

**SOAH DOCKET NO. 701-23-05448.IDEA
TEA DOCKET NO. 089-SE-1122**

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

v.

**CONROE INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

*** (Student), by next friend *** (Parent, and collectively, Petitioner), brings this action against the Conroe 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 issues in this case are whether the District failed to provide Student a free, appropriate public education (FAPE) and whether the District developed and implemented an appropriate individualized education program (IEP) for Student. The Hearing Officer concludes that the District denied Student a FAPE reasonably calculated to allow Student to make progress in light of Student’s unique circumstances within the relevant time period.

I. DUE PROCESS HEARING

The due process hearing was conducted on April 19-20, 2023 through the Zoom videoconferencing platform. Student was represented throughout this litigation by Student’s legal counsel, Mark Whitburn of Whitburn & Pevsner, PLLC. In addition, *** and ***, Student’s parents (Parents), attended the hearing. The District was represented throughout this litigation by its legal counsel, Amy Tucker of Rogers, Morris & Grover LLP. In addition, Dr. ***, the Director of Special Education for the District, attended the hearing as a party representative. Petitioner requested that the hearing be open to the public and observers were present.

The parties offered joint and separately disclosed exhibits. Petitioner offered testimony of five of Student's current and former teachers, Dr. *** (a private expert on clinical psychology), *** (a private tutor and expert on reading instruction), and Parent. Respondent offered testimony of Student's campus principal, a District licensed specialist in school psychology (LSSP), and the District's dyslexia program coordinator as an expert on dyslexia and reading. The hearing was recorded and transcribed by a certified court reporter. Both parties filed timely written closing briefs. The Decision in this case is due on June 2, 2023.

II. ISSUES

A. Petitioner's Issues

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

- Whether the District failed to provide Student a FAPE.
- Whether the District failed to develop and implement an appropriate IEP for Student.

B. Petitioner's Requested Relief

Petitioner requested the following items of relief:

- Order the District to reimburse Parent for past and future expenses on educational services, including tutoring and dyslexia and *** services.
- Order the District not to retain Student in *** grade.
- Any other relief the Hearing Officer deems appropriate.

C. Respondent's Legal Position

Respondent generally and specifically denied Petitioner's factual allegations and legal claims. Respondent also asserted the two-year statute of limitations as an affirmative defense.

III. FINDINGS OF FACT

Background

1. Student is *** years old and in the *** grade. Student lives with Student's parents, ***. Student has dyslexia and ***. Student is eligible for special education based on specific learning disability (SLD) in the areas of basic reading, reading fluency, reading comprehension, and written expression, and other health impairment (OHI) due to Attention Deficit Hyperactivity Disorder (ADHD).¹
2. Student has attended the District since *** and reading concerns emerged then. Parents obtained a private evaluation diagnosing Student with ADHD, dyslexia, and ***. In 2019, at the beginning of *** grade, Student was evaluated by the District for dyslexia. Student scored below average in all the primary and secondary characteristics of dyslexia and showed a deficit in orthographic processing. The evaluation concluded that Student met Texas Education Agency (TEA) criteria for dyslexia.²
3. At the same time, Student was also evaluated by the District for ***. That evaluation noted Student's weaknesses in spelling and orthographic processing, consistent with the dyslexia evaluation. However, the evaluation concluded overall that Student's writing was typical of a *** grader.³
4. Thereafter, Student began receiving dyslexia interventions through a general education *** class and accommodations pursuant to a Section 504 Plan.⁴

¹ Joint Exhibit (JE) 1 at 1; JE 14 at 14.

² JE 16; Due Process Hearing Transcript (Tr.) 315-16.

³ JE 15.

⁴ JE 14 at 16; Tr. 103.

5. Later in *** grade, Student was referred for a full and individual evaluation (FIE) by Student's Section 504 Committee due to behavioral and academic concerns. At that time, Student had been diagnosed with ADHD by a pediatrician and was taking medication at home. The District received an OHI eligibility form completed by Dr. ***regarding Student's ADHD.⁵

6. A January ***, 2020 FIE report found Student met eligibility criteria for OHI based on Student's ADHD. On cognitive testing, Student exhibited weaknesses in comprehension, long-term retrieval, auditory processing, fluid reasoning, and short-term memory. In academic performance, Student had normative deficits in basic reading, reading comprehension, and written expression. At the time of the evaluation, Student was reading approximately *** below grade level. The evaluation applied a dual discrepancy/consistency definition of SLD and determined that Student did not meet eligibility for SLD because, although Student's basic reading skills were low, Student had a corresponding general cognitive weakness. The evaluation recommended that Student continue to receive the dyslexia interventions currently provided under Student's Section 504 Plan.⁶

7. An initial admission review and dismissal (ARD) committee meeting was held on February ***, 2020. The ARD Committee accepted the FIE recommendations and determined Student to be eligible for special education based on OHI of ADHD. The ARD Committee agreed to one annual goal targeting phonetic knowledge and decoding and a set of accommodations. Student was placed in the general education setting with 150 minutes per week of in-class support in ***. The ARD paperwork included a dyslexia supplement indicating that Student would continue to receive dyslexia interventions for two hours per week.⁷

8. In March 2020, all schools closed to in-person instruction for the remainder of the semester due to the COVID-19 global pandemic. The District provided remote services to students. The remote format was challenging for Student and Student regressed.⁸

⁵ JE 14 at 1, 3, 20.

⁶ JE 14 at 8-14, 17-18; Respondent's Exhibit (RE) 11.

⁷ JE 10 at 5-6, 10, 12, 17.

⁸ Tr. 156-58.

***** Grade - 2020-2021 School Year**

9. When Student returned to school in person in the fall 2020 semester, the general education *** class teacher did a mastery check, which showed that Student had regressed on some skills in the dyslexia curriculum when compared to a January 2020 mastery check.⁹
10. A revision ARD Committee meeting was held on September ***, 2020. Based on current data, the ARD Committee agreed that Student needed modified curriculum in **. The ARD Committee agreed to modify Student's schedule of services to add pull- out services in the ** classroom (60 minutes per day for ** and 75 minutes per day for **), in addition to the ** in-class support already provided. The deliberations note that "dyslexia services are recommended in the special education setting." The ARD Committee agreed to four new annual goals in **, **, **, and **. ¹⁰
11. Prior to the September 2020 ARD Committee meeting, Student had been receiving dyslexia interventions in the general education *** class. Student had not made much progress in the *** class that semester since the beginning of the school year. After the September 2020 ARD Committee meeting, Student no longer received the general education dyslexia intervention class.¹¹
12. During Student's *** ** time in *** grade, a special education teacher worked with Student using the Level of Literacy Intervention (LLI) curriculum and on Student's IEP goals. LLI is not designed to be a comprehensive dyslexia program. Student's IEP goals addressed skills that were related to dyslexia.¹²
13. By December ***, 2020, Student had mastered three of the four annual goals adopted at the September 2020 ARD Committee meeting and was making progress on the fourth— Student's *** goal.¹³

⁹ Petitioner's Exhibit (PE) 5 at 30-31; Tr. 111.

¹⁰ JE 9.

¹¹ Tr. 52-53, 107-08.

¹² Tr. 227, 230-31, 249-50, 395-96, 425-26.

¹³ JE 24.

14. Student's annual ARD Committee meeting for *** grade was held on January ***, 2021. At that time, Student was still reading at a *** level. Student was also performing below grade level in ***. The ARD Committee discussed Parents' concerns about Student being behind and wanting to get Student caught up and off modified curriculum. The ARD Committee agreed to a schedule of services: 300 minutes per week in *** for ***, 375 minutes per week in *** for ***, and 150 minutes per week of in-class support for *** (the same total amounts as in the prior IEP). The IEP also included the dyslexia supplement indicating that Student would continue to receive dyslexia interventions, now noted at 2.5 hours per week. The ARD Committee also agreed to four new annual goals for Student in ***, and ***.¹⁴
15. Over the course of *** grade, Student improved two reading levels, from a late *** level to an early *** grade level. In that school year, Student had *** absences and *** tardies. Student's final grades in the core subject areas ranged from ***.¹⁵
16. Student's performance on norm-referenced standardized *** testing using grade-level texts reflect that Student made progress over the course of *** grade, but at a rate that led to Student falling further behind the grade level expectations.¹⁶
17. Student made steady progress on the goals from the January ***, 2021 IEP and mastered all four by November 2021.¹⁷

***** Grade - 2021-2022 School Year**

18. At the beginning of the 2021-22 school year, Parent exchanged emails with Student's new case manager regarding Student's services, including whether Student's *** time was one-on-one or small group. The case manager clarified that it was a small group, as it had been in *** grade. Parent expressed her belief that Student needed one-on-one support. In October 2021, Parent and the case manager exchanged emails again about Student's

¹⁴ JE 8 at 2-3, 6-7, 14, 16, 21; RE 11.

¹⁵ JE 20 at 3; RE 6; RE 11.

¹⁶ PE 10; Tr. 433-44.

¹⁷ JE 23.

positive progress in ***, and possibly moving Student back to the regular curriculum instead of a modified curriculum or reducing Student's *** time.¹⁸

19. During the fall 2021 semester, Student's *** *** time was spent working on Student's *** IEP goals and using LLI. Student struggled with *** when working in the LLI curriculum. Student had started the fall 2021 semester reading on an early *** grade level and grew one reading level to a mid-*** grade level by mid-year.¹⁹

20. Student's annual ARD Committee meeting for *** grade was held on November ***, 2021. At that time, Student was reading on a mid-*** grade level. The ARD Committee discussed Parents' concerns about Student's lack of reading progress, whether more aggressive interventions were available, and why Student hadn't been receiving the general education dyslexia intervention class. It became apparent that at least some school staff were unaware that Student had dyslexia, including Student's case manager, and no one could provide a clear explanation of the history of Student's participation in the general education *** class and/or other dyslexia interventions. The deliberations stated, "student has not been serviced through dyslexia since being placed in Special Education." The ARD Committee agreed to add the general education *** class, at 150 minutes per week, to Student's schedule of services. Dyslexia services also continued to be reflected at 2.5 hours per week in the dyslexia supplement. The rest of the schedule of services was modified to reflect 300 minutes per week in *** for ***, 150 minutes per week in *** for ***, 150 minutes per week of in-class support for ***, and 300 minutes per week of in-class support for ***. The ARD Committee agreed to a new accommodation (***) and three new annual goals (***)
***).²⁰

21. In early December 2021, Parent exchanged emails with Student's case manager about the confusion over Student's dyslexia services. The case manager apologized for not catching the issue sooner. Parents also spoke with the District's dyslexia coordinator and received dyslexia resources.²¹

¹⁸ PE 5 at 5-8, 11-12; RE 19-21.

¹⁹ PE 5 at 19; Tr. 41, 43-44, 46-47, 425-26.

²⁰ JE 7 at 2, 5-7, 13, 16, 21; Tr. 35, 49.

²¹ PE 5 at 23; RE 2 at 8.

22. A revision ARD Committee meeting was held on December ***, 2021 and continued on January ***, 2022 to discuss compensatory dyslexia services for Student. Compensatory services were initially offered to occur over the summer, but the ARD Committee ultimately agreed to provide services after school twice a week. The ARD Committee deliberations, and the document as a whole, do not reflect any specifics on why compensatory services are being offered or how much. The ARD Committee also discussed Student's progress in the general education *** class and concerns about Student's reading level continuing to fall further behind grade level.²²
23. At the beginning of the Spring 2022 semester, Student's case manager began providing Student Student's *** instruction, instead of a different special education teacher. The case manager was getting training on the *** curriculum, which is used in the general education *** class. *** is a comprehensive reading curriculum that has all the TEA-required elements of a dyslexia program.²³
24. A revision ARD Committee meeting was held on April ***, 2022. The ARD Committee discussed that Student's progress in the general education *** class and during the compensatory service sessions had been minimal and slow. The general education dyslexia teacher had been providing the compensatory sessions and used the time to work on extra activities with Student separate from the *** program used in class. Student's reading level was still at a *** grade level and had not grown during that semester. The ARD Committee agreed to move Student's dyslexia interventions to the *** setting instead of the general education setting. Student would continue to receive instruction in the *** program, but at a slower pace in the *** setting with a special education teacher. Parents declined to continue the after school compensatory services. The ARD Committee also conducted a review of existing evaluation data (REED) to prepare for a new FIE of Student. The REED recommended updated cognitive and achievement testing, and informal data collection in all other areas.²⁴
25. Between the April 2022 ARD Committee meeting and the end of the 2021-2022 school year, Student's reading level grew by two levels to a *** grade level. Overall, in

²² JE 6 at 1-2.

²³ PE 5 at 25-27; Tr. 67, 104-05, 399-400.

²⁴ JE 5 at 1-2, 8-11; RE 12; Tr. 74-76, 121-22.

the 2021-2022 school year, Student grew three reading levels, all within the ***-grade range.²⁵

26. Student's performance on norm-referenced standardized *** testing using grade-level texts reflect that Student made progress over the course of *** grade, but at a rate that led to Student falling further and further behind the grade level expectations.²⁶
27. During the 2021-2022 school year, Student had *** absences and *** tardies, the majority of which occurred in the fall semester. Student's family experienced many *** during the 2021-2022 school year, resulting in absences. Student's report card grades ranged from ***.²⁷
28. Parents obtained a private psychological evaluation in May 2022 that diagnosed Student with ADHD and SLD in reading, written expression, and ***. The evaluator noted that Student had a very unusual cognitive profile with sub-scores that ranged from ***.²⁸

***** Grade - 2022-2023 School Year**

29. A District evaluation report was completed, dated August ***, 2022, containing updated cognitive and achievement testing. Student's achievement scores in the reading, ***, and writing clusters all indicated normative deficits. Student exhibited cognitive deficits in fluid reasoning, retrieval fluency, and orthographic processing, and was within or above normal limits in all other areas. The evaluation recommended that Student also be found eligible for a specific learning disability in the area of basic reading based on a pattern of strengths and weaknesses model.²⁹

²⁵ JE 27 at 8; RE 6; RE 11; Tr. 76-77, 79-80.

²⁶ PE 10; Tr. 433-44.

²⁷ JE 20 at 2; Tr. 458.

²⁸ JE 19 at 11-12.

²⁹ JE 13 at 1-3, 6, 9.

30. Progress reports on Student's IEP goals reflect that Student made progress on all three goals from the November ***, 2021 IEP, however Student had not mastered any of them. It was recommended that new goals be developed based on the updated evaluation data.³⁰
31. The ARD Committee met on August ***, 2022, and continued on August ***, 2022, to review the District's new evaluation and hold an annual ARD Committee meeting for Student. The ARD Committee agreed to the additional eligibility area of SLD for basic reading, however Student's parents disagreed with the determination that Student was not also eligible based on SLD in written expression. An LSSP explained that eligibility criteria had changed over time for dyslexia and SLD. Parent also shared information about Student being recently diagnosed with *** that impact Student's reading. It was recommended that Student *** when reading. The ARD Committee agreed to add this as an accommodation. The ARD Committee discussed Parents' concerns about Student's slow reading progress, as well as the reading program being implemented with Student and the data collected on Student's progress. At the time, Student's reading level was a *** grade level, and had regressed one level from the end of the prior school year. The ARD Committee discussed and agreed to six new annual goals in decoding, reading comprehension, ***. The ARD Committee removed the accommodation of modified curriculum in *** but maintained modified curriculum for ***. Assistive technology (AT) of speech-to-text and text-to-speech software was added to the accommodations. A new schedule of services was discussed and agreed upon that provided 225 minutes per week of dyslexia intervention in the *** classroom, an additional 150 minutes per week of *** intervention in the *** room, and 150 minutes per week of math intervention in the *** room. The schedule of services also included in class support in general education: 225 minutes per week for *** and 300 minutes per week for math. The IEP contained the dyslexia supplement, although service minutes are no longer detailed there. The ARD Committee also discussed the compensatory dyslexia services that had previously been offered and provided. Student had attended nine hours of compensatory services during the spring 2022 semester before the after-school sessions were discontinued. The District proposed recommencing after-school compensatory dyslexia services. Parents did not agree to this offer and instead requested reimbursement for private tutoring.³¹

³⁰ JE 22.

³¹ JE 4 at 2, 7-10, 12, 18-19, 22-28, 42-43; JE 28 at 3-6; RE 11.

32. The ARD Committee meetings ultimately ended in disagreement. A reconvene meeting was held on August ***, 2022. Parents provided a letter with specific areas of concern in advance of the meeting, which were all discussed. The ARD Committee discussed AT needs and agreed to conduct an AT evaluation. The ARD Committee continued to discuss Student's reading level and the qualifications of the teacher who would provide dyslexia intervention. The ARD Committee also continued to discuss the compensatory dyslexia services offered. The District had completed a calculation, dated the same date as the reconvene meeting, determining that Student had missed approximately *** dyslexia sessions from August 2021 to November 2021 and had attended *** compensatory sessions in the spring 2022 semester. The District offered to do 30-minute after-school sessions twice a week until November ***, 2022 and additional services for six hours per day, four days per week, for the five weeks of ESY in June and July 2023. Parents declined these services and stated they would seek reimbursement for private services that Student was to begin attending during the school day. The reconvene meeting ultimately ended in disagreement. Prior written notice was issued, dated August ***, 2022. Parents submitted a letter, dated August ***, 2022, confirming areas of disagreement and stating that Student would be attending private reading intervention each weekday ***.³²
33. Student has attended private services at the *** since August 2022, primarily working with owner *** through videoconference. Ms. *** uses the Bergman method for one-on-one literacy intervention with struggling readers. The intervention is focused on decoding. Ms. ***'s initial assessment of Student was that Student was reading at below a *** level.³³
34. After the ARD Committee meeting, Parents exchanged emails with the campus principal about whether Student's daily absences to attend private reading services would be considered excused or unexcused absences. Parents were informed that absences for this reason were not excused for the purposes of state compulsory attendance laws and may impact Student's eligibility for promotion to the next grade. Student's attendance at the private services has been scheduled such that Student has missed all *** instruction at school.³⁴

³² JE 4 at 28-34, 40-42; JE 28 at 1-2; JE 29.

³³ Tr. 277-82, 284, 287-89, 310.

³⁴ JE 20 at 1; RE 1 at 11-13; RE 4; Tr. 179-83, 188, 194.

35. An AT evaluation was completed, report dated November ***, 2022. The evaluator collected information from Student's teachers and parents, conducted a classroom observation, administered several assessment tools, and trialed different AT options with Student. The evaluation recommended speech-to-text when writing and continued practice with additional AT tools.³⁵
36. An ARD Committee meeting was held to review the AT evaluation on December ***, 2022. The ARD Committee accepted the evaluation and updated Student's AT accommodations. Parents requested that discussion of Student's present levels and goals be postponed to a future ARD Committee meeting and the meeting ended in agreement.³⁶
37. An independent educational evaluation (IEE) was completed by Dr. ***, report dated December ***, 2022. The evaluation included cognitive and achievement testing, records review, an observation of Student at school, and information gathered from Parent and one of Student's teachers. On cognitive testing, Student exhibited a full-scale IQ in the borderline deficient range, although Dr. *** reported that Student's verbal IQ in the low average range was a more accurate assessment of Student's functioning. Student's academic assessment indicated very low performance in reading, low in writing, and low average in math. Dr. *** ruled out an intellectual disability and recommended that Student be found eligible based on SLD in basic reading, reading fluency, written expression, reading comprehension, and nonverbal learning. Dr. *** noted that Student was missing school to attend private tutoring and that this was causing Student emotional distress. The IEE recommended consideration of counseling services, as well as a functional behavior assessment (FBA) for inattention behaviors, and a variety of accommodations.³⁷
38. The ARD Committee met on January ***, 2023, to review Dr. ***'s evaluation. School staff held a prior meeting with Dr. *** to discuss the IEE, but Dr. *** was not present at the ARD Committee meeting. A District LSSP reviewed the IEE with the ARD Committee and discussed District staff concerns about the IEE. District concerns included a lack of established pattern of strengths and weaknesses for the SLD recommendations, separation of verbal and nonverbal IQ, lack of phonological and orthographic assessment, and lack of adaptive information collected from Student's teacher. The District did not

³⁵ JE 12 at 7-15.

³⁶ JE 3 at 5-6, 8-9.

³⁷ JE 17 at 1-4, 6-7, 9-10; Tr. 216-18.

accept the IEE or the additional eligibility areas recommended. Parents disagreed with this determination. The District recommended additional assessment to explore additional SLD areas, as well as an FBA and counseling assessment as recommended by Dr. ***. The ARD Committee discussed updates to Student's accommodations and new *** goals because Student had mastered Student's previous *** goals. Parent agreed with the updated goals.³⁸

39. Another District evaluation was completed, report dated February ***, 2023, that included an FBA, counseling assessment, and additional testing in orthographic processing. The FBA investigated Parent concerns about Student experiencing frustration and low self-esteem from difficult academic activities. The evaluator observed Student and collected teacher information, ultimately concluding that Student was not demonstrating behavior concerns, had effective problem-solving strategies, and did not need a behavior intervention plan. The evaluation further concluded that counseling as a related service was not needed for Student due to Student's effective problem-solving skills. Additional orthographic processing assessment showed normative weakness, and the evaluation determined that Student met TEA criteria for ***.³⁹
40. The ARD Committee met on March ***, 2023 to review the February 2023 evaluation. Dr. *** attended and the ARD Committee continued to discuss the IEE as well. In the interim, Dr. *** had conducted an additional academic achievement assessment of Student, with results consistent with Student's previous testing. The ARD Committee agreed to add eligibility for SLD in reading fluency, reading comprehension, and written expression. Parents expressed frustration that it had taken so long to recognize Student's ***. The ARD Committee discussed and agreed to new goals in *** to address Student's newly identified needs. The ARD Committee also agreed to add in-class support in ***.⁴⁰
41. In the current 2022-23 school year, Student has accrued nearly daily unexcused absences for arriving to school late after attending private reading services on weekday ***. Student also had absences in November and December 2022 due to the ***

³⁸ JE 2 at 5-8.

³⁹ JE 11 at 2, 9, 11, 13-15.

⁴⁰ JE 1 at 1, 4, 6-7; PE 4; RE 11; Tr. 210.

***. During the fall 2022 semester, Student missed *** hours of instruction. Student has received grades of incomplete for *** in the current school year.⁴¹

42. Ms. *** testified that Student has made great progress in the Bergman method program mastery checks and is a more confident and fluent reader in their sessions. Parent also testified that Student has become more confident and interested in reading at home.⁴²
43. Although Student has been absent during *** instruction in the general education and special education settings since August 2022, District staff have done some progress monitoring on Student's reading level. At the time of the due process hearing, Student's reading level remained at a *** grade level. Student has not made consistent progress on Student's reading and writing IEP goals in the current school year, particularly since Student's reading level has not increased and the goals assume reading level growth over time.⁴³

IV. DISCUSSION

Petitioner alleges that the District denied Student a FAPE and failed to devise and implement appropriate IEPs for Student. The timeframe for Petitioner's claims begins on November 15, 2020.⁴⁴ Petitioner seeks an order that the District reimburse Parent for current and future expenses for privately obtained services and not retain Student in *** grade.

⁴¹ JE 20 at 1; JE 21; RE 3; Tr. 457.

⁴² JE 30 at 36-37; Tr. 293, 300-01, 320-24, 458-63.

⁴³ RE 6; RE 11; Tr. 253-54, 411-15.

⁴⁴ Petitioner's Complaint was filed on November 14, 2022. Respondent asserted the two-year statute of limitations. Petitioner did not plead any exceptions to the two-year statute of limitations. Therefore, Petitioner was required to bring claims within two years of when Petitioner knew or should have known (KOSHK) about the actions that form the basis of the complaint. Petitioner has not argued, and the evidence has not established, that the KOSHK accrual date is any later than two years backward from the date of filing. Therefore, the timeframe for the claims at issue here begins on November 15, 2020. *See, e.g., Hooker v. Dallas Indep. Sch. Dist.*, 2010 WL 4025776, *10-*11 (N.D. Tex. 2010).

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the IEP and/or placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show that 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. *Tatro v. State of Tex.*, 703 F.2d 823, 830 (5th Cir. 1983), *aff'd in part, rev'd in part sub nom. Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984), and *vacated in part*, 741 F.2d 82 (5th Cir. 1984).

B. FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). A school district has a duty to provide a 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. The District is responsible for providing Student with specially-designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982).

The basic inquiry is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The Fifth Circuit

has articulated a four-factor test to determine whether a Texas school district's program is reasonably calculated to enable the child to receive educational benefit. 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
- Whether positive academic and non-academic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F., 118 F. 3d 245, 253 (5th Cir. 1997). 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. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018) (citing *Endrew F.*, 137 S. Ct. at 1000-01).

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. *Michael Z.*, 580 F. 3d at 294.

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, a school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, 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, 300.320, 300.323(a).

The District's obligation when developing Student's IEP is to consider Student's strengths, Student's parents' concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1)(i). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

Petitioner argues that Student's IEPs were not appropriately individualized on the basis of assessment and performance with regard to Student's dyslexia and ***. Petitioner argues, in part, that Student's IEPs were inappropriate because they did not always include all the elements of a dyslexia program required by the TEA Dyslexia Handbook, incorporated at 19 Tex. Admin. Code § 74.28. Noncompliance with the TEA Dyslexia Handbook is not a *per se* FAPE violation, just as compliance with the Handbook does not necessarily indicate a provision of FAPE. *R.J. v. Keller Indep. Sch. Dist.*, 2011 W.L. 13233497, *6-*7 (N.D. Tex. 2011). The Hearing Officer analyzes Student's IEPs herein using the *Michael F.* factors to determine whether Student's IEPs were appropriate rather than an analysis of strict compliance or non-compliance with the TEA Dyslexia Handbook. Student had multiple IEPs over the course of the relevant time frame from November 15, 2020 to November 14, 2022, that included part of *** grade, all of *** grade, and part of *** grade, which are all analyzed below.

i. Dyslexia

At the beginning of the relevant time period, in *** grade, Student's IEP provided 60 minutes per day of *** time for ***, as well as approximately 30 minutes per day of in-class support for ***. Student also had an IEP goal that targeted dyslexia-related decoding skills. Student was no longer attending the general education *** class, which was not clearly reflected in Student's previous IEP in any event. Student had experienced regression during the virtual instruction provided due to COVID-19 and the September 2020 ARD Committee meeting increased the intensity of Student's services in numerous ways, including moving Student's services to *** and putting Student on a modified curriculum. The preponderance of the evidence supports that Student's removal from the general education *** class was an intentional decision by the September 2020 ARD Committee, not an oversight or mistake, and that this IEP reflected data-based decisions considering Student's needs at the time.

After this decision, Student received the same *** supports and services for the rest of *** grade, through the January 2021 *** grade annual IEP, and until the November 2021 ARD Committee meeting in *** grade. In between the September 2020 and January 2021 ARD Committee meetings, Student's reading level made very little progress. The ARD Committee agreed to new annual goals but did not alter Student's services and supports in light of this lack of progress. The January 2021 ARD Committee did not adequately consider Student's assessment needs and performance with regard to dyslexia and reading.

Student's reading level also barely moved between the January 2021 and November 2021 ARD Committee meetings. At that time, the ARD Committee agreed to return Student to the daily general education *** class, in addition to Student's existing services and a new decoding goal. This decision appears to have been based on the ARD Committee's confusion over Student's dyslexia services rather than a data-driven decision to address Student's lack of reading level progress. The record reflects that the general education *** class had not been successful for Student when Student attended in *** and early *** grade.

The general education *** class again proved to be an ineffective intervention for Student. Student's reading level did not improve at all and Student was not making appropriate progress in the class. The April 2022 ARD Committee agreed to move Student's dyslexia services to the *** setting. The amount of time that passed between the November 2021 and April 2022 ARD Committee meetings with Student showing no or minimal progress is concerning.

The decision to move Student's dyslexia services to the *** setting, and then in *** grade to increase that *** time, reflects a careful consideration of Student's assessment data and performance. The *** grade IEPs have also incorporated assessment information from Dr. *** and updated medical information about Student's *** issues. The April 2022 IEP and the *** grade IEPs reflect appropriate individualization on the basis of Student's assessment and performance.

Overall, the evidence shows that Student's IEPs have sometimes, but not always, been appropriately individualized on the basis of Student's assessment and performance with regards to Student's reading level and dyslexia.

ii. ***

The evidence showed that Student's IEPs at issue were individualized on the basis of assessment data and Student's performance as to Student's *** needs. Student received a private diagnosis of *** by *** grade, but the District did not identify Student with TEA-eligible *** and an SLD in written expression until March 2023, in *** grade. However, even before Student was found eligible with *** and an SLD in written expression, Student's IEPs considered Student's assessment data and present levels in writing and provided services and accommodations to address Student's deficits. The evidence reflects that over the relevant time period,

Student's writing skills have made progress, but at a rate that has caused them to diverge further and further from grade level expectations. The evidence supports that this rate of writing progress is appropriate for Student. The record also reflects that Student has received *** interventions in both reading and writing to support Student's writing needs. The appropriateness of an IEP is not driven by the particular disability labels. *Lauren C., by and through Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 376-77 (5th Cir. 2018). Student's IEPs have appropriately addressed Student's writing and *** needs based on Student's assessment and performance.

2. Least Restrictive Environment (LRE)

The IDEA requires that a student with a disability shall be educated with peers without disabilities 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).

To determine whether a school district is educating a student with a disability in the LRE, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Educ., 874 F. 2d 1036, 1048 (5th Cir. 1989).

Petitioner's Complaint did not challenge the restrictiveness of Student's educational placement, which includes a mix of services in general education with and without inclusion support, as well as time in a special education setting. The evidence supports that Student's partial removal from the general education setting is appropriate based on Student's particular needs and has been adjusted over time based on Student's performance. Overall, Student's IEPs have been administered in the LRE and Student has been included to the maximum extent appropriate.

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

The IDEA contemplates a collaborative process between school districts and 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 reflects several lapses in coordination and collaboration by key stakeholders in Student's educational services. Beginning before the relevant time period for the claims in this case, there have been confusing elements of Student's IEPs. When Student initially became eligible for special education and related services in *** grade, there was agreement that Student would continue to receive the general education *** class Student had been attending pursuant to a Section 504 Plan; however, that agreement is only reflected in the initial IEP to the extent that a dyslexia supplement lists interventions at 2 hours per week, with no further specificity. The

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evidence does not reflect that the District also maintained a separate Section 504 Plan for Student detailing these services.

At the September 2020 ARD Committee meeting in *** grade, there was some agreement to change Student's program so Student would begin receiving reading intervention in the *** classroom, but there was no accompanying updated dyslexia supplement and the documentation left unclear whether Student was intended to continue in the general education *** class or not. The Hearing Officer ultimately concludes that the decision to remove the general education *** class was intentional, but the paperwork remained confusing. The annual ARD Committee meeting in January 2021 adopted a new IEP that included a new dyslexia supplement, which now reflected 2.5 hours per week of dyslexia services with no further clarification of when the services would be provided or what those services were.

In *** grade, at the November 2021 annual ARD Committee meeting, the Committee agreed to add the daily general education *** class to the schedule of services. However, a new dyslexia supplement still provided services at 2.5 hours per week, begging the question of what those 2.5 hours per week were under the prior IEP without 2.5 hours per week of general education *** class in the schedule of services. By the *** grade annual ARD Committee meeting, the dyslexia supplement no longer reflects any service times at all. The IDEA and its implementing regulations do not require any specific formality to how school districts document services within an IEP. The Hearing Officer does not fault the District for any specific failure to clearly document services in the schedule or services, the dyslexia supplement, the deliberations, or any other specific point in the IEPs. However, the way that Student's services have been reflected over the course of the IEPs at issue in this case has been confusing and internally contradictory, evidencing coordination deficits.

These paperwork deficits seemingly begat the greatest coordination failure that has occurred here: the revelation in the *** grade annual ARD Committee meeting that staff working with Student did not know that Student had dyslexia. At that time, Student's IDEA eligibility was only OHI for ADHD, but Student also had documented dyslexia. The ARD Committee deliberations confusingly stated that "student has not been serviced through dyslexia since being placed in Special Education." The record does not reflect explanation to Parents of this statement or how Student's dyslexia needs were targeted through Student's special education services. Again, there are no specific requirements on how and where relevant documentation belongs in an IEP. But here, where Student's case manager reviewed only parts of the IEP, none of which documented Student's dyslexia, a coordination issue occurred.

The communication between school staff and Parents about this confusion only bred further confusion. The evidence does not support that anyone ever explained to Parents what had occurred at the September 2020 ARD Committee meeting that resulted in Student's removal from the general education *** class in *** grade, how Student's dyslexia-related needs were serviced through special education after that, and whether it was advisable to return Student to the general education *** class in *** grade. The documentation of the December 2021 ARD Committee meeting to discuss compensatory dyslexia services is vague about what was being discussed and why. When this was discussed again at the beginning of *** grade, the District now relied upon a compensatory calculation admitting that Student had not received dyslexia services from August 2021 to November 2021. However, Student hadn't attended the general education *** class from September 2020 to November 2021, almost an entire school year more than what was reflected in the District's calculations. This sows even greater confusion on whether Student was supposed to have been attending the general education *** class that entire time or not, and if not, why compensatory services were offered.

The evidence also shows some effective collaboration among the key stakeholders, including through Parents' participation in all of the ARD Committee meetings. The effort to offer compensatory services was collaborative, although the communication about it was confusing. School staff demonstrated openness to Parents' input and that of Dr. ***, the IEE provider, while not always agreeing. A failure to agree with Parents does not, in and of itself, show a failure to collaborate with Parents. Overall, the evidence does not reflect that the District refused to listen to Parents or excluded them in bad faith.

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, 813-14 (5th Cir. 2012).

Here, it is undisputed that Student's reading progress has been slow. The District argues that Student's progress has been appropriate in light of Student's complex disabilities, cognitive deficits, and frequent absences. Student has ADHD, a unique cognitive profile, dyslexia, ***, specific learning disabilities, and *** conditions that were not diagnosed or addressed until *** grade. Student missed a lot of school in *** grade and is currently missing an enormous amount of school in *** grade. All of these factors impact Student's expected rate of progress in reading, and all other areas, during the relevant time period.

It is noteworthy that Student was able to grow two reading levels, nearly a half year of growth, in only one month following the April ***, 2022 ARD Committee meeting that moved Student's dyslexia services back to the *** setting, working in the *** curriculum at a

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slower pace with a special education teacher.⁴⁵ Student had many absences during the 2021-2022 school year, but the evidence does not reflect whether or not there were any absences during that last month of school. This month of progress, assuming good attendance, reflects a capacity benchmark with which to judge Student's progress at other times within the relevant time period.

The relevant time period begins in November of Student's *** grade year. Student grew only two reading levels over the course of the entire *** grade year, in which Student had excellent attendance all year. During *** grade, Student made little progress on Student's reading level the entire year, until the April 2022 ARD Committee meeting, after which Student grew two reading levels in a month. Student had *** absences in *** grade; however, the evidence does not support that these absences combined with Student's particular disabilities explain the limited progress made on Student's reading level in *** grade up to the April 2022 ARD Committee meeting.

In *** grade, Student's reading level has not grown at all, based on District assessments, however Student has not attended any *** instruction at school during the current school year. The *** grade IEPs have been designed to provide Student with even more of the focused dyslexia instruction in the *** setting as the effective IEP implemented at the end of *** grade. While the *** grade IEPs have not been fully implemented due to Student's non-attendance during all *** instruction, they are appropriately designed to result in academic progress.

Reading level is not the only metric of academic progress. Student mastered Student's IEP goals

⁴⁵ School districts have discretion over curriculum and methodology decisions. The Hearing Officer does not hold that the *** curriculum is the only appropriate dyslexia intervention for Student. Likewise, the LLI curriculum or any eclectic approach are not *per se* inappropriate to address dyslexia. However, it is noteworthy here that Student's *** instruction with the *** curriculum was markedly more effective than Student's *** instruction with prior approaches.

from the *** grade annual IEP and made steady progress on Student's IEP goals from the *** grade annual IEP. However, "progress toward IEP goals is not dispositive." *H.W. by & through Jennie W v. Comal Indep. Sch. Dist.*, 32 F.4th 454, 469 (5th Cir. 2022). Student maintained high grades in all subject areas in *** and *** grades, with the support of a modified curriculum in *** and ***. Student has consistently shown growth on standardized testing, although at a rate that has caused Student to fall further and further behind Student's peers.

In sum, Student has experienced sufficient academic benefit from some of the IEPs at issue, but less than sufficient academic benefit from others. The record also reflects that Student experienced non-academic benefit from the IEPs at issue. Notably, Student is experiencing social distress from being absent so much in the current school year, and therefore missing so much of the IEP on offer.

5. FAPE Conclusion

When looking at the totality of the *Michael F.* factors as applied to the IEPs at issue here, the evidence showed that the District denied Student a FAPE from January ***, 2021 to April ***, 2022.

The September 2020 IEP in effect at the beginning of the relevant time period reflected an attempt to increase the intensity of Student's services gradually. This was data-based, provided in Student's LRE, and with the agreement of Parents. Although it did not result in much reading level progress, the IEP overall offered Student a FAPE.

However, by the time of the January ***, 2021 ARD Committee meeting, Student's lack of reading level progress should have driven consideration of whether Student's program needed modifications. Instead, the ARD Committee kept Student's services the same. When considering

the *Michael F.* factors in total, this IEP failed to offer Student a FAPE.

Likewise, the November 2021 IEP returned Student to the general education *** class seemingly without any data-based discussions on what was appropriate for Student at the time. This again resulted in minimal to no progress on Student's reading level. When considering the *Michael F.* factors in total, this IEP failed to offer Student a FAPE.

The April ***, 2022 ARD Committee meeting resulted in Student being returned to the *** setting for dyslexia services at Student's pace with a special education teacher. This IEP resulted in Student's most accelerated reading level growth in the record. This was a data-based decision that reflected Student's LRE, and the IEP as a whole offered Student a FAPE. The *** grade IEPs have continued to reflect services that are based on Student's assessment and performance and tailored to result in appropriate progress for Student. As such, the *** grade IEPs also offer Student a FAPE.

Based on the four factors of *Michael F.*, the evidence establishes that the District provided Student a FAPE during the relevant time period until January ***, 2021, and again after April ***, 2022. However, the District did not provide Student a FAPE between these dates.

C. IEP Implementation

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 Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d

781, 796 (5th Cir. 2020). To prevail on Student's claim under the IDEA, Petitioner must show more than a *de minimis* 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 Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

The primary allegation of failure to implement relates to Student's removal from the general education *** class in September 2020, that continued through November ***, 2021. As discussed above, the Hearing Officer concludes this was an intentional decision. The general education *** class was not clearly reflected in Student's IEP at any point before the November ***, 2021 ARD Committee meeting. There can be no failure to implement something that is not in the IEP in the first place.

To the extent that Petitioner argues that Student's IEP was not implemented in that Student did not receive any dyslexia services at all, the Hearing Officer finds that Student was receiving dyslexia services in the *** setting throughout the relevant time period. The appropriateness of Student's IEP and whether Student's dyslexia needs were adequately addressed have been analyzed above, and ultimately found lacking. However, this was not due to a failure to implement any of Student's IEPs. Petitioner therefore did not meet Petitioner's burden on this claim.

D. Remedy

The District denied Student a FAPE from January ***, 2021 to April ***, 2022 by failing to have appropriate IEPs in place. As such, the District must compensate Student for this failure. 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. *See Meiner v. Missouri*, 800 F.2d 749, 753 (8th Cir. 1986); *D.A. v. Houston Indep. Sch. Dist.*, 716 F.Supp.2d 603, 612 (S.D. Tex. 2009), *aff'd*, 629 F. 3d 450 (5th Cir. 2010) (upholding decision that student failed to prove amount of compensatory reimbursement for school district's failure to timely evaluate).

Compensatory education may be awarded by a hearing officer after finding a violation of the IDEA. It constitutes an award of services to be provided prospectively in order to compensate the student for a deficient educational program provided in the past. *G. ex. rel. RG v. Fort Bragg Dependent Schs.*, 343 F. 3d 295 (4th Cir. 2003). 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.D.C. 1992). A qualitative, rather than quantitative, standard is appropriate in fashioning compensatory and equitable relief. *O.W.*, 961 F.3d at 800; *Reid ex rel. Reid v. Dist. of Columbia*, 401 F. 3d 516, 523-24 (D.C. Cir. 2005) (rejecting hour-for-hour compensatory calculation in favor of flexible assessment of compensatory relief to address student's needs).

Petitioner has primarily requested reimbursement for past and future privately provided services. As an initial matter, Petitioner offered no invoices or other competent evidence to establish any expenses on private services. Parent and Ms. *** both testified to their recollections of how much the family has spent on Ms. ***'s services to date. However, these verbal non-specific recollections do not constitute competent evidence upon which to base a reimbursement order. The only private services in evidence are the private reading services from Ms. ***. The evidence does not support that the private services from Ms. *** are an appropriate prospective remedy either. While the Hearing Officer does not discredit the evidence that Student is making progress in the Bergman method program and become a more enthusiastic and confident reader at home, this has not translated to progress on the full spectrum of ***

instruction provided at school.⁴⁶ The Hearing Officer also does not endorse a sole focus on decoding to the exclusion of all other elements of reading and writing instruction. Student is entitled to compensatory services that address Student's dyslexia and reading needs holistically.

Petitioner has also requested an order that the District not retain Student in *** grade. Assuming without deciding that the Hearing Officer has jurisdiction over the District's promotion and retention decisions, Petitioner has not shown that requiring promotion to *** grade is an appropriate remedy for the FAPE violation found here.

Petitioner brought forward no expert testimony or evidence explaining the nature and scope of the compensatory services Student requires to remedy the denial of FAPE in this case. A relevant consideration is the success of the services provided by the April 2022 IEP through the end of that school year. One-on-one services from a special education teacher have shown to be effective for Student. The Hearing Officer is mindful that one-on-one after school sessions proved to be ineffective for Student when they were offered and tried during the Spring 2022 semester. However, it is relevant that those unsuccessful sessions were provided by a general education teacher and were not integrated with other effective dyslexia services for Student.

In consideration of the success of the *** setting dyslexia interventions in May 2022, the pace of progress made then, and the amount of progress Student could have been expected to make during the violation period in light of Student's unique disabilities and needs, the Hearing Officer grants compensatory dyslexia services in a total amount of 1,800 minutes (30 hours). Services shall

⁴⁶ Petitioner's Closing Brief touts the comparative scores on the Woodcock-Johnson IV (WJ-IV) subtests administered as part of the May 2022 private psychological evaluation and the December 2022 IEE, showing that Student's sub-score in *** increased by *** points as evidence of the effectiveness of Ms. ***'s services. However, it is equally noteworthy that Student's sub-scores in *** remain virtually the same in both administrations of the WJ-IV. See JE 17 at 4; JE 19 at 7.

be provided one-on-one by a special education teacher during the summer of 2023 and/or the 2023-2024 school year, to be allocated at the discretion of the District, in addition to the services already included in Student's IEP.

The Hearing Officer acknowledges the District's previous efforts to offer compensatory services, which Parents have rejected. *See P.P. v. Nw. Indep. Sch. Dist.*, 839 F. App'x 848, 857 (5th Cir. 2020) (Petitioner failed to meet burden of entitlement to compensatory services where Petitioner failed to accept remedial services already offered by Respondent). The record does not indicate the provider qualifications or staff-to-student ratio for the compensatory services previously offered. However, the compensatory services ordered here must be provided one-on-one by a certified special education teacher.

V. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer*, 546 U.S. at 62.
2. Petitioner met Petitioner's burden of proving that Respondent denied Student a FAPE for the period of January ***, 2021 to April ***, 2022. *Rowley*, 458 U.S. 176; *Andrew F.*, 137 S. Ct. 988.
3. Petitioner did not meet Petitioner's burden of proving that Respondent denied Student a FAPE during all other relevant times. *Rowley*, 458 U.S. 176; *Andrew F.*, 137 S. Ct. 988.
4. Petitioner did not meet Petitioner's burden of proving that the District failed to implement Student's IEP. *Schaffer*, 546 U.S. at 62; *Bobby R.*, 200 F.3d at 349.

VI. ORDERS

Given the broad discretion of the Hearing Officer in fashioning relief, the Hearing Officer makes the following orders:

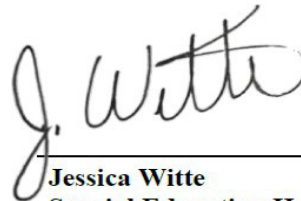
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1. Subject to the requirements described in Section IV.D above, the District shall offer Student 1800 minutes of one-on-one dyslexia instruction from a special education teacher, in addition to any similar services that are provided through an IEP adopted by Student's ARD Committee.

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

SIGNED May 31, 2023.



Jessica Witte
Special Education Hearing Officer
For the State of Texas

VII. 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. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516(a); 19 Tex. Admin. Code § 89.1185(n).