

**DOCKET NO. 033-SE-1020**

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

v.

**KILLEEN INDEPENDENT SCHOOL  
DISTRICT,  
Respondent**

§  
§  
§  
§  
§  
§  
§  
§  
§

**BEFORE A SPECIAL EDUCATION**

**HEARING OFFICER FOR**

**THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

**I. STATEMENT OF THE CASE**

Student, \*\*\*, by next friends Parent and Parent (Student or, collectively, Petitioner) brings this action against the Killeen Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. The main issue in this case is whether the District denied Student a Free Appropriate Public Education (FAPE). The Hearing Officer concludes the District provided Student a FAPE at all relevant times.

**II. PROCEDURAL HISTORY**

**A. Legal Representation**

Student was represented throughout this litigation by Student’s legal counsel, Sonja Kerr of Connell Michael Kerr, LLP. The School District was represented throughout this litigation by its legal counsel, Geneva Jones with Geneva Jones & Associates, PLLC.

### III. DUE PROCESS HEARING

The due process hearing was conducted virtually via the Zoom videoconferencing platform on February 9-10, 2021. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel, Sonja Kerr. Ms. Kerr was assisted by her co-counsel, Dorene Philpot. In addition, \*\*\*, Student's mother, attended the due process hearing.

Respondent continued to be represented by its legal counsel, Geneva Jones. In addition, Dr. \*\*\*, the Executive Director of Special Education for the School District, attended the hearing as the party representative. Both parties filed written closing briefs in a timely manner. The Decision in this case is due on April 19, 2021.

### IV. ISSUES

#### A. Petitioner's Issues

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

1. Whether the District denied Student a Free Appropriate Public Education (FAPE), specifically:
  - a. Whether the District used the Individualized Education Plan (IEP) Present Levels of Academic Achievement and Functional Performance (PLAAFPs) to inform the IEP goals.
  - b. Whether the IEP goals are sufficiently well-designed and challenging to result in meaningful progress.
  - c. Whether the District has provided sufficient Dyslexia services and academic/emotional assistance from an aide and other District staff members for Student to receive a FAPE.
  - d. Whether the District has fully implemented the IEP, particularly in regards to Dyslexia services.

- e. Whether the District provided sufficient transition PLAAFPs, goals, and services for Student.
- f. Whether the District has continued to provide Student a FAPE during disruptions caused by COVID-19.
- g. Whether the District has provided Student appropriate assistive technology.
- h. Whether the District carefully and correctly discussed compensatory education.
- i. Whether the District has allowed Student's parent to participate in planning Student's educational program.

**B. Respondent's Legal Position and Additional Issues**

Respondent took the following legal positions:

- 1. The District generally and specifically denies Petitioner's claims and denies responsibility for providing any of Petitioner's requested relief.
- 2. The District affirmatively pleads the one-year statute of limitations to bar claims arising more than one year prior to the date of filing. In Order No. 6, the Hearing Officer determined the one-year statute of limitations would bar any issues which arose prior to October 21, 2019.
- 3. The District pleads the affirmative defense of impossibility.
- 4. The District offers a plea to the jurisdiction over any issues and requests for relief arising under statutes other than the IDEA. That plea to the jurisdiction was granted in Order No. 4 in this case.

**V. REQUESTED RELIEF**

**A. Petitioner's Requested Relief**

Petitioner requested the following items of relief:

- 1. Order the District to provide Student compensatory education.

2. Order the District to reimburse Student's parents for costs, including tuition and transportation costs, associated with moving Student to a different school district.
3. Order the District to provide any other relief the Hearing Officer finds necessary and appropriate.

## VI. FINDINGS OF FACT

### Historical background of services

1. Student is \*\*\* years old. Student is \*\*\* and attended \*\*\* in the District at the start of the 2020-21 school year. Prior to that, Student attended \*\*\* grades at \*\*\* in the District. Student qualifies for special education as a student with Emotional Disturbance and Other Health Impairment (OHI).<sup>1</sup> Student is personable and has many friends at school.<sup>2</sup>
2. Student's family \*\*\*. From the first time Student attended school, Student has attended public school in the District. On October \*\*\*, 2020, Student withdrew from the District. Since November \*\*\*, 2020, Student has attended public school in a different school district.<sup>3</sup> Student's parents are happy with the education Student is receiving in the new school district.<sup>4</sup>
3. Student began receiving Dyslexia services under a Section 504 plan in May of the 2016-17 school year. Prior to the 2016-17 school year, Student already had a Section 504 plan due to Attention Deficit Hyperactivity Disorder (ADHD). Student began receiving specific Dyslexia services in May 2017 in the form of one \*\*\* class to replace a traditional reading \*\*\*.<sup>5</sup> Student's parent did not find the Dyslexia class effective. She pulled Student out of the class with the agreement of Student's Section 504 Committee during the 2017-18 school year. The District continued to find Student eligible for Dyslexia services at that time and made certain accommodations in Student's Section 504 plan to accommodate Student's Dyslexia.<sup>6</sup>
4. The District conducted a Full Individual Evaluation (FIE) at Student's parent's request in March 2017. The District did not find that Student qualified for special education and related services.<sup>7</sup> In October 2017, the District referred Student for an Independent Education Evaluation (IEE) at Student's parent's request to an evaluator of her choice. The

---

<sup>1</sup> Joint Exhibit 9, page 1 (J\_, at \_).

<sup>2</sup> Transcript (Tr.) 484.

<sup>3</sup> Tr. 84; J52, at 1.

<sup>4</sup> Tr. 148-49.

<sup>5</sup> Tr. 88.

<sup>6</sup> J8, at 26.

<sup>7</sup> Respondent's Exhibit (R\_) 12.

IEE found Student did not have Dyslexia. The IEE also did not recommend Student be found eligible for special education and related services for an emotional disturbance. The IEE found Student had a full scale IQ of \*\*\*, no deficiencies in reading, and a “very good” prognosis for academic and social success. The IEE evaluator did make several recommendations to help with behavior management and organization, including chunking material into smaller units, helping Student with organization, and allowing Student access to frequent breaks.<sup>8</sup>

### **The 2018 FIE and Eligibility for Special Education and Related Services**

5. Student first qualified for special education and related services in January 2019. The District completed a Full Individual Evaluation (FIE) of Student in December 2018. The evaluation recommended Student be found eligible for special education and related services as a student with an emotional disturbance and OHI for ADHD. The FIE evaluators also found that Student continued to meet criteria to be served as a student with Dyslexia despite the findings of the 2017 IEE.<sup>9</sup>
6. The District held its initial ARD Committee meeting on January \*\*\*, 2019. The meeting ended that day at 5:20 p.m. and reconvened on January \*\*\*, 2019, so the meeting could be completed.<sup>10</sup> Student’s parent attended the meeting and was in agreement with the IEP developed at the meeting when the meeting concluded.<sup>11</sup>
7. The ARD committee adopted the FIE’s recommendation that Student be served as a Student with OHI and an emotional disturbance. The ARD Committee agreed Student should spend Student’s entire school day in the general education setting with appropriate supports, services, and accommodations.<sup>12</sup>
8. While Student performed grade-level work, the ARD Committee noted several concerns with Student based on the FIE and on reports from Student’s parent and Student’s teachers. Among the concerns, the IEP developed by the ARD Committee noted Student has difficulty controlling Student’s impulses, trouble taking notes and organizing, and Student can be defiant when given directives. The ARD Committee implemented a number of accommodations to address these issues. Among the accommodations, the IEP included allow for preferential seating, check for understanding, extra time on assignments, breaking up large assignments, note-taking assistance, and having Student paraphrase or repeat instructions that were given to ensure Student understands.<sup>13</sup>

---

<sup>8</sup> J3, at 13, 16-17.

<sup>9</sup> R13, at 2.

<sup>10</sup> J37, at 26.

<sup>11</sup> J37, at 27.

<sup>12</sup> J37, at 22.

<sup>13</sup> J37, at 5-6.

9. Additionally, the District conducted a Functional Behavioral Assessment (FBA) and used it to develop a Behavior Intervention Plan (BIP). The overarching behavior targeted by the BIP was “defiance.” The BIP listed a number of concrete examples of specific behaviors that constituted the targeted “defiance,” including refusal to follow directions, \*\*\*, and several others. The District listed the antecedents to the behavior and listed five prevention strategies, two teaching strategies, and five reinforcement strategies to address the behavior.<sup>14</sup>

### **The 2019-20 school year**

10. On August \*\*\*, 2019—the beginning of Student’s \*\*\* grade year—the ARD Committee convened for an annual ARD Committee meeting at Student’s parent’s request to discuss potential changes as Student transitioned from \*\*\* grade to \*\*\* grade at \*\*\*. The ARD Committee reconvened on September \*\*\*, 2019, to complete the ARD Committee meeting. Student’s parent participated in both meetings in-person and ended the second meeting in agreement with the IEP and with the issues she raised having been addressed.<sup>15</sup>
11. Student spent the entire 2019-20 school year in the general education setting. The District also kept the previously-developed BIP in place.<sup>16</sup> Student’s Present Levels of Academic Achievement and Functional Performance (PLAAFPs) were developed using the 2018 FIE and teacher reports. Student’s academic performance and functional development were all at grade-level and did not show any concerns. The PLAAFPs included several of the concerns mentioned at the initial ARD Committee meeting in January 2019. Additionally, it mentioned Student has some difficulty doing independent tasks and addressed Student’s difficulties with organization. The PLAAFPs mentioned Student would benefit from an organization goal and accommodations, including chunking Student’s notes—an accommodation first recommended by the 2017 IEE, to help with Student’s behavior and organization ability.<sup>17</sup> Student is able to perform work in accordance with the grade-level Texas Essential Knowledge and Skills (TEKS).<sup>18</sup>
12. The District developed annual goals for Student based on the PLAAFPs. Each goal addressed a specific area of concern as outlined in the PLAAFPs. Student was performing grade-level work in general education classes and did not require goals in subject matter areas, but the IEP did list three goals. Student’s first goal was a note taking goal to improve Student’s focus on content and overall organizational skills. The IEP stated a baseline score for Student on specific trials the District would use to measure Student’s progress. The IEP then listed specific trials and percentages to measure Student’s progress toward those goals.

---

<sup>14</sup> J37, at 12-13; Tr. 393.

<sup>15</sup> J6, at 28.

<sup>16</sup> J6, at 27; Tr. 372.

<sup>17</sup> J6, at 5.

<sup>18</sup> J7, at 22-23.

It then listed the specific District staff members who would be responsible for implementing the goal.<sup>19</sup>

13. Student's second goal was a behavioral goal concerning following directives and \*\*\*. The goal began with a baseline score from which to measure Student's progress. The goal then went into detail on precisely how progress would be measured using different tests and trials and who would measure it.<sup>20</sup> The final goal concerned behavior as well, specifically encouraging Student to have appropriate interactions with peers and adults. It also listed baseline scores from which progress could be measured. The goal then went into detail on precisely how progress would be measured using tests and trials and who would measure it.<sup>21</sup> Student does not require assistive technology to access the general education curriculum. Student has been thriving in general education classes without the use of assistive technology and no evaluations have recommended using assistive technology to improve Student's performance.<sup>22</sup>
14. Student's IEP also devoted a section to Student's transition. Student's \*\*\*.<sup>23</sup> Student does not require any related services and does not receive any.<sup>24</sup> The District conducted a Functional \*\*\* Evaluation ahead of the August 2019 ARD Committee meeting. At this time, Student is \*\*\*. Student is interested in \*\*\*. Student plans to \*\*\*. Student will not require long-term personal care services or other community resources.<sup>25</sup>
15. On January \*\*\*, 2020, the ARD Committee reconvened at Student's parent's request to discuss a recent medical recommendation with Student's ARD Committee. Student's parent attended the meeting in-person. Student's parent provided a letter to the ARD Committee from a doctor indicating that Student needed to \*\*\* during the day, because the doctor was concerned about Student's \*\*\*. The ARD Committee agreed to provide Student \*\*\* during the day and the meeting ended with all parties in agreement.<sup>26</sup>
16. On March \*\*\*, 2020, the ARD Committee met at Student's parent's request. Student's parent attended the meeting in-person. Student's parent had two concerns she wanted to discuss with the ARD Committee at that time.<sup>27</sup>
17. Student's parent's first concern was Student's Dyslexia services, because she felt aspects of Student's reading were not strong. During the 2017-18 school year, Student's parent had

---

<sup>19</sup> J6, at 8.

<sup>20</sup> J6, at 8-9.

<sup>21</sup> J6, at 8.

<sup>22</sup> Tr. 439-42, 461.

<sup>23</sup> J6, at 10-14.

<sup>24</sup> J7, at 19.

<sup>25</sup> J6, at 10-14.

<sup>26</sup> J7, at 27-28; Tr. 107.

<sup>27</sup> J8, at 26-27.

pulled Student from Student's Dyslexia class. During the 2018-19 and 2019-20 school years, the District provided Student after-school tutoring services in a one-on-one setting once per week. The tutoring focused on listening comprehension and vocabulary. While it contained elements of a Dyslexia program called the Wilson Program, it was not specifically tutoring aimed at Student's Dyslexia. The ARD Committee proposed placing Student into a specific Dyslexia classroom-based program \*\*\* per day, \*\*\* per week. District staff members of the ARD Committee stated that consistency was important to address Student's Dyslexia. Student's parent stated she did not want Student in the classroom-based Dyslexia program. The ARD Committee agreed to conduct a Wilson Assessment of Decoding and Encoding (WADE) test and then look at the issue again. The ARD Committee did not place Student in the Dyslexia program it had recommended in deference to the wishes of Student's parent.<sup>28</sup>

18. Student's parent's second concern was that Student was \*\*\*. The District provided Student a "\*\*\*," which allowed Student to \*\*\*, after the January 2020 ARD Committee meeting. Student had not been \*\*\* despite having access to them. Student attended the ARD Committee meeting briefly to inform the ARD Committee that Student did not want to \*\*\* and was unsure Student wanted access to the nurse's office to \*\*\* either. Student's parent was concerned Student \*\*\* and was not getting \*\*\* Student required. There was a disagreement during the meeting as to whether \*\*\* like the ones to which Student had enjoyed access since January 2020. While the ARD Committee had made the suggestion during the meeting that \*\*\* be healthy, the ARD Committee did not force Student's parent to provide only \*\*\*. Instead, the ARD Committee agreed to table any further discussion about potentially making changes to \*\*\* routine until Student's annual ARD Committee meeting. The meeting ended with Student's parent in agreement with the IEP.<sup>29</sup>
19. During the 2019-20 school year at \*\*\*, Student's year-end grades ranged from a \*\*\*. Student had an \*\*\*.<sup>30</sup> Student was on the A/B Honor Roll during each of Student's \*\*\* years at \*\*\*. In Student's most recent year-end STAAR testing, Student achieved the "mastery" level in each area tested, including \*\*\*. That means Student not only "met" grade-level expectations, Student "mastered" the grade-level material.<sup>31</sup> Student also \*\*\*.<sup>32</sup> During the 2019-20 school year, Student made measurable progress on each of Student's three IEP goals related to behavior and organization.<sup>33</sup>
20. In March 2020, the District closed completely for two weeks and then switched to a virtual model due to the impact of COVID-19. Student accessed Student's education virtually. This put stress on Student's family, because they had issues with technology at home and

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*; Tr. 127, 303-04.

<sup>30</sup> R16.

<sup>31</sup> R18; Tr. 293-95.

<sup>32</sup> J6, at 11.

<sup>33</sup> J10, at 3; Tr. 493.



keeping Student focused.<sup>34</sup> At the same time, Student was able to continue making progress in the virtual environment. Student attended each of the classes in Student's IEP schedule of services in the virtual environment and continued to receive As and Bs in all of Student's classes.<sup>35</sup> Student continued to get help with staying organized as required under Student's IEP.<sup>36</sup> There has not been any issue with Student's \*\*\* since Student has been in virtual school. Student's parent is able to give Student \*\*\* during the day when Student needs them.<sup>37</sup>

### **The 2020-21 school year**

21. On May \*\*\*, 2020, the ARD Committee convened virtually due to the ongoing COVID-19 pandemic. Student's parent participated in the ARD Committee meeting. The District reviewed the results of the WADE test. Student obtained a total reading score of \*\*\*% and a total spelling score of \*\*\*%. Consequently, the ARD Committee agreed that Student would not take a separate Dyslexia class \*\*\* days per week. The District did discuss continuing certain accommodations specific to ongoing online instruction, including read-aloud support, video captions and transcripts for the virtual screen, lesson support and eNotes to help Student organize the material, and other accommodations to help Student stay organized and on-task. Student's parent disagreed so that she could have more time to review the IEP and reconvene at a later date.<sup>38</sup>
22. On June \*\*\*, 2020, after she had reviewed the proposed IEP, Student's parent sent an email to several District staff members outlining her reasons for disagreeing with the May \*\*\*, 2020 ARD Committee meeting. Because the ARD Committee was still in disagreement, the ARD Committee reconvened on August \*\*\*, 2020, prior to the 2020-21 school year. Student's parent attended the meeting and reviewed the points of disagreement from the June \*\*\*, 2020 email she had sent.<sup>39</sup>
23. Student's parent felt Student had deficits in the areas of reading comprehension, memory, and language processing. The testing the District had conducted in 2017 and 2018, the WADE conducted in 2020, and the testing from the 2017 IEE provider all indicated Student's scores in those areas to be at least in the average range. Student's grades and classroom performance also did not indicate any deficits in those areas, but Student's parent disagreed with the data from the evaluations and teachers. The District offered to reevaluate Student at that point, but Student's parent refused the offer.<sup>40</sup>

---

<sup>34</sup> Tr. 119.

<sup>35</sup> R18; Tr. 466-67.

<sup>36</sup> Tr. 473-74.

<sup>37</sup> Tr. 173.

<sup>38</sup> J9, at 29-31.

<sup>39</sup> J10, at 34.

<sup>40</sup> J10, at 32-33.

24. The ARD Committee also discussed compensatory education due to the District's use of virtual education beginning in March 2020. The District stated it required additional time in the fall to evaluate Student's performance before making a determination of how much compensatory education was due and in what areas Student would benefit from compensatory education. The meeting ended in disagreement.<sup>41</sup>
25. In the fall of 2020, Student continued to attend school virtually. Most students in the District attended school in-person at that time. Student attended all of Student's classes and received all services listed in Student's IEP. The one in-person activity in which Student participated was \*\*\*, which Student attended \*\*\* per week in-person.<sup>42</sup> The District met all of Student's educational needs in the virtual environment.<sup>43</sup> Student withdrew from the District on October \*\*\*, 2020. Student began attending school in a different school district on November \*\*\*, 2020, several weeks after filing the present Complaint.<sup>44</sup>
26. On January \*\*\*, 2021, a private licensed Dyslexia therapist conducted a Woodcock Reading Mastery Test (WRMT-III) evaluation of Student. She found that Student tested in the above-average range in listening comprehension and basic reading skills, in the average range in reading comprehension, and the low-average range in reading fluency. Student scored in the \*\*\* percentile in word identification and the \*\*\* percentile in word attack. However, based on Student's intelligence, Student should be able to score better in reading comprehension and has the ability to improve Student's reading comprehension skills. The Dyslexia therapist concluded Student could benefit from direct Dyslexia instruction.<sup>45</sup>

## VII. DISCUSSION

### A. Duty to Provide a 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)(1)(A). The District has a duty to provide FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

---

<sup>41</sup> *Id.*

<sup>42</sup> Tr. 147

<sup>43</sup> Tr. 468.

<sup>44</sup> Tr. 143-44.

<sup>45</sup> P9; Tr. 179-93.

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 District's duty to provide FAPE to students with disabilities continues during the COVID-19 global pandemic. Neither state nor 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](https://tea.texas.gov/sites/default/files/covid19_special-education_qa_updated_March_20.pdf). 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>.

A school district must provide a student an educational program reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017). The student's progress must be something more than mere *de minimis* progress. *Id.*, at 1000. Every child should have the opportunity to meet appropriately challenging objectives. *Id.*, at 992.

## **B. Burden of Proof**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.<sup>46</sup> *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 a FAPE and offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*

## C. FAPE

### The Four-Factor 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
- Whether positive academic and non-academic benefits are demonstrated.

*Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997). Even after the Supreme Court's 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

These four factors need not be accorded any particular weight, nor applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). When weighing the four factors in this case, the evidence shows that the District provided Student a FAPE.

---

<sup>46</sup> 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).

## 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, 300.323(a).

While the IEP need not be the best possible one, nor must it be designed to maximize a student's potential, the school district must nevertheless provide a student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district “was reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.* 137 S. Ct. at 999.

The District’s obligation when developing Student’s IEP is to consider Student’s strengths, Student’s parent’s 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. 300.320(a)(1)(i). The District considered all of those elements in forming an educational plan for Student. The District first conducted an FIE in 2017. The District then funded an IEE that year. In 2018, the District conducted another FIE and found Student eligible for special education and related services. The FIE made a number of recommendations for Student’s IEP. The District implemented the recommendations from the FIE, particularly the behavior management and organization recommendations. It used those recommendations to develop Student’s PLAAFPs, which noted Student’s areas of concern in organization and oppositional behavior.

The District also interviewed its teachers in order to learn more about Student’s strengths and weaknesses. Student performed grade-level work and was consistently on the A/B Honor Roll,

but Student continued to struggle with organizational skills and certain behaviors. The District then developed three individualized, measurable goals based on Student's PLAAFPs.

Petitioner obtained a Dyslexia expert who, in January 2021, recommended Student would benefit from a specific Dyslexia program. The District offered a daily Dyslexia program in March 2020 for consistency, but Student's parent declined this program for Student. Student was served in a Dyslexia program previously under a Section 504 plan, but Student's parent requested Student be pulled out of the program during the 2017-18 school year.

The District then conducted a WADE and determined Student did not require a specific Dyslexia program. Student was obtaining As and Bs and accessing the grade-level curriculum without issue. The District offered to do further testing on Student's reading issues, but Student's parent declined the further testing offered. Student then left the District in October 2020 and no longer resides in the District. While Petitioner's expert could be correct, the District based the program it provided Student on the assessments and teacher feedback to which it had access. Additionally, it is not the District's responsibility to maximize Student's potential. *Juan P.*, 582 F.3d at 583. Student accessed the general education curriculum and thrived in it without additional Dyslexia services. Petitioner did not demonstrate that the District failed to meet Student's needs or failed to individualize Student's education on the basis of assessment and performance.

## **2. Least Restrictive Environment**

The IDEA requires that a student with a disability must 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 least restrictive environment, 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. El Paso Indep. Sch. Dist.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

In this case, Student was educated at all relevant times in the general education setting. The ARD Committee recommended in March 2020 that Student receive instruction in a classroom for students with Dyslexia one period each day, but Student's parent did not agree with that. By the end of the 2019-20 school year, the ARD Committee no longer recommended that class. Student has done grade-level work and remained on the A/B Honor Roll in general education classes. Those classes constitute Student's least restrictive environment.

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

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

In this case, the District worked closely with Student's parent. Student's parent had consistent communication with Student's teacher and participated in all of Student's ARD Committee meetings. The District was responsive to concerns she raised. During the 2019-20 school year, the District held two ARD meetings in August and September 2019 as Student was

preparing for the \*\*\* grade. They then held additional ARD Committee meetings at Student's parent's request in January 2020, March 2020, and May 2020.

In January 2020, when Student's parent presented a letter indicating Student required \*\*\*, the District agreed to provide \*\*\*. The District then gave Student a \*\*\* indicating Student could \*\*\*. In March 2020, when Student indicated Student did not want to \*\*\*, the District offered alternatives like allowing Student to \*\*\*. Petitioner did not present evidence that \*\*\* were necessary for Student to receive a FAPE, but the District was responsive to Student's parent's concerns regardless of whether \*\*\* were required for Student to make progress.

At that same meeting, when Student's parent indicated she had concerns with Student's reading, the District offered to move Student from the weekly one-on-one tutoring it had provided since the 2017-18 school year to a daily class focused on Dyslexia remediation. Student's parent declined the offer. In May 2020, the District offered to conduct additional testing of Student in response to Student's parent's concern about Student's reading. Student's parent declined the testing. While Student's parent was not satisfied with the District's efforts, she was an important part of all decisions made by Respondent.

#### **4. Academic and Non-Academic Benefit**

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 812-13 (5th Cir. 2012). In this case, Student received both academic and non-academic benefit. Student made progress on each of Student's three IEP goals during the 2019-20 school year. Student passed the most recent administration of the STAAR exams with the "mastery" distinction. Student performed grade-level work in general education classes during Student's years in the District.

In terms of non-academic benefit, Student made friends with other students and participated in classes and activities with general education students. *See Marc V. v. North East Indep. Sch. Dist.*, 455 F.Supp.2d 577, 596 (W.D. Tex. 2006) (noting making friends is a key non-



academic benefit). Student participated in \*\*\*. Student derived both academic and non-academic benefit from Student's educational program.

## **5. Conclusion**

The evidence showed the District based the services it provided Student on performance and assessment. It then provided those services in Student's least restrictive environment. The District made its educational decisions in a coordinated and collaborative manner with key stakeholders, particularly Student's parent. Student also received both academic and non-academic benefits from Student's IEP. Petitioner did not show Student needed assistive technology or related services in order to access a FAPE. Therefore, the District provided Student a FAPE.

## **D. Transition Services and Plan**

### **1. Transition Services Rules Under the IDEA**

The IDEA requires a set of transition services be included in the first IEP in effect when a student turns age 16 (or younger by decision of the ARD Committee), unless state law provides otherwise. In Texas, the age is 14. The IEP must include appropriate measureable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. The IEP must also include the transition services, including courses of study, the student needs to reach those goals. 34 C.F.R. § 300.320; Tex. Educ. Code §§ 29.011; 29.0111; 19 Tex. Admin. Code § 89.1055(h). The IDEA defines transition services as a coordinated set of activities for the student that is designed to be within a results-oriented process and focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities. 34 C.F.R. § 300.43 (a)(1).

Transition services must be based on the individual student's needs, taking into account the student's strengths, preferences, and interests. Transition services may include instruction, related services, community experiences, the development of employment and other post-school

adult living objectives, and (if appropriate) the acquisition of daily living skills and provision of a functional vocational evaluation. 34 C.F.R. § 300.43(a)(1)(2)(i)-(v). Transition services may be special education if provided as specially designed instruction or a related service if required to assist the student to benefit from special education. 34 C.F.R. § 300.43(b).

## **2. State Law**

Under state law, the ARD must consider, and where appropriate, address the following in the student's IEP:

- appropriate student involvement in the student's transition to life outside the public school system;
- if the student is younger than 18, appropriate parental involvement in the student's transition;
- if the student is at least 18, appropriate parental involvement in the student's transition if the parent is invited to participate by either the student or the school district;
- any post-secondary education options;
- a functional vocational evaluation;
- if the student is at least 18, the availability of age-appropriate instructional environments;
- independent living goals and objectives; and
- appropriate circumstances for referring a student or the student's parents to a governmental agency for services. Tex. Educ. Code §§ 29.011; 29.0111; 19 Tex. Admin. Code § 89.1055(h)(1)-(9)(i).

## **3. Preferences and Interests for \*\*\* Planning**

Student \*\*\* in August 2020. \*\*\*. Student does not require special instruction in daily living skills or other areas some students who receive special education and related services may require. Petitioner did not present evidence that Student's transition plan is insufficient.

It is reasonable to expect Student may continue to develop or change interest or preferences during Student's \*\*\*. Student's \*\*\* and/or other activities Student decides to become involved in later may all have an impact on Student's interests and preference. This evolution of ideas, preferences, and interests must be reviewed annually – and the evidence showed the District did just that – even if the review results in no change to the \*\*\* goals and transition services. *See, Letter to Anonymous*, 69 IDELR 223 (OSEP 2017). However, at this point, Student is receiving support in Student's transition goals from the District.

### **E. Compensatory Education**

Petitioner raised the District's refusal to consider offering compensatory education for services not received after the District switched to a virtual model as an issue in the case. 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 (8<sup>th</sup> 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 (5<sup>th</sup> Cir. 2010).

The Department of Education has made it clear that school districts still owe students a FAPE even while schools may be virtual. ARD Committees are required to consider offering students compensatory services for any portion of the IEP the District did not provide on an individual basis. *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>.

Petitioner stated the District did not consider offering Student compensatory education for services Student may have missed during virtual school after March 2020. Student continued to receive all of Student's educational services. Student does not require related services or assistive technology. The District provided all of Student's classes listed in Student's schedule of services in Student's IEP in the virtual environment.

It is possible the District still owed Student compensatory services. The District stated at the August 2020 ARD Committee meeting that it needed additional time to observe Student before determining whether compensatory services were owed, how much was owed, and in what areas services might be owed. Student withdrew from the District before the District convened an additional ARD Committee meeting. Petitioner did not demonstrate that the District failed to follow Student's IEP or implement Student's services after Student began receiving virtual school in March 2020. Petitioner also did not demonstrate that the District's request for additional time to evaluate the compensatory services it might offer amounted to a refusal to consider compensatory services.

### VIII. CONCLUSIONS OF LAW

1. The District provided Student a FAPE during the relevant time period and Student's IEP—which contained appropriate PLAAFPs, goals, and services—was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. 176; *Endrew F.*, 137 S. Ct. 988.
2. The District provided Student with appropriate transition services. 34 C.F.R. § 300.320; Tex. Educ. Code §§ 29.011; 29.0111; 19 Tex. Admin. Code § 89.1055(h).
3. The District did not fail to consider providing Student compensatory education. *Meiner v. Missouri*, 800 F. 2d 749, 753 (8<sup>th</sup> 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 (5<sup>th</sup> Cir. 2010); *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>.

### IX. ORDERS

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

**SIGNED April 19, 2021.**



---

**Ian Spechler**  
**Special Education Hearing Officer**  
**For the State of Texas**

## **X. NOTICE TO THE PARTIES**

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code § 2001.144(a)(b).