hearing.

Respondent continued to be represented by its legal counsel, Jessica Witte. In addition, ***, Special Education Director for the District, and ***, Executive Director for Federal Programs for the District, attended the hearing as the party representatives. Both parties filed written closing briefs in a timely manner. The Decision in this case is due on November 18, 2020.

IV. ISSUES

A. Petitioner's Issues

Petitioner raises the following IDEA issues from the 2019-20 school year for decision in this case:

FAPE

- Whether the District denied Student a FAPE during the relevant time period.
- Whether the District denied Student a FAPE by failing to provide an appropriate program following the disruptions due to the COVID-19 global pandemic.
- Whether the District denied Student a FAPE by failing to provide appropriate dyslexia and speech services following the disruptions due to the COVID-19 global pandemic.

Procedural

- Whether the District modified Student's Individualized Education Program (IEP) outside of the Admission, Review, and Dismissal (ARD) Committee meeting process, without parental participation, and without providing Prior Written Notice (PWN).
- Whether the District denied Student's parent the right to meaningfully participate in the decision-making process for Student's special education program.

B. Respondent's Legal Position and Additional Issues

Respondent generally 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.

V. REQUESTED RELIEF**A. Petitioner's Requested Relief**

Petitioner requests the following items of relief:

1. An Independent Education Evaluation (IEE) of Student in all areas of suspected disability and need.
2. Compensatory education services.
3. Compensatory related services.
4. A determination that Student's parent was denied the right to meaningfully participate in the decision-making process for Student's special education program.
5. Reimbursement for education expenses incurred by Student's parent.
6. A determination that the School District denied Student a FAPE.
7. Other remedies determined appropriate by the hearing officer.

VI. FINDINGS OF FACT

1. Student is ***-year-old *** student who attends *** in the District. Student is eligible for special education services under the classifications of speech impairment and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD).¹

¹ Joint Exhibit (JE) 3 at 1.

2. Student has a *** disorder characterized by a ***. Student displays ***. Student needs speech therapy services ***.²
3. Student has a limited attention span and has a medical diagnosis of Autism. Student is *** when compared to Student's same-aged peers. Student displays executive functioning deficits that impact Student's ability to regulate Student's emotions and behaviors, inhibit Student's impulses, impact Student's ability to remain organized, and impact Student's social functioning. Student's executive functioning deficits hinder Student's academic, behavioral, and social functioning in a school setting.³
4. Student has deficits in word reading, decoding, spelling, and phonological processing. Student struggles with word identification, sound blending, and spelling. Student meets state eligibility criteria as a student with dyslexia and qualifies for dyslexia intervention.⁴
5. On November ***, 2019, Student's ARD Committee met for Student's annual meeting to develop Student's IEP and Student's schedule of services. The committee developed an English goal for Student to combine letter sounds to create recognizable words, an English goal for Student to decode consonant-vowel-consonant (CVC) words, a behavior goal for complying with directions, a behavior goal for ***, a speech goal for ***, and a speech goal for ***. The ARD Committee developed a program for Student with ***-minute per week social skills sessions, ***-minute per week direct speech therapy session, *** minutes per day of inclusion support in English Language Arts, *** minutes per day of inclusion support in Math, and dyslexia services.⁵
6. The District provided Student with ***-minute direct intervention sessions with a dyslexia teacher each week from the beginning of the 2019-20 school year through March ***, 2020. Student's dyslexia teacher was responsible for implementing the English goals in Student's IEP.⁶
7. The District was closed for Spring Break the week of March 16, 2020. On March 23, 2020, the District suspended in-person instruction for all students in response to the COVID-19 global pandemic. The District was closed for all instruction the week of March 23, 2020 and instructed its special education staff to refrain from delivering any services during this week.⁷

² JE 1 at 5.

³ JE 1 at 2, 6, 14, and 31-32.

⁴ JE 1 at 36-37; JE 2 at 12; JE 3 at 3.

⁵ JE 3 at 1 and 17-22.

⁶ Petitioner's Exhibit (PE) 40; Transcript (TR) at 136.

⁷ JE 5 at 4; Respondent's Exhibit (RE) 1; RE 12 at 1.

8. On March ***, 2020, the District enabled Google Hangout Meets for all students in the District to allow District staff to hold videoconference sessions with students.⁸
9. On April 7, 2020, the District provided guidance on the delivery of teletherapy to its related services personnel. The District advised teletherapy could be provided in groups with properly completed confidentiality releases from all families participating, that indirect consultation therapy could be substituted for direct therapy, and that a second District staff member could be asked to join a direct teletherapy session to ensure compliance with the District requirement of two adults being present for on-line sessions with students.⁹
10. On April 9, 2020, Texas Governor Greg Abbott temporarily waived a series of regulations to lift telehealth restrictions and expand telehealth options in response to COVID-19. The waivers allow a smart phone or any audio-visual, real-time, or two-way interactive communication system to qualify as a telecommunications technology that can be used to provide telehealth services. The waivers apply to, among others, speech-language pathologists and dyslexia therapists.¹⁰
11. On March ***, 2020, the District contacted Student's Mother to determine whether the family preferred teletherapy or on-line materials done on their own for Student's remote speech therapy. Student's Mother responded on the same day, indicating teletherapy was the method of choice for Student's remote speech services. The District delivered one session of speech teletherapy for Student on April ***, 2020. On April ***, 2020, the District notified Student's parents that the speech teletherapy was being discontinued for ethical and equity reasons unrelated to Student's specific needs or IEP. The District did, however, allow its therapist to continue to deliver speech teletherapy during this time. For the remainder of the school year, the District delivered speech services to Student through on-line activities and was unable to measure Student's progress on Student's speech goals. Student received *** of the *** minutes of speech services called for in Student's IEP during this time frame.¹¹
12. Beginning on March ***, 2020, the District delivered Student's dyslexia services on-line through the *** program, a computer-based dyslexia instruction program. The *** program initially misidentified Student's present reading level and assigned Student lessons significantly below Student's reading level. Student remained at the incorrect *** level until April ***, 2020, when the District reset the *** system for Student. The District had concerns about Student appropriately utilizing the *** program. Student accessed the *** program for *** minutes from April ***, 2020 to May ***, 2020. The District

⁸ RE 11.

⁹ RE 13.

¹⁰ <https://gov.texas.gov/news/post/governor-abbott-waives-regulations-expands-telehealth-options>

¹¹ PE 4; PE 5; RE 24; TR at 39, 185, 195-196, and 526-527.

delivered no direct dyslexia intervention sessions to Student and did not measure progress on Student's IEP English goals during this time.¹²

13. Beginning on March ***, 2020 and continuing for *** weeks until the end of the school year, the District delivered to Student ***-minute synchronous behavior communication support (BCS) sessions each week, ***-minute synchronous inclusion support session each week, ***-minute synchronous social skills session per week, and one weekly session with Student's *** teacher through Google Hangouts.¹³
14. On April ***, 2020, the District proposed an IEP amendment for Student. The proposed amendment would expire "upon return to direct, in-person instruction." The District proposed changing Student's social skills instruction to ***-minute per week sessions, ***-minute per week inclusion support session through Google Hangouts, *** minutes per week of *** on-line dyslexia instruction, *** indirect speech therapy consultation sessions per the nine week grading period, and one weekly email speech consult with Student's parents. The District prepared the amendment without input from Student's Mother. The District sent the proposed IEP amendment to Student's Mother along with a prior written notice (PWN). Student's Mother rejected the proposed IEP amendment.¹⁴
15. On April ***, 2020, Student's ARD committee convened to discuss the District's proposed IEP amendment. Student's Mother requested ***-minute per week direct dyslexia instruction sessions, ***-minute per week direct speech therapy session, *** class direct instruction and one weekly Google Hangout session. Student's Mother also expressed concern about the *** program being used for dyslexia intervention. The District rejected the Parent's requests and continued to propose amending Student's IEP as proposed on April ***, 2020. Student's Mother continued to disagree with the proposed IEP amendment.¹⁵
16. Student's Mother arranged for Student to receive an additional reading and writing tutoring session each week once Student's services from the District were reduced. During April and May of 2020, Student received Student's tutoring via videoconference. Student was able to maintain attention during the virtual tutoring sessions. In June through August, a majority of Student's tutoring sessions were conducted in-person utilizing coronavirus safety protocols. In April, Student received ***-minute tutoring sessions at a total cost of \$***. In May, Student received ***-minute tutoring sessions for a total of \$*** and *** additional ***-minute tutoring sessions for a total of \$***. In June, Student received ***-minute tutoring sessions for a total of \$***. In July, Student received ***-minute sessions

¹² JE 7; RE 20; TR at 125, 129, 140-141, 150, 162-163, 166-167, 170, 333 and 544-545.

¹³ TR at 45, 49, and 235.

¹⁴ JE 4; JE 10.

¹⁵ JE 5 at 4-5.

of tutoring for a total of \$***. In August, Student received ***-minute tutoring sessions for a total of \$***.¹⁶

17. Beginning on March ***, 2020, the District altered the special education services delivered to Student, failing to implement services set out in Student's November, 2019 IEP. The District modified Student's IEP and special education services without Student's Mother's consent. The District has yet to meet to determine whether Student needs compensatory services to make up for the services not provided to Student during COVID-19. The District is waiting until a full *** week grading period has been completed in the 2020-21 school year before gathering data to make a compensatory education determination for Student.¹⁷
18. When school resumed for the 2020-21 school year, the District provided Student with the services in Student's IEP, including providing direct speech and dyslexia services in a synchronous videoconference format.¹⁸

VII. DISCUSSION

A. 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 who are enrolled in the district. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a) (3). The District's duty to provide FAPE to students with disabilities continued during the COVID-19 global pandemic. Neither state or federal law provide flexibility to school districts in times of emergency regarding their obligation to provide FAPE to students receiving special education services. 34 C.F.R. Section 300.101; U.S. Dept. of Education, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020), <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020>; Texas Education Agency, *COVID19 and Special Education in Texas* (March 20, 2020), tea.texas.gov/sites/default/files/covid19_special-education_qa_updated_March_20.pdf.

¹⁶ PE 12; PE 13; PE 14; PE 15; PE 16; TR at 51-52, 91-92, and 109-111.

¹⁷ TR at 40, 198, 283, 500, 508-509, and 518-519.

¹⁸ TR at 79, 176, and 188.

The district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs and ensure Student receives 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). During the COVID-19 global pandemic, the District is obligated, to the greatest extent possible, to ensure each student with a disability can be provided the special education and related services identified in the student's IEP. 34 C.F.R. Section 300.101; U.S. Dept. of Education, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020), <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020>.

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.¹⁹ *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.*

C. FAPE

The Four Factors Test

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

- 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

¹⁹ 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).

- 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 *Andrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

The basic inquiry in this case is whether the IEP implemented by the district “was reasonably calculated to enable [Student] to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017). A school district must both adequately design a student’s IEP and adequately implement the IEP. *Rene J., as next friend of C.J. v. Hous. Indep. Sch. Dist.*, 913 F.3d 523, 528 (5th Cir. 2019). In this case, Petitioner does not challenge the design of Student’s IEP. In fact, Petitioner and the District agree Student’s November 2019 IEP is appropriate and reasonably calculated to allow Student to make progress in light of Student’s circumstances. Petitioner does, however, challenge the District’s implementation of Student’s IEP following the onset of the COVID-19 global pandemic.

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). Since only IEP implementation is at issue in this case, and Petitioner does not contest whether Student’s program was individualized on the basis of Student’s needs or whether the program met Student’s LRE, the analysis in this case starts with factors three and four. *ID.*

1. Significant Or Substantial Failure To Implement

Petitioner takes issue with the District’s implementation of Student’s speech and dyslexia services from March ***, 2020 to the end of the school year. To prevail on Petitioner’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). Student's IEP contained six goals, two each for Speech, English, and behavior. Student's IEP provided for direct speech, dyslexia, behavior, and inclusion services.

a. Speech Implementation

Following the global pandemic, the District was required to make every effort to provide the special education and related services identified in Student's IEP. U.S. Dept. of Education, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020), <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020>. Shortly after the coronavirus outbreak, the District enabled Google Hangout Meets for sessions with students and gave permission to its therapist to conduct teletherapy. Moreover, Governor Abbott waived teletherapy regulatory requirements, alleviating practice limitations for speech therapists. Using Google Hangout Meets, the District delivered ***-minute direct speech teletherapy session for Student. The District then abruptly discontinued Student's speech teletherapy services. The District's service discontinuation was unrelated to Student's individual needs and inconsistent with Student's IEP. Despite having the capacity to do so, the District failed to provide all but one of the speech therapy sessions called for in Student's IEP. The District failed to make every effort to provide the related service of speech to address one of Student's identified disabilities and two of the six goals on Student's IEP. *Id.*

b. Dyslexia Implementation

For students with dyslexia who are eligible for special education services under other eligibility categories, the ARD committee must address the student's need for dyslexia instruction and the most appropriate means for delivering this instruction. Each student with dyslexia must have access to an instructional program that meets the requirements of state law and access to the services of a teacher trained in dyslexia and related disorders. 19 Tex.Admin. Code Section 74.28. In this case, Student's ARD committee determined Student required direct dyslexia instruction and Student received ***-minute intervention sessions with a dyslexia teacher each week until the

coronavirus outbreak. Moreover, Student's dyslexia teacher was responsible for implementing both of Student's English goals. On March ***, 2020, the District began delivering Student's dyslexia services on-line through the *** program, a computer-based dyslexia instruction program. Both the District and Student's Mother had concerns about Student effectively utilizing the *** program. In addition, the *** program initially misidentified Student's reading level and Student only accessed it for *** minutes during the relevant time frame.

A student with dyslexia who is served through special education must receive critical, evidence-based components of dyslexia instruction that is individualized to meet the student's unique needs. A school district in Texas may not use a computer-based program as the primary means for delivering dyslexia instruction. Texas Dyslexia Handbook, JE 11 at 35, 46, 51, and 104. The District failed to provide Student with direct dyslexia instruction during the coronavirus outbreak. The District had the capacity to deliver dyslexia instruction through Google Hangout Meets, but refused to do so. In addition, as with speech services, Governor Abbot removed barriers to dyslexia providers delivering direct, virtual services. The District, instead, contrary to explicit instruction from the Texas Education Agency, delivered Student's dyslexia instruction exclusively through a computer-based program. The District failed to make every effort to implement the dyslexia services and English goals in Student's IEP.

2. Demonstrable Academic Benefit

The District argues Student has made demonstrable benefit because Student will ultimately achieve all of the goals in Student's IEP by the next annual meeting in November of 2020. However, the District was unable to track Student's progress on either Student's speech or English goals from March ***, 2020 to the end of the school year and does not plan to review Student's progress until the end of the first nine weeks of the 2020-21 school year. Moreover, the District provided no direct speech or dyslexia services for the entire last grading period of the 2019-20 school year. Given an entire absence of data, Student cannot be said to have made progress or received benefit from March ***, 2020 to the end of the school year.

3. Material Implementation Failure

A school district's failure to implement a material portion of an IEP violates the IDEA but failure to perfectly execute an IEP does not amount to denial of FAPE. *M.N. v. Sch. Bd. of City of Virginia Beach*, 2018 WL 717005 (E.D. Va. 2018); *Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. TH*, 642 F.3d 478, 484 (4th Cir. 2011). Here, the District failed to implement a material portion of Student's IEP when it failed to provide direct speech and dyslexia services and failed to implement four of Student's six IEP goals. *Id.* The District's failure to implement these material portions of Student's IEP resulted in a denial of FAPE. *Spring Branch Independent School District*, 961 F.3d at 796; *Houston Ind. Sch. Dist.*, 200 F. 3d at 349.

D. IEP Modifications

Petitioner alleges the School District modified Student's IEP outside of the ARD Committee meeting process and without parental participation. The school district and the parent may agree to not convene an ARD committee meeting to make changes to a student's IEP after the annual ARD committee meeting, and may instead agree to develop a written document to amend or modify the student's IEP. 34 C.F.R. Section 300.324(a)(4)(i). Unless the IEP is modified in agreement consistent with this provision, a school district may only modify a student's IEP at a meeting attended by the entire ARD committee. 34 C.F.R. Section 300.324(a)(6). In sum, an IEP amendment outside of an ARD committee meeting requires the parent and the school district to agree on the content of the modification, agree a meeting is unnecessary, and develop a written document detailing the IEP modification. *Spring Branch Independent School District*, 961 F.3d at 799.

Here, the District proposed an amendment outside of the ARD committee meeting process. The District's proposal was a unilateral proposal made without parental input. Student's Mother disagreed with the proposed changes to Student's IEP. The District then convened an ARD committee meeting to discuss the proposed amendment. At the meeting, Student's Mother again expressed disagreement with the proposed amendment. The District contends, because Student's Mother did not consent, the IEP amendment was not implemented. However, the reality is that

from March ***, 2020 to the end of the school year, the District provided services to Student as set out in the rejected IEP amendment, and, not consistent with Student's actual IEP. Therefore, this hearing officer concludes the District made an IEP amendment outside of an ARD committee meeting without parent agreement on the content of the modification, without agreement a meeting was unnecessary, and without developing a written document detailing agreed upon IEP modifications. Spring Branch Independent School District, 961 F.3d at 799.

E. Relief

Petitioner requests as relief an IEE, compensatory education services, compensatory related services, and reimbursement for educational services provided by Student's parents. Hearing Officers have broad equitable powers, as courts do, to fashion appropriate relief where there has been a violation of the IDEA. *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 35, 374 (1996); *Harris v. Dist. of Columbia*, 19 IDELR 105 (D.C.D.C. 1992). The District argues it has offered to eventually provide compensatory services for services reduced in its proposed IEP amendment. However, seven months have now passed since Student missed out on the speech and dyslexia services in Student's IEP and the District has not only failed to meet to make a compensatory education award, it is still waiting to take data for making the determination. The District failed to implement Student's IEP and denied Student a FAPE in the Spring of 2020, entitling Student to appropriate and timely relief. *Burlington Sch. Comm.*, 471 U.S. at 374.

An impartial hearing officer has the authority to grant all relief deemed necessary, including compensatory education, to ensure the student receives the requisite educational benefit denied by the school district's failure to comply with the IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991). Compensatory education imposes liability on the school district to pay for services it was required to pay all along and failed to do so. *Meiner v. Missouri*, 800 F. 2d 749, 753 (8th Cir. 1986); *D.A. v. Houston Ind. Sch. Dist.*, 716 F. Supp 2d 603, 612 (S.D. Tex. 2009), *aff'd* 629 F. 3d 450 (5th Cir. 2010). In this case, the District was required by Student's IEP to provide direct speech therapy services. To remedy the District's failure to provide these related services, this hearing officer awards Student *** minutes of compensatory speech therapy services.

Relief awarded by Hearing Officers must be appropriate and further the purpose of the IDEA to provide a student with a FAPE. *Sch. Cmte. of Town of Burlington, Mass.*, 471 U.S. at 369. In this case, Student's Parents reasonably decided to obtain additional tutoring sessions for Student, instead of waiting for the District to remedy its failure to implement Student's dyslexia services. Therefore, this hearing officer determines it serves the purposes of the IDEA to order the District to reimburse Student's Parents for the extra tutoring sessions for a total reimbursement of \$***.

VIII. CONCLUSIONS OF LAW

1. Petitioner met Petitioner's burden of proof to show the District failed to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer v. West*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993).
2. The District denied Student FAPE during the relevant time period and failed to address Student's needs in light of Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017).
3. The District failed to adequately implement Student's IEP during the relevant time period, resulting in a denial of FAPE. *Spring Branch Independent School District v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020); *Houston Ind. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).
4. Respondent modified Student's IEP outside of the ARD Committee meeting process and without parental participation. 34 C.F.R. Section 300.324(a)(6).
5. Petitioner is entitled to relief for the denial of FAPE. *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 35, 374 (1996).

IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are GRANTED as follows;
2. IT IS ORDERED that Respondent provide Student with *** minutes of compensatory direct speech therapy.

3. IT IS ORDERED that Respondent reimburse Petitioner \$*** for tutoring services provided to Student.

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

SIGNED November 18, 2020.



Steve Elliot
Special Education Hearing Officer
For the State of Texas

IX. 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, Sec. 2001.144(a) (b).