

TEA Docket No. 019-SE-0918

STUDENT,	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT & PARENT	§	
	§	HEARING OFFICER
V.	§	
	§	FOR
COPPERAS COVE	§	
INDEPENDENT SCHOOL DISTRICT	§	THE STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner Student, b/n/f Parents (Student) filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA") 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations. The complaint was received by the Texas Education Agency on September 20, 2018.

Respondent, Copperas Cove Independent School District, (District) made a general appearance and disputes the facts upon which Student’s allegations are based. In addition, the School District requested the dismissal of 1) claims arising outside the one-year statute of limitations rule as applied in Texas; and 2) dismissal of all claims arising under laws other than the IDEA.

LEGAL REPRESENTATIVES

Student was represented by Elizabeth Angelone and Meera Krishnan of the Cuddy Law Firm. School District was represented by Kelly Janes and Jamie Turner of Walsh Gallegos Treviño Russo & Kyle, P.C.

CASE SUMMARY

The main issue in this case is whether the school district fails to provide Student with a Free Appropriate Public Education (FAPE). Specifically, whether the school district fails to provide and implement an appropriate Individual Education Plan (IEP) in the least restrictive environment (LRE).

The hearing officer concludes the school district provided Student with FAPE and implemented an appropriate IEP during the 2017-2018 and 2018-2019 school years. The hearing officer also concludes that School District's proposed placement for 2018-2019 is appropriate and in the least restrictive environment. Each IEP was approved or recommended by the Admission, Review, and Dismissal (ARD) Committee during meetings attended by Parent.

The hearing officer finds that the school district's evaluations are appropriate, and therefore, Petitioner is not entitled to the cost of an Individual Educational Evaluation (IEE) at school district expense.

The hearing officer orders additional evaluations for consideration by the ARD Committee and the revision of the IEP as may be determined appropriate in accordance with the evaluations.

PRELIMINARY MOTIONS

SUFFICIENCY OF COMPLAINT

The Complaint asserts claims arising under the IDEA and its implementing federal and state regulations. There being no objection, Petitioner's complaint was found sufficient to meet the requirements of the IDEA.

CONTINUANCES AND EXTENSIONS OF DECISION DUE DATE

Both parties waived their right under 19 TA.C. §89.1185(1), to obtain a final decision within 45 days after the date Petitioner's Request for a Due Process Hearing was originally filed. Several motions for continuance and extension of deadlines were filed. After consideration of the factors specified in Texas Administrative Code §89.1186, each motion was granted for good cause.

PRELIMINARY ORDERS

The first scheduling order was issued on September 21, 2018. The second scheduling order was issued on November 5, 2018. A Third Scheduling Order was issued on January 25 , 2019.

JURISDICTION

Petitioner alleges violations of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1400 *et seq.*), the Texas Commissioner's and State Board of Education Rules, and the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §701 *et seq.* Petitioner also alleges a failure to provide comparable services pursuant to the Interstate Compact on Educational Opportunity for Military Children. See the Tex. Educ. Code Chapter 162.

The jurisdiction of a special education hearing officer in Texas is strictly limited to claims arising under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* Specifically, a hearing officer has the authority to determine claims related to the identification, evaluation, or educational placement of a student with a disability or the provision of a FAPE to the student. 34 C.F.R. §§ 300.507; 300.511; 19 Tex. Admin. Code §§ 89.1151 (a), 89.1170.

The hearing officer has no jurisdiction to resolve claims or make an award under any law other than the IDEA. To the extent either party seeks affirmative relief arising under any law other than the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1400 *et seq.* (2004), such claims are beyond the scope of jurisdiction for these proceedings, and they are **DISMISSED** for want of jurisdiction.

Requests for an award of attorneys' fees and litigation costs, including expert witness costs, are outside the jurisdiction of a special education hearing officer in Texas. 34 C.F.R. §§ 300.516, 300.517; 19 Tex. Admin. Code § 89.1185 (n).

STATUTE OF LIMITATIONS

Under the IDEA, a parent or agency must request an impartial due process hearing within two years of the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 USC §1415(f); 34 CFR §§300.507(a)(2); 300.511(e). However, if the state has its own time limitation for filing a request for hearing, then the state rule applies. In Texas, the time limitation is one year. 19 Tex. Admin. Code §89.1151(c). Petitioner filed this action on September ***, 2018. Under Texas law, the statute of limitations would bar any claims arising prior to September ***, 2017 to be heard by this hearing officer.

DUE PROCESS HEARING

The matter came on for Due Process Hearing in the offices of the School District on December 12, 2018 through December 14, 2018. A record was duly made by Michael Naegele, TX CSR CSR 1210, a Texas certified court reporter. A copy of the transcript was delivered to the parties and this hearing officer. Both parties submitted briefs in a timely manner, and this Decision is timely issued by the ordered deadline of February 5, 2019.

ISSUES FOR DECISION

PETITIONER'S REQUESTED FINDINGS

1. A finding that CCISD procedurally and substantively violated the IDEA and denied Student a free appropriate public education during the relevant time period.
2. A finding that CCISD procedurally and substantively violated the IDEA by failing to evaluate Student in all areas of suspected disability and need, including a failure to evaluate Student for a Specific Learning Disability (SLD) and an auditory processing disorder under the IDEA
3. A finding that CCISD procedurally violated the IDEA by failing to grant Parent's request for an Independent Educational Evaluation (IEE) of Student in all areas of suspected disability and need.
4. A finding that Student is eligible for special education and related services as a Student with a Specific Learning Disability in Basic Reading, Reading Fluency, Reading Comprehension, and Written Expression.
5. A finding that CCISD procedurally and substantively violated the IDEA by failing to provide Student with comparable services in speech therapy and phonics/reading comprehension intervention between September ***, 2017 and October ***, 2017.

PETITIONER'S REQUESTED RELIEF

1. Order CCISD to fund independent Occupational Therapy, Assistive Technology, and Speech Evaluations of Student by an evaluator of the Parent's choosing so as to obtain recommendations relating to Student's programming and services to address Student's *** deficiencies.
2. Order CCISD to fund an independent evaluation of Student for an Auditory Processing Disorder by an evaluator of the Parent's choosing so as to obtain recommendations relating to Student's programming and services, as recommended by Mr. ***, the IEE provider.
3. Order that upon receipt of the above evaluations, CCISD will convene an ARD meeting and develop a new IEP for Student which:
 - a. Incorporates and explicitly lists any compensatory services awarded by the Hearing Officer in this proceeding;
 - b. Accurately reflects the Student's present levels of academic achievement and functional performance;
 - c. Includes appropriate goals and short-term objectives that address the Student's academic and behavior needs;
 - d. Includes appropriate related services as recommended by the evaluators referenced above, including:
 - i. At least one hour per week of speech therapy;
 - ii. One hour per day of academic language therapy, provided by a certified academic language therapist, licensed dyslexia therapist, or licensed dyslexia practitioner, licensed under Chapter 403 of the Texas Occupations Code; and

- iii. Direct occupational therapy to address Student's *** deficiencies;
 - e. Identifies appropriate teaching methodologies that will be employed to address the Student's academic needs;
 - f. Identifies appropriate behavior methodologies and includes a plan to implement the behavior methodologies;
 - g. Includes parent training so that the Parents have the skills to support the implementation of the IEP; and
 - h. Provides services in Student's appropriate least restrictive environment.
- 4. Order CCISD to provide compensatory educational services to Student including but not limited to:
 - a. 13 hours of compensatory speech services by a qualified provider of the parent's choosing;
 - b. 520 hours of compensatory academic language therapy services by a Certified Academic Language Therapist, licensed dyslexia therapist, or licensed dyslexia practitioner, licensed under Chapter 403 of the Texas Occupations Code of the parent's choosing, provided over two (2) years, as recommended by Dr. ***;
 - c. *** support in the form of occupational therapy and assistive technology by a qualified provider of the parent's choosing, in an amount recommended by the independent evaluator; and
 - d. Transportation or reimbursement of transportation expenses to/from the compensatory services provider, if the services are not provided on campus.

5. Order CCISD to reimburse Parents in the amount of *** academic tutoring services provided by ***, and *** for the transportation of Student to and from *** during Summer 2018 (***), calculated at the Texas Comptroller rate of \$.535/mile.
6. Order CCISD to ensure staff members who work or interact with Student are trained on FIE policies and practices to ensure each child referred to the ARD Committee is comprehensively evaluated in all areas of suspected disability by a date certain determined by the Hearing Officer.
7. Order CCISD to ensure staff members who work or interact with Student receive training relating to the determination and provision of comparable services under the IDEA and the Military Interstate Children's Compact by a date certain determined by the Hearing Officer.
8. Order CCISD to ensure staff members who work or interact with Student receive training relating to the interaction between dyslexia and the Specific Learning Disability eligibility category in the IDEA, the importance of using research-based interventions for students with a specific learning disability, and the provision of dyslexia interventions to students also receiving special education services by a date certain determined by the Hearing Officer.
9. Any other relief the Hearing Officer determines is appropriate in the interest of justice or fairness.

BURDEN OF PROOF

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

TESTIMONY AND EXHIBITS

The Hearing Officer makes the following findings:

1. Student began receiving special education services through an *** when Student was ***. T. 563.
2. Student was diagnosed with autism at the age of ***. T. 562. At the time of Student's diagnosis, Student was *** and had frequent tantrums and behavioral issues. T. 562; 1048.
3. Following Student's Autism diagnosis, Parent enrolled Student in 40 hours per week of private Applied Behavior Analysis (ABA) Therapy. T. 562. Parent reported that following Student's enrollment in ABA Therapy, it took the therapists "about six months to get [Student] to start talking." T. 1058.
4. At the beginning of the 2015-2016 school year, Student transferred to the *** (***) in *** and began ***. J.Ex. 3 at 1
5. Student's IEP provided services to Student under the eligibility categories of *** and Speech-Language Disorder. J.Ex. 3 at 1.
6. Student continued to receive private ABA therapy while enrolled in ***. Student received between 10 to 12 hours per week of therapy while school was in session, and 40 hours per week when school was on break. T. 562.
7. During the second semester of ***, Student began receiving 1:1 tutoring with Student's classroom teacher twice a week before school to address Student's literacy skills. J.Ex. 3 at 2.

8. Student was able to meet ***' "end of year *** ***" benchmark. J.Ex. 3 at 2.

*** GRADE (***)

9. At the beginning of *** grade, in September 2016, Parent expressed concern about Student's lack of progress during Student's annual IEP team meeting. Student's IEP Team requested additional assessments to determine Student's need for specially designed instruction. J.Ex. 3 at 1.

10. In October 2016 *** created an intervention plan to address weakness in reading comprehension. Student received 15 minutes per week of small group instruction in reading comprehension skills and small-group reading intervention with a reading specialist three times per week. J.Ex. 3 at 2.

11. Student's writing was inconsistently legible, and Student struggled to ***. J.Ex. 3 at 5.

12. *** staff also noted Student had difficulty with ***. J.Ex. 3 at 5.

13. In-class assessment data showed Student struggled with decoding. Student ***. Staff concluded Student required specially designed instruction to address Student's decoding deficits. J.Ex. 12 at 5

14. Parent expressed concern about Student's reading abilities and the IEP Team noted Student was making slow progress and was not "closing the gap." J.Ex. 12 at 12.

15. *** also conducted the Behavior Assessment System for Children, Third Edition (BASC-3), a standardized behavioral checklist to measure Student's problem behaviors and positive adaptive behaviors. J.Ex. 3 at 6-8.

16. Student's November 2016 BASC-3 overall behavior assessment scores fell in the clinically significant range, meaning Student has a tendency to become irritable quickly, has poor

social skills and difficulty communicating, and has trouble concentrating and following directions. Student had trouble concentrating and following directions and difficulty maintaining necessary levels of attention at school. J.Ex. 3 at 7.

17. These assessments indicated a disability was adversely affecting Student's educational performance and suggested Student may benefit from specialized instruction. The evaluator recommended Student's IEP Team consider providing Student with special education services under the eligibility category of Other Health Impairment (OHI). J.Ex. 3 at 9.

18. Based on observation and teacher reports, it was noted that Student was not making progress in the areas of reading and writing, partly because "[Student] *** and this impedes [Student's] ability to express ***self through writing. At times, [Student] ***." J.Ex. 3 at 3.

19. At the end of *** grade, *** determined Student required Tier II interventions to address Student's lack of progress in *** and reading comprehension. P.Ex. 5 at 1-2.

20. To address Student's lack of progress in ***, *** began providing Student with 30 minutes per week of interventions on ***. P.Ex. 5 at 1.

21. To address Student's lack of progress in reading comprehension, *** provided Student with 40 minutes per week of intervention in a small group ***. P.Ex. 5 at 2.

*** GRADE (***)

22. On July ***, 2017, at the beginning of *** grade, the IEP Team at *** changed Student's primary eligibility category to Other Health Impairment based on [Student's] diagnosis of ADHD as Student "has continued to struggle with reading and has made slow progress." The IEP included the secondary eligibility category of Speech Impairment. J.Ex. 12 at 12.

23. Student's July ***, 2017 IEP provided the following accommodations:
- a. Math: Preferential seating, all items read aloud;
 - b. Reading: Preferential seating, modified assignments, spelling tests split into two parts;
 - c. Social Studies, Writing, Science: Preferential Seating. J.Ex. 12 at 6.
24. Student's July ***, 2017 IEP also provided Student with the following related services:
- a. Resource Reading: 5 sessions/week, 15 minutes per session because Student needed support with decoding;
 - b. Resource Writing: 5 sessions/week, 30 minutes per session because Student needed to continue working on ***;
 - c. Speech Therapy: 12 sessions/grading period, 30 minutes per session. J.Ex. 12 at 6.

ENROLLMENT IN COPPERAS COVE ISD (***) GRADE)

25. On September ***, 2017, Student began attending *** grade in Copperas Cove ISD, after Student's family moved to Texas ***.
26. On September ***, 2017, Student's special education case manager, provided Student's teachers with the July ***, 2017 IEP from ***. All teachers signed that they received the IEP on either September ***, 2017 or October ***, 2017. J.Ex. 31.
27. Student's *** teacher "sat down" with Student's case manager to discuss Student's accommodations and "where [Student] was at." She "took the accommodations and things that were already in place from that and continued on with those." Student was given additional accommodations at first, though she did not specify which. T. 472.
28. Student's special education case manager did not meet with Student's teachers to review the IEP because the teachers could read the IEP and understand the IEP in the same way that she could. T. 786.

29. CCISD provided comparable services to Student's *** IEP from the day after Student's transfer, and "we ended up providing [Student] with more accommodations than what [Student] came with, because [Student] didn't seem to be as far along as the IEP [from ***] made us believe." (Tr. 649:21-23).
30. These services included *** and *** instruction in the amounts specified in Student's *** IEP. (Tr. 650:16-18).
31. Student also received the same amount of speech services as in Student's *** IEP. The ARD on October ***, 2017, reduced Student's speech services slightly to allow Student's speech therapist to monitor Student's generalization of skills. (Tr. 875:2-10).
32. Petitioner believes that Student should have received Response to Intervention ("Rtl") services in addition to Student's special education services because Student received such services in *** . (Tr. 438; Tr. 441).
33. CCISD did not provide Student with Tier II interventions in *** and reading comprehension services described in the IEP from *** . T. 438; 487; 732-733; P.Ex. 5.
34. As Student's *** teacher stated about Rtl supports, "we are more intense in special education than they are in RTI and we're more individualized to [Student's] needs and goals and [Student's] weaknesses than they are in RTI. What [Student]'s receiving in special education is better than what [Student] would be receiving in Rtl." (Tr. 704:25 – Tr. 705: 1-4).
35. In addition to the services outlined in the IEP, Student received dyslexia services, a general education Tier 3 program, beginning in the 2017-2018 school year. (Tr. 46-47).
36. Student receives instruction in the *** to assist with *** . Student works on ***, participated in embedded reading, whole-group reading, and reading comprehension questions. (Tr. 462:9-21).

37. On October ***, 2017, Parent filled out a CCISD Parent Information Form. J.Ex. 30. Indicating Student's underperformance in English and reading was affecting Student's performance in all subjects. J.Ex. 30 at 7.
38. CCISD uses the Fountas & Pinnell Reading System to assess the progress of all students in reading. T. 420.
39. On October ***, 2017, Student's reading skills were assessed using the Fountas & Pinnell Reading System. J.Ex. 9 at 1, 10. Student scored on a Level ***, with *** percent accuracy, excellent comprehension, and a fluency level of ***. J.Ex. 9 at 1, 10. A Fountas and Pinnell Level *** is considered *** level. R.Ex. 6 at 1.
40. On October ***, 2017, Student's reading teacher assessed Student using the *** system. Student scored a *** overall, placing Student on the *** level in reading. J.Ex. 10 at 2.
41. Student's gradebook reflects, that if Student scored below a 65 on an assignment, a 65 would be entered in the gradebook while Student's actual grade on the assignment would be recorded as a comment in the Skyward grade book system. T. 433-434; see, e.g. J.Ex. 26 at 2, 5, 15, 17, 18.
42. "Case Manager Accountability Tracking" sheets were completed for Student for each six-week grading period. J.Ex. 37. The tracking sheets require a student's case manager to check the student's grades, whether accommodations were provided and tracked in the system, and "whether the student was being successful or not." The tracking sheets are not provided to the student's parents. T. 625.
43. When determining whether Student was passing Student's classes for the purposes of the tracking sheets, the recorded grade in the gradebook not Student's actual grades were used. T. 627-628.

44. Parents were expected to track Student's progress towards Student's IEP goals, using the combination of IEP grades and the assignments being sent home to "keep the parents informed." T. 746.

OCTOBER ***, 2017 REVIEW OF EXISTING EVALUATION DATA (REED)

45. A Review of Existing Evaluation Data (REED) meeting was held October ***, 2017. J.Ex. 13. The "Transfer REED Part 1" incorporated the assessment results from the *** Psychological Evaluation. It also incorporates the information from the Parent Information Form submitted by Parent on October ***, 2017, including Parent's comments regarding Student's underperformance in English and reading. J.Ex. 13 at 6.

46. As part of the October ***, 2017 REED, CCISD's speech-language pathologist completed a "Full and Individual Evaluation Disability Report" for the eligibility category of Speech Impairment. J.Ex. 13 at 8-9.

47. The FIE Disability Report indicates Student has a communication disorder in the areas of ***. The form indicates the evaluation information from *** was used in making her determination. J.Ex. 13 at 8-9.

48. CCISD did not conduct additional formal assessments of Student since Student had "just been tested two years prior, and so that evaluation was still current for another year." T. 873.

49. Student "did just meet the eligibility criteria for Texas," based on Student's scores from the *** evaluation. T. 873. Student is considered "borderline" because "half of [Student's] scores would meet the criteria for Texas eligibility, and the other half were above that cutoff criteria." T. 874.

OCTOBER ***, 2017 ARDC MEETING

50. At the October ***, 2017 REED, the only additional evaluation requested by the ARDC

was an updated Other Health Impairment form. J.Ex. 13 at 4.

51. CCISD also convened a “Transfer” ARDC meeting for Student on October ***, 2017. J.Ex.

14. CCISD’s Reading PLAAFP reported Student was ***, even with Student’s “ARDed accommodations.” J.Ex. 14 at 2.

52. The Reading PLAAFP included in the October ***, 2017, IEP states three general strengths and 3 general weaknesses but included no objective data regarding Student’s reading comprehension or decoding skills. The Reading PLAAFP does not incorporate any information from Student’s July ***, 2017 IEP from ***. J.Ex. 14 at 2.

53. The October ***, 2017 Reading PLAAFP states Student is “currently performing on *** level.” J.Ex. 14 at 2. The PLAAFP provides *** data for Student demonstrating Student was on a *** level in all assessed skills except for an informational test of comprehension. J.Ex. 14 at 3.

54. The October ***, 2017 IEP lists Student’s reading goal as: “In 36 instructional weeks, provided [Student’s] accommodations, Student will read grade level text with fluency and comprehension, ***, with 80% accuracy.” J.Ex. 14 at 8.

55. Student’s case manager who wrote the PLAAFPs and goals was unable to demonstrate where Student’s reading PLAAFP contained a baseline for the various components of Student’s reading goal such as where Student’s baseline for *** was located. T. 725-728.

56. The October ***, 2017 Written Expression PLAAFP states Student had a grade average of ***, with accommodations. J.Ex. 14 at 3.

57. The PLAAFP lists Student’s strengths as:

- a. ***.
- b. ***
- c. ***.

58. The PLAAFP lists Student's weaknesses in Written Expression as:

- a. ***
- b. ***
- c. ***.

J.Ex. 14 at 3.

59. The October ***, 2017 IEP lists Student's language arts goal as: "In 36 instructional weeks, provided [Student's] accommodations and text on [Student's] instructional level, Student will write legibly and use appropriate punctuation conventions, proper capitalization, and word endings (***)" J.Ex. 14 at 9.

60. The October ***, 2017 IEP contains a section for "Assessment Results/Considerations." The only assessments listed are "****" for Math and Reading. Id. Student was recorded as being between a *** – *** grade level in Math, and a *** level in Reading. J.Ex. 14 at 6.

61. The October ***, 2017 IEP provides Student with 5 sessions of speech therapy per 6-week grading period, 30 minutes per session. J.Ex. 14 at 18. The campus speech pathologist noted significant progress in Student's skills prior to transferring to CCISD. (Tr. 873-874). Student's services were reduced slightly at ARD. (Tr. 874-875). Student continues to receive speech therapy services in the amount of 30 minutes, 4x per six week grading period. (J19:21).

62. The "LRE Service Alternatives" section of the October ***, 2017 IEP states the ARDC is providing Student with "General education classroom core instructional interventions (Tier 1)" and that the ARDC "considered" providing Student with both "Targeted group interventions (Tier II) and "Intensive, individual interventions other than special education (Tier III)." J.Ex. 14 at 14.

63. Student's reading teacher testified Student did not receive tiered intervention services

because “[Student] was already receiving special ed services.” T. 441.

64. Student’s case manager also testified Student was “out of the RTI process” because Student receives special education services. T. 733.

65. Student is currently, during the 2018-2019 school year, receiving both special education services and Tier 3 intervention services. T. 733.

66. The ARDC deliberations conclude that “[Student’s] weaknesses indicate a need for specially designed instruction in the areas of reading comprehension and language arts, as well as math.” J.Ex. 14 at 22.

67. The October ***, 2017 ARD deliberations do not contain any discussion regarding the services and supports Student was receiving under Student’s IEP in ***, including the tiered interventions to address Student’s decoding and reading comprehension weaknesses.

68. CCISD has worked collaboratively with Petitioner’s parents both in and out of ARD. (Tr. 765-766). Student’s case manager called the parent within the first week or two of Student’s transfer to touch base with the parent and introduce herself. (Tr. 649-650). Staff has also communicated with the parent outside of ARD via email and telephone conversations. (Tr. 780:18-24). At ARD meetings, the parent participated actively in each meeting. Parent input was considered, and revisions to the IEP were made with consideration of that input. (Tr. 765:1-20).

69. CCISD provided progress reports at all required intervals as outlined in the Student’s IEP. CCISD uses an innovative method of progress reporting to permit parents to see a student’s progress in the general education curriculum in comparison to their IEP goal progress. The parents receive a “cover” page that includes the student’s grades in all areas, including grades in IEP progress. (See, e.g., J26:1). The subsequent pages of the report indicate each general education assignment that was used to monitor progress in

general education, and then each grade that was used to monitor progress on an IEP goal/objective. (See, e.g., J26:2-13). Additionally, these pages indicate the accommodations that were used by the student on each assignment. (Tr. 994:17-21).

70. Prior Written Notice was provided at the end of each ARD meeting held for Student. (J14:25 [October ***, 2017 PWN]; J15:1-2 [October ***, 2017 IEP Amendment PWN]; J17:5 [January ***, 2018 PWN]; J18:4-5 [April ***, 2018 PWN]; J19:28-29 [September ***, 2018 PWN]).

71. The Prior Written Notice (PWN) provided to Parent at the conclusion of the October ***, 2017 ARDC meeting does not contain any information regarding CCISD's reduction in speech services from 12 sessions per grading period to 5 sessions per grading period. J. Ex. 14 at 25.

72. The Prior Written Notice (PWN) provided to Parent at the conclusion of the October ***, 2017 ARDC meeting does not contain any information regarding the ARDC's consideration and rejection of providing Tier II or Tier III interventions to Student for decoding and reading comprehension. J.Ex. 14 at 25.

PRIVATE ABA THERAPY

73. Student began receiving private ABA therapy services in November 2017. Student's private ABA provider testified regarding both the Vineland Adaptive Behavior Scales and the ABA Therapy Student receives from. T. 517.

74. The purpose of conducting the Vineland assessment was to identify Student's deficits and create therapy goals for Student's treatment plan. T. 522.

75. The Vineland Adaptive Behavior Scales indicated Student had deficits in adaptive behavior and communication. P.Ex. 1 at 9; T. 523-524. Student had significantly higher receptive and written language scores than Student's expressive language score, indicating Student

is “***.” P.Ex. 1 at 9; T. 524.

76. The Vineland results also indicate Student has socialization deficits and deficits in ***.
P.Ex. 1 at 9. ***. T. 525.

77. The Vineland results indicate Student should receive 20 hours of ABA therapy per week.
T. 526. During the school year, Student receives six hours per week of ABA therapy. T.
526. During the summer, Student receives an average of fourteen hours per week of ABA
therapy. T. 533.

78. Student’s ABA treatment plan includes strategies and goals tailored to the “shut down
behavior.” Student has made progress and mastered some of the goals created for
Student, and Student has been given new treatment goals. T. 531-2.

79. Parent testified that Student has “come a long way with ABA” and that in an “ideal world”
she would love for ABA to be able to come into the school setting.” (Tr. 1058-1059). The
parent offered assurances that her insurance would cover such visits. (Tr. 1059:14-18).

80. Student’s ABA therapist is using the same strategies as CCISD to support Student’s
behaviors. Specifically, Student’s ABA therapist has been “working on asking for help...
***.” (Tr. 532:19-23).

81. Student’s resource teacher testified that “shut down” behavior was not persistent and
seemed to be reduced as Student’s confidence grew in the classroom. (Tr. 696:1-6).

82. Student does have an existing medical diagnosis of Autism, but Mr. ***, an independent
evaluator, testified he would not recommend autism eligibility for Student. Teachers
testified that Student interacts appropriately with peers and during group work. (Tr.
491:3-5)

*** GRADE: JANUARY- MAY 2018

83. On January ***, 2018, CCISD re-assessed Student in reading ***. J.Ex. 10 at 2.
84. On January ***, 2018, CCISD re-assessed Student's reading skills ***. Student scored *** accuracy, excellent comprehension, and a fluency of ***. A "****" *** . J.Ex. 9 at 1, 10.
85. For the middle of *** grade year, a *** is considered "Does not meet expectations: Needs intensive intervention." R.Ex. 6 at 1.
86. On January ***, 2018, Student's ARDC convened to hold a Revision ARDC Meeting. J.Ex. 17. The ARDC reviewed Student's present levels of performance and noted "[Student] still struggles with [Student's] reading fluency and often relies on [Student's] teachers reading to [Student] instead of trying to read passages ***self first." J.Ex. 17 at 2.
87. Parent "expressed concerns regarding Dyslexia testing." In response to Parent's concerns, the district agreed to conduct a dyslexia screening and "share findings with the parent." J.Ex. 17 at 2.
88. Parent testified CCISD staff did not explain to her the difference between a screening and an assessment. T. 569. Parent believed CCISD would be conducting a full evaluation for a reading disability. T. 569.
89. On February ***, 2018, CCISD Reading Interventionist conducted the WIST Word Identification and Spelling Test as a dyslexia "screener." P.Ex. 2 at 1. The WIST is a standardized, normed assessment. T. 71.
90. Student's scores on the WIST were almost uniformly in the "****" range. P.Ex. 2. Student's results were in the "****," meaning Student scored *** on the assessment that Student's results were not ***. T. 77.

91. On April ***, 2018, a Revision ARDC meeting was convened to discuss the *** results, and it was agreed to conduct “dyslexia testing.” J.Ex. 18 at 1. The reading interventionist attended the meeting and recommended that Student “could benefit by targeted instruction.” J.Ex. 18 at 2.
92. On April ***, 2018, CCISD provided Parent with documents titled “Consent for Full and Individual Evaluation” and “Notice of Full and Individual Evaluation”. The latter document indicates “dyslexia testing” will be given in the area of “Academic Performance.” J.Ex. 7. Parent signed the consent form on April ***, 2018. CCISD conducted the dyslexia assessment on May ***, 2018. J.Ex. 8.
93. Student was evaluated using the following norm-referenced, standardized assessments:
- a. Comprehensive Test of Phonological Processing—2nd Edition (C-TOPP 2)
 - b. Woodcock Reading Mastery Test – 3rd Edition (WRMT-III)
 - c. Gray Oral Reading Test –5th Edition (GORT-V)
 - d. Test of Written Spelling –5th Edition (TWS-V).
94. Student scored in the “****” range on the CTOPP-II measuring Phonological Awareness and Phonological Memory, and the subtests measuring the “Characteristics of Dyslexia:” Decoding, Word Recognition, Oral Reading Fluency, Accuracy, Rate, and Spelling. J.Ex. 8 at 1-2.
95. Student scored in the “****” range for Reading Comprehension, based on subtest scores from the GORT-V and the WRMT-III, and Written Expression. However, Student scored in the *** range for Cognitive/Academic Ability. J.Ex. 8 at 1.
96. Based on assessment results, Student should qualify with dyslexia. J.Ex. 8 at 3.
97. CCISD did not communicate the results of Student’s dyslexia testing to Parent during the 2017-2018 school year or at any point during Summer 2018.

98. In May 2018, Student's progress in reading was assessed using ***. Student's final *** assessment score corresponded to a *** level. J.Ex. 10 at 2.
99. Student's End of Year *** results in math indicated Student remained on a *** grade level in all components of the assessment, with only small gains from Student's comprehensive score in October 2017. J.Ex. 10 at 1.
100. Student's final Speech Therapy Progress Report for the 2017-2018 school year was made. J.Ex. 24 at 5.
101. Petitioner's IEP progress reports from the 2017-2018 school year indicate that Student made progress on all IEP goals, and Petitioner received passing grades in all academic areas, including on Student's IEP goals. (J26).
102. Student received services in both the general education and special education setting during the 2017-2018 school year. Student's *** teacher indicated that she would not have recommended Student being pulled out of her classroom more frequently, because learning with Student's peers is important and that in *** grade they provide a lot of whole group instruction with "teachable moments" so students can learn from each other. (Tr. 455-456).

SUMMER 2018

103. Parent inquired as to whether Student would be eligible for summer school or Extended School Year. T. 570. Parent was told Student did not qualify for either because Student's grades were too high for summer school and Student had not shown the regression required to qualify for Extended School Year. T. 570.
104. CCISD requires a student to fail two semesters in a row to be eligible for summer

school. T. 435. Eligibility is based on report card grades. T. 435.

105. As CCISD would not provide summer services to Student, Parent sought out academic tutoring for Student on her own in order to prevent Student from falling further behind. T. 1049.

106. Parent enrolled Student in academic reading classes at *** on May ***, 2018. P.Ex. 11. Based on Student's assessment results, *** recommended a 12-week program for Student with 13 hours of instruction per week. P.Ex. 11.

107. The parent testified that that Student "did okay with ***" but Student still had shutdowns and refusal to do work after attending ***, and that Student did not make significant progress in Student's *** reading assessment between EOY in Spring 2018 and BOY in Fall 2019. (Tr. 2050- 1051).

108. The cost of Student's *** summer program was \$***. Parent paid for the program. T. 596-597; 614.

109. Parent also provided Student with transportation to and from *** during Summer 2018. T. 583; 1049. Parent testified her home was approximately *** from the *** where Student received tutoring. T. 583.

110. During Summer 2018, Student also received an average of 14 hours per week of private ABA therapy. T. 533.

111. On July ***, 2018, Parent requested an Independent Educational Evaluation (IEE) of Student in "all areas of suspected disability and need, including but not limited to Autism, Specific Learning Disability, Other Health Impairment, Occupational Therapy, Assistive Technology, and other areas of suspected disability." P.Ex. 8 at 11.

112. On August ***, 2018, the CCISD special education director emailed Parent stating she had “reviewed and summarized the timeline of data,” with a list of the evaluations of Student that she had reviewed. P.Ex. 8 at 6.

113. On August ***, 2018 Parent emailed the CCISD special education director with her selection of two evaluators: Mr. *** for the psychoeducational IEE *** for the speech IEE. P.Ex. 8 at 2.

114. On September ***, 2018, Ms. *** informed Parent that the contract with Mr. *** had been completed, but the contract with the speech therapy provider was still in progress. The District provided payment to Mr. *** for the independent psychoeducational evaluation. To date, CCISD has not provided Parent with an independent speech evaluation. P.Ex. 8 at 1.

*** GRADE (AUGUST 2018-PRESENT)

115. Student has made passing grades in all of Student’s general education classes, as well as on Student’s IEP goals. (J23; J26: J29). Petitioner accused District staff of inflating Student’s grades by raising Student’s grades on assignments to a *** when Student’s true grade was lower. However, this was the grading policy for ALL students in *** grade, to give students the opportunity to recover from failing grades. (Tr. 434:7-16; Tr. 459-460). The grading policy was therefore not a modification of Student’s grading in the general education setting. (Tr. 991: 11-15).

116. Student’s *** grade teachers also follow a similar policy for recording Student’s grades in the gradebook. J.Ex. 26 at 42, 47. Student’s case manager claimed she was “not aware of this happening.” T. 630, 632.

117. Petitioner made assertions that the grading policy in math in ***-grade was “raising” grades. The math teacher testified that if a student had a failing grade, Student

would be retaught in small group and then would be permitted to retake the test to receive a maximum grade of a 70. (Tr. 632:14-19).

118. Permitting a student to re- do an assignment is another way for the student to show mastery and to pass the class and meet grade-level expectations. (Tr. 996-997) and is permissible in accordance with CCISD policies that permit any student to be retaught and reassessed if they make a failing grade. (Tr. 996:15- 16). This helps students master grade-level concepts in the school environment and find success. (Tr. 997:1-15).
119. Dr. *** testified that based upon the records she reviewed, Student “has made some progress.” (Tr. 829:8).
120. Observations from Student’s teachers at CCISD indicate that Student’s writing skills have improved. (Tr. 440:9-40).
121. Student’s case manager also testified that when Student first transferred, “it was very difficult to get [Student] to read willingly and independently” and that Student’s first F&P testing took a very long time. (Tr. 656:21-24). She also emphasized that Student is now showing “maturity, growth” and that Student has improved significantly in Student’s willingness to write. (Tr. 673:6-10).
122. Student’s *** teacher described the progress Student has made through the example of a recent research project, where Student researched ***, put Student’s ideas on a graphic organizer, created a *** rough draft, completed the revision/editing process, and is creating a book to read aloud to the class. (Tr. 658-661).
123. Student receives instructional services appropriate to meet Student’s educational needs and to create an IEP reasonably calculated for Student to make progress. Student received a number of multi-sensory supports in the *** grade general education classroom, like *** so students could see and hear instruction at the same time. (Tr. 457-

458).

124. When Student first transferred to CCISD, Student's ARD committee included an accommodation to pre-teach *** skills before *** to build confidence and fluency. (Tr. 658:7-14).
125. Student's *** grade classroom offers many opportunities for movement, provided engagement through ***, and would create *** to provide students with visual support for new concepts. (Tr. 703:5-25; 704:1-12).
126. Mr. ***, an independent evaluator, indicated that Student's current IEP accommodations are appropriate "as long as [Student] understands them" (Tr. 350-357; Tr. 363-364), and that having *** and *** services for ELAR and math is appropriate. (Tr. 357-358).
127. Throughout Student's enrollment in CCISD, Student received 45 minutes per day each of general education ELAR and math, with *** support. (J19:20). Student also received 30 minutes per day of *** (J19:20).
128. Student receives the recommended 3 blocks per lesson and two lessons per week in the *** program. (Tr. 53:14- 24).
129. Beginning with the 2018-2019 school year, Student receives 45 minutes per day, 4 days per week of dyslexia instruction in addition to *** and inclusion services. (J19:20). Student also received use of assistive technology daily as needed, and *** minutes of speech four times per six weeks grading period. (J19:21).
130. Mr. *** recommended giving Student only 15 minutes in the general education classroom per day, and 60 minutes in each class period away from Student's general education peers. (Tr. 359:5-11). Mr. *** was unable to articulate what services or

supports justified an increase in Student's time away from Student's peers. (Tr. 343:3-6; 344:19-24).

131. Student's *** teacher testified she would not increase *** time. Student is making progress in the current setting, and she is hopeful that she can reduce the amount of time Student needs for math inclusion services by the end of the year. (Tr. 696:7-9).

132. After Student enrolled on September ***, 2017, Student took the *** and received an instruction level ***. (J9:10). Four months later, Student progressed to a *** Level ***. (J9:10). By the end of the year, Student remained at a level ***, but with higher accuracy and fluency rates. (J9:10).

133. This indicates objective progress in Student's reading. Student's *** teacher testified that "I wouldn't expect with the deficits that [Student] came with, to see a growth over several reading levels. But there's growth." (Tr. 664:12-13). Student also improved being able to self-correct errors in reading over the course of the school year. (Tr. 667:3-5).

134. Student also made progress in *** in both reading and math. When Student first took the *** assessment in reading during the 2017-2018 school year, Student was at Level ***, vocabulary, and literature comprehension. (J14:3).

135. By the time of Student's *** benchmark in the 2018-2019 school year, Student had tested out of any need in ***, had received the "max score" in ***, and was at *** in vocabulary and literature comprehension. (J19:3; Tr. 755:22-25).

136. Student's *** scores from Student's transfer ARD on October ***, 2017 indicated that Student was in *** level for *** and ***, and at a ***-grade level for *** and ***. (J14:4).

137. By Student's annual ARD on September ***, 2018, Student was at ***-grade level in both *** and *** and was at *** for ***. (J19:5). Only Student's *** scores remained at the ***-grade level from year to year. (J14:4; J19:5).
138. Within the *** setting in *** and *** grade, Student has the benefit of working directly with Student's *** teacher in *** settings or in very small groups of three to complete assignments. (Tr. 690). (Tr. 740:5).
139. Since the *** class is a small class, the teacher is able to give individualized attention to each student. Student's *** teacher indicated that Student recently struggled with ***, but that in working with Student's teacher, Student and Student's teacher were able to create an individualized strategy that worked for Student in order to be able to successfully use the ***. (Tr. 690-691).
140. When asked about "expected progress," Dr. *** stated that after two years in an Orton-Gillingham based program (when Student has currently participated for less than six months) she would expect Student to get to a place where Student can *** reading and writing and feel comfortable *** building vocabulary, fluency, and comprehension. She noted that for children like Student who also have *** difficulties and attention problems, "that progress could be a bit slower." (Tr. 830).

DYSLEXIA INTERVENTION: *** READING SYSTEM

141. Student's dyslexia teacher testified that providing services for 45 minutes per day instead of an hour is appropriate ***. (Tr. 145-146).
142. In dyslexia class, they complete sound drills, work with creating words on magnet boards, write sight-words on whiteboards, all in order to repeat the sounds and combinations that letters make. (Tr. 146-149). Additionally, teaching students in groups means that they have the ability to learn from each other in that setting. (Tr. 161: 11-15).

143. Student's teacher did not see any indications that Student had dyslexia over the first three months that Student was enrolled. Student knew letters and number sounds, was able to read small sentences, was not reversing letters, and was able to track what was being read. (Tr. 461).
144. Student was not screened for dyslexia services upon enrollment in CCISD because CCISD screeners take place during ***. (R10: Tr. 153:23-25)
145. Student's dyslexia teacher indicated that she was surprised that Student was not tested at Student's prior district, because usually they would consider that testing earlier, and prior to sped testing. (Tr. 155:9-15).
146. The dyslexia screener was completed on February ***, 2018. (R11:1). The screener did indicate a reason to suspect dyslexia characteristics. However, in accordance with the Dyslexia Handbook, for students currently receiving special education and related services, consent for formal dyslexia testing must be decided by ARD Committee. (P14:82).
147. The ARD Committee convened to discuss dyslexia testing on April ***, 2018. The time frame between the completion of the dyslexia screener and the ARD date was thirty school days, due to the intervening time for Spring Break and other District holidays. (J42).
148. The formal dyslexia evaluation report was reviewed in ARD thirty school days after the report was completed, on September ***, 2018. (J19).
149. On August ***, 2018, Parent emailed the reading interventionist for the results of the testing since the district had not contacted her with the results. P.Ex. 9 at 8-9.
150. The CCISD reading interventionist informed Parent that Student did "fit the

dyslexic profile,” and offered to begin providing dyslexia services to Student during the first week of September, even though Student’s ARDC was not scheduled to meet until September ***. P.Ex. 9 at 7.

151. The parent and the dyslexia teacher agreed prior to the ARD to start Student’s dyslexia instruction the same date as the other students, which was about a week before the ARD Committee met on September ***, 2018. Parent agreed to allow Student to begin receiving dyslexia services because she wanted Student “to get appropriate resources sooner rather than later.” (Tr. 600:9-19; P9:7)

152. CCISD began providing Student with dyslexia services through the *** in September 2018. The *** is a research-based program that is based in the Orton-Gillingham method. T. 44-45.

153. Student’s dyslexia teacher indicated that although dyslexia services would have been helpful during Student’s *** grade year, they were not critical because “[Student] was getting support and accommodations” in *** grade and “was getting support from the special education department [***].” (Tr. 173:8-15).

154. The *** is a program that is used with children who have word-level deficits who are not making sufficient progress through their current intervention. *** is appropriate for students who need more intensive, structured, literacy instruction due to a language-based learning disability, such as dyslexia. T. 49.

155. The publisher of the *** recommends the material be presented to students ***. T. 50.; R.Ex. 9. The publisher of the *** recommends students complete at least *** per year, with *** being recommended. *** recommends an hour to an hour and a half of instruction per day, five days per week. *** can be taught either individually or in groups. For groups, *** recommends a group of “up to six students, with four being optimal.” T. 51-52.

156. Student is provided *** instruction in a group of *** students. T. 52. Student is provided *** instruction 45 minutes per day, 4 days per week. T. 207.
157. Student's progress is assessed through Student's performance on subtests. T. 187; P.Ex. 17. Student's scores on the subtests are not recorded. T. 207.

SEPTEMBER ***, 2018 ARDC MEETING

158. On September ***, 2018. Student's ARDC convened J.Ex. 19. Student's private ABA therapist was present. CCISD also invited a district BCBA to attend the ARDC meeting. J.Ex. 19 at 27.
159. At the September ***, 2018 ARDC meeting, "[Student] was found eligible for dyslexia services which will be provided in the general education setting during the 2018-2019 school year." J.Ex. 19 at 24.
160. The IEP produced at the September ***, 2018 meeting states Student is "Dyslexia/Qualified," but does not include any information regarding eligibility for a Specific Learning Disability. J.Ex. 19 at 1.
161. The schedule of services in the September ***, 2018 IEP states Student will receive "Dyslexia Services – Gen Ed" for 45 minutes per day, 4 times per week, in a group setting. J.Ex. 19 at 20.
162. The parent criticized the dyslexia program as not being sufficiently individualized, because it is taught in groups. However, the dyslexia teacher supports students' individual needs by weaving areas of difficulty back into future lessons. (Tr. 62:13-15).
163. Student's Reading PLAAFP notes Student's "beginning of year" *** results, indicating current performance on a *** grade level." J.Ex. 19 at 2.

164. Student's present levels of performance were used by student's case manager to write goals based upon Student's individualized strengths and weaknesses. (Tr. 654-655).
165. Based upon these PLAAFP statements, Student's IEP specifically included a reading goal targeting fluency and comprehension (J14:8), a writing goal addressing legibility, punctuation, and capitalization (J14:9), and solving word problems (J14:10).
166. In *** grade, Student's PLAAFP statements were supported by teacher data and also *** and *** scores. (J14:2-3). Those related to reading weaknesses focused on fluency and comprehension. Student's writing weaknesses included ***. (J14:3). Student's math weaknesses included ***. (J14:4).
167. Student made progress on Student's IEP goals as indicated on Student's final report card for *** grade. (J29:1). At the time the goals were created, Student had been enrolled in CCISD for 20 days; it takes time to determine student's level of functioning. (Tr. 723-725).
168. For *** grade, Student's IEP once again identified weaknesses in reading fluency and comprehension (J19:2), in writing legibility (J19:4), and in math related to expanded ***. (J19:4).
169. Student's *** teacher specifically wrote Student's reading goal to be on "instructional level" so that the *** reading levels could guide the books Student was selecting and reading. Student once again received a writing goal regarding increasing legibility and improving sentence conventions such as *** (J19:10), and a math goal related to ***. (J19:11).
170. Student did make progress in developing reading skills towards grade level, as indicated by Student's progress in improving reading from a *** level in the 2017-2018

school year to a ***-grade level in 2018-2019 school year. (J19:2).

171. During the September ***, 2018 ARDC meeting, Parent expressed her concern regarding Student's *** and asked for an Occupational Therapy consult to assist Student with Student's ***. J.Ex. 19 at 24.

172. Despite Student's *** weaknesses being noted in Student's Written Expression PLAAFP, Student's teachers told Parent they "had not been collecting data on [Student's] *** at this time." J.Ex. 19 at 24. Instead, Ms. *** offered to allow Student to stay after school to practice Student's *** with her. J.Ex. 19 at 24.

ASSISTIVE TECHNOLOGY EVALUATION

173. It is not disputed that Student has difficulty with ***, and that *** tasks are non-preferred. In this instance, the District felt comfortable providing Student with assistive technology supports without need for a formal AT evaluation. (Tr. 1005:1-16).

174. Speech-to-text also has been considered but was not determined to be a necessary AT device. Student's *** teacher did not recommend a support like speech-to-text. Student has made progress in Student's willingness to write as well as Student's writing abilities. Student is capable of ***, demonstrates an ability to convey Student's thoughts on paper, and that *** is much more functional of a skill for Student. (Tr. 708).

175. Student uses a graphic organizer to assist in recalling information and organizing Student's thoughts. (Tr. 1006:10-16).

OCCUPATIONAL THERAPY EVALUATION

176. Petitioner failed to identify any educational need for occupational therapy or physical therapy services. The parent has not produced any evaluation supporting that OT is required for Student. The parent stated that she wanted an occupational therapy

evaluation for Student because Student's ***. (Tr. 1060).

177. Student's *** grade teacher indicated writing was not a preferred activity, but Student's ***. (Tr. 463:9-14).

178. Student's dyslexia teacher supported that Student's *** when Student focuses, and that the purpose of after-school *** tutoring for Student was to ensure that Student could ***. (Tr. 98:9-13).

179. When the dyslexia teacher discontinued tutoring, she stated that "[Student] can ***, [Student] just needs to take [Student's] time when *** writing, [Student] has the ability to do that." (Tr. 103:4-8).

180. Throughout Student's enrollment in CCISD, Student has had a *** goal. Student's *** teacher provides reminders and support for Student to slow down, which results in ***. Such supports can be provided within the general education environment and do not require an occupational therapist. (Tr. 1004:17-18).

ASSISTIVE TECHNOLOGY

181. Student received multisensory reading supports within the general education curriculum. For example, Student received *** where the book reads aloud to a student ***. (Tr. 445:16-18).

182. All students had headphones so they could listen to books. (Tr. 445:20-22). Student has access to iPads and computers/laptops in the general education environment and the *** environment. (Tr. 683:9-11). Additionally, in ***, Student has access to a whiteboard, movement breaks around the room, and introduction of concepts through visual, auditory, and tactile means. (Tr. 698-699).

183. Student receives assistive technology in Student's IEP in the form of the option to use a laptop for the final draft of written assignments. (J19:14). Student's *** when

Student focuses, and Student does not need or request use of a laptop instead, preferring to *** Student's final projects. (Tr. 731:1-9; Tr. 711:1-1-5).

FUNCTIONAL BEHAVIORAL ASSESSMENT

184. Shortly after school resumed, Parent received a phone call inquiring as to "what they had done over the summer" because Student appeared to have regressed. Student's "shut down" behavior had grown worse, and Student was consistently refusing to do work. T. 588-589. Student "wouldn't talk" and could not be redirected to do Student's work. T. 589.

185. Parent offered to bring Student's private ABA therapist to Student's Annual ARD in September 2018. T. 588. The parent's ABA therapist attended the September ARD and agreed with the Committee that a FBA was not needed. (Tr. 546:8-18). The ABA therapist also did not recommend development of a BIP for Student regarding Student's behavior of shutting down. (Tr. 551:13-16). The ABA therapist agreed and the Committee agreed that data tracking to see if a token system was needed in case the behaviors reemerged was an appropriate next step. (Tr. 546:19-21). (Tr. 641; Tr. 542-543; J39).

186. After Student's transfer at the beginning of *** grade, Student would cry when presented with work tasks. With redirection and positive support, Student made progress with this behavior and was increasingly able to initiate and complete work without assistance. (Tr. 439:20-25; 440:1-19).

187. At the beginning of *** grade, Student would "shut down" by ***. With redirection and encouragement, Student was able to begin working again. (Tr. 638-639; Tr. 709:8-14)).

188. Student's behaviors were not persistent and seemed to be reduced as Student's confidence grew in the classroom. (Tr. 696:1-6).

189. Student had accommodations already in place in Student's IEP to assist with the "shut down" behavior, like chunking assignments and using a laptop for long writing assignments. (Tr. 710-711; J19:13-14).
190. By the time of Student's September ARD, the behaviors were no longer occurring. (Tr. 544-545). Student's Behavior PLAAFP states: 4 out of 5 times, [Student] does not respond favorably to redirection or reminders of classroom expectations, resulting in Student's refusal to work at all or follow the instructions correctly. Student will shut down, *** or ignore any teacher instructions. J.Ex. 19 at 5.
191. For the first time, Student's IEP states that Student's behavior impedes Student's own learning or that of others. Despite this statement, the only positive behavioral interventions listed are unspecified "Accommodation for behavior (i.e. task avoidance/refusal, distractions.)" J.Ex. 19 at 7.
192. Student's private ABA therapist testified no one from CCISD had been in contact with her after the ARDC meeting, even though both she and Parent had signed consent for CCISD staff to do so. T. 541; 543- 544.
193. Though Student was supposed to be provided with accommodations for Student's behavior, the IEP does not discuss which accommodations were added to address Student's "shut down" behavior. J.Ex. 19 at 13- 14.
194. The September ***, 2018 IEP contains Prior Written Notice. J.Ex. 19 at 28. The Prior Written Notice simply states there was a "proposed adjustment of IEP services based on student needs and results of dyslexia evaluation." Id. The Prior Written Notice contains no description of the services that were adjusted or added, the IEP accommodations that were changed, or the reduction in speech services.
195. The schedule of services contained in the September ***, 2018 IEP states Student will receive four 30-minute sessions per 6 week grading period. J.Ex. 19 at 21. This is a

decrease from the number of speech therapy sessions Student received under Student's October 2017 IEP. J.Ex. 14 at 18 (five 30-minute sessions per 6 week grading period).

*** GRADE: POST-ARDC

196. "How we work with [Student] and what we provide [Student] with does not matter what [eligibility] [Student] comes with. [Student] gets what [Student] needs. And I feel that the IEP is providing [Student] with everything that [Student] needs to be successful." (Tr. 756:15-23).

197. On September ***, 2018, Student began receiving one hour of after-school *** support each week. P.Ex. 9 at 3.

198. On September ***, 2018, Parents received an "Intervention Progress Report," indicating Student was receiving "Tier 3 Reading" *** and that Student had "Met Expectation." R.Ex. 3 at 2; T. 180.

199. Student's *** teacher filled out two forms titled "Reading RTI Documentation Tier 1." Student's "areas of concern for reading" were both "basic reading skills" and "written expression.". Student's goal for RTI was "****," "****," and "****." According to the forms, Student was provided with approximately 10-15 minutes of intervention services each day. P.Ex. 18 at 1-2.

200. On October ***, 2018, after-school *** support was discontinued because "[Student] has demonstrated that [Student] can ***. [Student] just needs to take [Student's] time." Ms. *** also stated Student could continue to ***, but that she would no longer be able to work with Student one-on-one. P.Ex. 9 at 1.

201. On November ***, 2018, Parents received an "Intervention Progress Report" indicating Student "Made Progress, Less Than Expected." R.Ex. 3 at 2. Ms. *** testified

Student was working hard and doing good work but “doesn’t always get the concepts.” Ms. *** claimed Student has “worked through” Student’s difficulties since the issuance of the progress report. T. 180.

202. As of November ***, 2018, Student had progressed from Level *** in the *** to Level ***. J.Ex. 41 at 3.

203. CCISD’s records indicate Student received all of Student’s scheduled dyslexia instruction (45 minutes, 4 times per week) on five out of 11 weeks of the semester. J.Ex. 41 at 3.

204. Student has not received an outside dyslexia evaluation recommending a change in Student’s current programming. Student’s dyslexia teacher reports Student is making progress and is completing Student’s step tests with expected accuracy. (Tr. 169:1-6; P17).

INDEPENDENT EDUCATIONAL EVALUATION (IEE) BY ***

205. The contract with Mr. *** was executed on September ***, 2018, and evaluations began October ***, 2018. P.Ex. 20 at 2. Mr. *** was contracted to conduct evaluations of Student in the areas of “psychological, learning disability, and ADHD.” T. 270.

206. Mr. *** did not receive any of Student’s records from CCISD for his review. T. 272. Instead, Parent provided Student’s evaluations to Mr. ***. T. 271. Mr. *** produced his evaluation report to Parent and to Ms. *** on December ***, 2018. P.Ex. 20 at 1.

207. Mr. *** testified that on his initial meeting of Student, he had “immediate language concerns” because Student was unable to ***. T.273. Student was also unable to ***. T. 273. Mr. *** also noted Student’s responses “tended to be long and hard to follow at times” and that Student “tended to get off track easily.” T. 273-274.

208. Mr. *** reported Student's cognitive flexibility and frustration tolerance seemed "below age-level expectations." P.Ex. 20 at 3.
209. Mr. *** also conducted observations of Student in his *** classroom. T. 275-276. Student read at ***. T. 276; P.Ex. 20 at 3. In *** grade, an average student reads at approximately *** words per minute. T.276.
210. Mr. *** testified Student's reading rate was concerning because when Student was evaluated in *** grade at ***, Student read ***, meaning Student had only increased Student's reading speed by ***. T. 276. Mr. *** testified this *** increase was not meaningful progress. T. 276-277.
211. Mr. *** noted the *** low score of *** on the WJC-IV Auditory Processing subtest was a "red flag that would warrant additional investigation" into whether Student has an auditory processing disorder. T. 284.
212. Mr. *** also reported and testified Student had a deficit in ***, observing that Student was *** during the evaluation. T. 285- 286; P.Ex. 20 at 11, 13.
213. Mr. *** testified regarding his observation that Student "seemed lost" in the classroom and was "unsure what to do next." T. 347. Mr. *** testified Student's slower decision-making skills were also indicative of Student's ***. T. 347.
214. Mr. *** assessed Student's academic abilities using the Woodcock-Johnson Fourth Edition Test of Academic Abilities. P.Ex. 20 at 12-13. He reported Student's scores on the assessment "demonstrate the profound deficit in Student's academic abilities. P.Ex. 20 at 12. Mr. *** testified these results were indicative of a learning disability. T. 288.
215. Mr. *** theorized that Student's raw score on the assessments had "probably stayed the same" between *** and *** grade, meaning Student's academic ability

“probably has not increased since *** grade.” T. 290.

216. Mr. ***'s evaluation concluded with the recommendation that Student receive special education services as a student with a Specific Learning Disability in Basic Reading, Reading Fluency, Reading Comprehension, and Written Expression. P.Ex. 20 at 16.
217. Mr. *** failed to understand during the review of documents and observations of the Student that Student is already receiving special education instruction. (P20).
218. Mr. *** recommends that Student be provided with an IEP, and that Student receive *** approach, as well as use of *** (which Student already receives). P.Ex. 20.
219. The evaluation report noted that Student struggles with *** and ***. P.Ex. 20 at 10, 16. Student “does not have a good grasp of ***.” T. 288. As a result, Student’s dyslexia instruction from CCISD may not be effective because it “purports to teach [Student] in [Student’s] weakest area, ***.” Thus, “more of the same instruction method will not increase [Student’s] fluency and comprehension, which are the goals of reading.” P.Ex. 20 at 16.
220. The *** is Orton-Gillingham based, and that method specifically targets ***. (Tr. 405:22-25; Tr.835:2-10).
221. Student’s dyslexia teacher would not recommend *** teaching because it doesn’t give students an understanding of ***. (Tr. 149-150). Dr. ***, would not recommend mastery of a certain *** before progressing to the ***, because Orton-Gillingham programs work through ***. (Tr. 835:2-10).
222. Dr. *** specifically recommended Orton-Gillingham based-interventions for dyslexic students like Student, because such programs are “sequential, systematic, and multisensory” and they “build on each other” with “a lot of repetition and a lot of

practice.” (Tr. 12:5-10).

TESTIMONY OF DR. ***

223. Dr. *** has a PhD in educational psychology, with a specialty in school psychology and neuropsychology. T. 800; P.Ex. 15. She is a licensed specialist in school psychology and a licensed psychologist. Id. Dr. *** worked as a teacher, a principal, a school psychologist, a university professor, and the Assistant Director of 504 Services for *** before retiring to private practice. T. 801-802; P.Ex. 15. Dr. *** was admitted as an expert in dyslexia evaluation and programming at the due process hearing. T. 803-804.

224. Dr. *** reviewed the evaluations conducted by *** in 2016 and by Mr. *** in November 2018. T. 804. Dr. *** testified Student’s cognitive profile had remained consistent across both evaluations and CCISD’s own evaluations for dyslexia from May 2018. T. 804. A child’s cognitive profile should not change absent an event such as a traumatic brain injury. T. 805.

225. Dr. *** testified Student’s cognitive ability was in the average range. T. 829. Student’s verbal comprehension ability is also in the average range. T. 827.

226. In Dr. ***’s opinion, Student has a “moderate to severe presentation” of dyslexia. Dr. *** explained students with dyslexia can learn how to read, but only with a very specific intervention. T. 856. In the context of the IDEA, dyslexia is included in the definition of a specific learning disability in basic reading skills. T. 809-810.

227. Dr. *** testified early identification and intervention for students who are suspected of having dyslexia is important because early intervention creates more opportunity to build stronger neural pathways thus making it easier for the child to learn how to read. T. 811.

228. Dr. *** recommends a dyslexia intervention based on the Orton-Gillingham method. T. 812. Orton-Gillingham-based interventions are sequential, systematic, and multisensory and include a lot of repetition and practice. T. 812. Dr. *** testified the appropriate intervention for a specific child would depend on the individual child's profile, including the severity of their dyslexia. T. 812.
229. Dr. *** testified that the appropriate program for Student would be "having [Student] in an Orton-Gillingham-based program through completion and mastery of that program. And then at [Student's] age, also making sure that [Student] has access to things like Learning Ally and Bookshare so [Student] has all of [Student's] visual reading materials on auditory, you know, availability, so [Student] can participate with grade level discussions...I would also like to see some vocabulary development goals." (Tr. 826:17-23). Student is currently being provided with all of these supports in CCISD.
230. Dr. *** testified that the provision of intensive instruction must also be balanced with the capacity of the human brain. Dr. *** opined that it would not be productive for Student to be pulled out of Student's instruction for half a day or a full day to focus on certain skills to master them. Research shows that the optimal timing for dyslexia programming is in spurts of less than an hour for "optimal outcomes" and indicated that if a school does more than that, "it just doesn't compute; it's too exhaustive." (Tr. 850:18-19). The brain needs a rest period for those things to solidify in order to build upon each other. (Tr. 850:19-24).
231. Dr. *** is familiar with the *** system. She does not recommend *** for any dyslexic child because "[it] does not teach reading from that systemic, multisensory, sequential place that needs to be in place for our kids with dyslexia to actually learn to read well." T. 813.

232. The District does not use *** as an intervention system, but instead as a benchmark for tracking student progress in reading, not dyslexia. Dr. *** stated that she would want dyslexia progress monitored by one of the tools that go with the Orton-Gillingham program, that measure progress every week or every other week. (Tr. 819-820). Dr. *** testified that *** would be appropriate to measure fluency and reading rate. (Tr. 835:22-24).
233. Dr. *** testified the *** would not be a good system to measure a dyslexic child's progress in reading, instead preferring one of the progress monitoring tools that come with the Orton-Gillingham-based programs. T. 819.
234. Dr. *** reviewed Student's *** record from CCISD. In her opinion, Student's purported progress *** is not meaningful progress, because even if Student had recently progressed ***, Student would still be on a *** level. T. 817.
235. Dr. *** testified that, for a child who is far below grade level, such as the Student in this proceeding, the hope would be for Student to progress more than two *** in one academic year as the ultimate goal is for the student to be on grade level. T. 818.
236. Dr. *** emphasized the purpose of special education is to give a student: "Highly individualized instruction, different intensity of instruction, more one-on-one and very small group instruction so that they can—the goal is to work through and figure out how they're learning so we can best get them back up to grade level, which is the D in dismissal with an ARD; we're hoping to get them to that point at some time. T. 818.
237. Dr. *** expressed concern that Student's IEPs from October ***, 2017 and September ***, 2018 did not contain any Orton-Gillingham-based program language, which is important if the child moves from district to district. T. 822.
238. Dr. ***'s opinion of Student's 2018 IEP Reading goal is that the goal is "very broad"

and “probably too vague to understand if [Student is] making good progress and making appropriate progress for what we believe [Student’s] abilities are.” T. 824-825.

239. Dr. ***’s opinion of Student’s 2017 IEP Reading goal is that, while the goal is more specific than the 2018 IEP Reading goal, the goal is “pretty unachievable” because it required Student to read grade level text with fluency and comprehension, when Student “clearly is not on grade level or anywhere close to it.” T. 826.

240. In Dr. ***’s opinion, based on her review of the records, Student has not made a large amount of progress over the preceding 1.5 years. T. 845. Based on Student’s cognitive ability and prescribed number of hours of *** instruction, she believes Student should be making more progress than was documented by CCISD. T. 829.

241. When asked to describe the environmental conditions Student would need to make progress, Dr. *** stated that best practice would be to have Student in *** therapy one on one 45 minutes a day for five days a week. Student could be in a very small group, maybe two or three children max. T. 841

242. In Dr. ***’s opinion, a group of six for the ***, taught by a Level *** certified instructor, would be “a very hard thing to do.” T. 843. Dr. *** testified that only “a handful of very, very highly trained academic language therapists” may feel comfortable instructing a group of six students in the Level ***. T. 843.

243. Although Dr. *** testified that instruction from a CALT may be “best practice,” use of reading interventionists trained in the program are appropriate, particularly if they are supervised to make sure that implementation is being followed appropriately. (Tr. 837-838). This is also supported by the Dyslexia Handbook. (P14:79-80).

244. Dr. *** defined methodology as “the training of the interventionist, the therapist, in understanding how to teach [a program].” (Tr. 822:14-15).

APPLICABLE LAW

DUTY TO PROVIDE 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 sufficient related support services and specifically designed personalized instruction reasonably calculated to meet the unique needs of the child in order for them to receive an educational benefit, and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400 (d).

Under IDEA the District is required to identify students with disabilities residing within its jurisdiction between the ages of 3 and 21, who it suspects are eligible for special education. 34 C.F.R. § 300.111. The District is required to provide eligible students with special education and related services. The school district is responsible for providing such instruction and services at public expense and to comport with the child's IEP. 20 U.S.C. § 1401(9); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. vn. Rowley, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

FAPE

The obligation to provide a FAPE requires a school district to have in effect an IEP at the beginning of each school year. The ARD Committee develops the IEP and must consider the student's strengths, the results of the most recent evaluation data, the student's academic, developmental and functional needs, and parental concerns for enhancing the student's education. 34 C.F.R. 300.324(a).

An 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).

An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. It is not a form document. It is constructed only after careful consideration of the

student's present levels of achievement, disability, and potential for growth. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv); *Endrew F.*, 137 S.Ct. at 999.

The IDEA does not require the IEP to guarantee a certain level of accomplishment. It is not required to provide Student with the best possible education. It need not be designed to maximize a student's potential. The issue is not whether the school district could have done more. *Houston Ind. Sch. Dist. v. V.P.*, 582 F. 2d 576 (5th Cir. 2009) cert. denied, 559 U.S. 1007(2010).

Instead, the IDEA guarantees only a "basic floor of opportunity," by requiring that the IEP must be specifically designed to meet Student's unique needs, supported by services that permit Student to benefit from the instruction. The inquiry is whether Student received an educational benefit. *Rowley*, 458 U.S. at 188-189.

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 to provide a FAPE. Those factors are:

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

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

The four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Ind.*

Sch. Dist. v. Leah Z., 580 F. 3d 286, 294 (5th Cir. 2009).

PRESUMPTION OF APPROPRIATENESS

Under the IDEA the educational plan developed by a school district is presumed appropriate and the burden of proof for challenging that program is placed on the party making the challenge. Shaeffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 536-537 (2005); R.H. v. Plano Indep. Sch. Dist., 607 F.3d 1003, 1010-1011(5th Cir. 2011). Petitioner bears the burden of proof in this dispute and must overcome the presumption in favor of the District's educational plan and establish that the District failed to provide a FAPE.

DISCUSSION

The presumption of the appropriateness of the District's education program for the Student withstands challenge in this dispute. Petitioner did not meet Petitioner's burden to show that the District's program for the Student failed to provide a FAPE, or the District violated the IDEA.

Student is successful in the general education setting. The evidence established that the Student behaved as an average student within student's general education program. The Student's teachers had high expectations of the Student to achieve the goal of getting an education. These requirements are not inconsistent with the IDEA.

Within this general education setting success, the District offered accommodations and services. Student received instructional accommodations and services that allowed student to exhibit both academic and non-academic success – with the addition of special education instruction.

The Student is making progress. The District's general education program does not remediate the Student's disability, but instead allows the Student to receive an overall educational benefit within mainstream classes that includes passing grades and advancement from grade to grade. Klein Independent School Dist. v. Hovem, 690 F.3d 390, 398 (5th Cir. 2012).

Petitioner did not sustain Petitioner's burden to show a denial of a FAPE to the Student.

APPLICATION OF THE FOUR FACTOR TEST

Application of the four factors to the evidence in this case supports the finding that the School District's program was appropriate because the IEP is reasonably calculated to provide the requisite educational benefit given Student's unique circumstances. Rowley, supra, 458 U.S. at 206-20; Endrew F., supra, 137 S.Ct. at 999-1000 (2017).

INDIVIDUALIZED PROGRAM

Factor 1: The program is individualized on the basis of the student's assessment and performance.

To meet its substantive obligation, a school district must offer an IEP that is reasonably calculated to meet the child's needs to enable the student to make progress appropriate in light of the child's unique circumstances. The adequacy of a given IEP turns on the unique circumstances of the student for whom it was created. Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. 137 S. Ct. 988 (2017).

The ARD committee is required to review the student's IEP at least annually, and on the basis of any re-evaluations, information provided by parents, or the student's anticipated needs, to make any revisions needed to address a lack of expected progress. 34 C.F.R. 300.324(b)(1).

As the Supreme Court noted in Endrew F., a student's "present level of performance" provides the benchmark ... the starting point ... from which to measure the student's progress. The next component of every IEP is measurable annual goals designed to allow the student to make progress, if possible, based upon the student's circumstances, in the general education environment. Meaningful progress is the key regardless of the educational setting.

Petitioner believes Respondent failed to provide the student a FAPE by not providing present levels of performance on which appropriate, measurable goals could be based, and by using goals that cannot be measured due to lack of accurate baselines.

While it is clear that Student continues to have behavior challenges and ongoing struggles, the educational programming was individualized on the basis of the Student's assessments and performance, and it was reasonably calculated to enable Student to make appropriate progress in light of Student's individual circumstances. Endrew F., *supra*, 137 S.Ct. 988 at 1000.

Petitioner provided evidence to the contrary, including expert testimony showing that reasonable minds can disagree on pragmatic details of the delivery of the educational program. The school district is under a duty to consider the results and recommendations of that evaluation at an ARD committee meeting. The evidence showed the school district did that.

While "more," "different," or "better" services/goals/accommodations might be possible, the relevant question is whether the IEP as written is appropriate. Adam J. v. Keller Indep. Sch. Dist., Civ. No. 4:01-CV- 0797-A, 2002 WL 1906001 at *2 (N.D. Tex. Aug. 15, 2002) (finding fact that another plan "might work as well or even better does not mean that defendant has failed to provide plaintiff a FAPE"), *aff'd*, 328 F.3d 804 (5th Cir. 2003).

The role of the court is not to "second guess" school officials or substitute their own idea of an appropriate IEP for the opinion of the educational professionals. C.G. by & through Keith G. v. Waller Indep. Sch. Dist., 697 F. App'x 816, 820 (5th Cir. 2017), as revised (June 29, 2017) (citing Flour Bluff Indep. Sch. Dist. v. Katherine M. by Lesa T., 91 F.3d 689, 693 (5th Cir. 1996)).

The Supreme Court recently reiterated that "the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." Endrew F., *supra*, 137 S.Ct. at 999 (referencing Rowley, 458 U.S. at 206-07).

This issue is decided in favor of the School District because the District is not required to implement the "best" program designed by an expert to remediate or maximize a child's educational potential. Perhaps the school district could have conducted additional assessments such as those discussed during this due process hearing. Instead, after deliberative consideration,

the ARD committee determined that the supports are sufficiently appropriate.

LEAST RESTRICTIVE ENVIRONMENT

Factor 2: The program is administered in the least restrictive environment.

The IDEA requires that students with disabilities must be educated in general education settings with peers who do not have disabilities to the maximum extent appropriate. This requirement of the IDEA is referred to as a school district's obligation to educate a student in the least restrictive environment (LRE). 34 C.F.R. § 300.114(a)(2)(i).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs.

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

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

Daniel R.R. v. El Paso Ind. Sch. Dist., 874 F. 2d 1036, 1048 (5th Cir. 1989).

This determination requires an examination of:

1. a school district's efforts to provide the student with supplemental aids and services in the general education setting;
2. a school district's efforts to modify the special education curriculum to meet the student's individual needs;
3. the educational benefit a student is receiving while placed in the general education setting;

Daniel R.R., supra.

The binding law in this Circuit compels the conclusion that the School District's proposed schedule of services with a mixture of special education and regular education is the LRE.

Here, parents, teachers, and service providers continue to engage in careful and thoughtful discussion regarding the LRE appropriate to meet Student's needs, and the decision ARD Committee decision complies with the IDEA. Student's teachers have the most knowledge of Student's learning needs and have made a careful and thoughtful decision based on the data available.

The School District strives to offer the Student's educational program in the least restrictive environment. The IEP is designed and reasonably calculated to meet Student's unique and complex needs to make it possible for student to continue to be educated in the general education environment.

The School District made significant efforts to provide Student with supplemental aids and services and the resources for Student, but, even with these efforts, Student showed limited growth. The School District seeks to achieve a balance of the general education environment and the other educational needs of the student. Having determined that Student cannot be satisfactorily educated in the general education setting, the School District seeks to mainstream Student to the maximum extent appropriate.

COLLABORATIVE MANNER

Factor 3: The services are provided in a coordinated, collaborative manner by the "key" stakeholders.

The third prong of the Michael F. analysis requires the "key stakeholders" to provide services in a coordinated and collaborative manner. Michael F., 118 F.3d at 253. The school district is required to ensure parental participation in the ARD process, and it must make consistent efforts to reach consensus with over the relevant time period. 19 Tex. Admin. Code § 89.1050 (g).

However, the school district is not obligated to implement every parental request or suggestion. See, Lachman v. Illinois St. Bd. of Educ., 952 F. 2d 290, 297 (7th Cir. 988). No one member of an ARD Committee has veto power over the educational decision-making that is the ARD

Committee's overall responsibility. 34 C.F.R. §§ 300.321-300.322.

To prevail on this prong, Petitioner must prove the school "failed to implement substantial or significant provisions of the IEP." Bobby R., 200 F.3d at 349. Petitioner does not complain that any provision of the IEP was not implemented, but rather that it was not implemented with fidelity.

Petitioner complains the approach lacked objective and measurable goals. The evidence shows the goals were relatively clear. Even if the goals lacked more detail in describing behavior strategies, the IEP as a whole did not deny Student FAPE.

The IDEA does not require the levels of methodology and specificity Petitioner seeks in formulating an appropriate IEP. Although the amount of special education consult services seems somewhat arbitrary, Petitioner did not prove it was insufficient for the purpose of monitoring Student's performance. Recognizing that the needs of the child are not stagnant but evolving, the best educational programming will require continued adaptation based on the attention of the providers of support.

It is important to acknowledge the extensive experience of Student's teachers, not only as qualified professionals in the field of education, but with Student specifically. The Fifth Circuit has recognized the importance of the opinions of those individuals with the most immediate knowledge of a student's performance – the educators who work with the student on a daily basis. See Michael F., 118 F.3d at 253-54.

EDUCATIONAL BENEFIT

Factor 4: Positive academic and non-academic benefits are demonstrated.

The student must receive more than a de minimus educational benefit given the Student's unique circumstances. Andrew F., *supra*; Rowley, *supra*.

The school district is required to provide the student with a meaningful educational benefit that is likely to produce progress not regression or trivial advancement. The student does not need to

improve in every academic and non-academic area to receive an educational benefit. Houston, supra, 582 F. 3d at 583.

The determination of whether the student is receiving educational benefit while placed in the general education setting requires an evaluation of both the academic and nonacademic benefits. Id. Daniel R.R., supra, 874 F. 2d at 1048.

The fact that it is possible does not mean that it is required, or appropriate, under the IDEA. The student should be able to derive some actual educational benefit from Student's placement. Northside Indep. Sch. Dist., Dkt. No. 050-SE-1001 (SEA Tex. Jan. 4, 2002).

Although the additional supports recommended by Student's experts might "enhance" and "improve" the "gains" and "success" Student is experiencing, the IDEA does not require the District to implement them. See Zelazny, supra, 325 F.3d at 731 (expert's program showed district how to maximize student's potential, but IDEA does not require it be implemented).

The School District's program is reasonably calculated to provide Student with an educational benefit. Student's educational program is designed to be delivered in a mix of general and special educational settings. With supplemental aids and services, Student was able to make measurable progress on Student's IEP. However, the evidence also shows that Student received educational benefit and was able to be successful in the special education resource instruction setting.

It is important to acknowledge the extensive experience of Student's teachers, not only as qualified professionals in the field of education, but with Student specifically. The Fifth Circuit has recognized the importance of the opinions of those with the most immediate knowledge of a student's performance – the educators who work with the student on a daily basis. See Michael E., 118 F.3d at 253-54.

PROCEDURAL VIOLATIONS

To prevail on a claim of a procedural violation of the IDEA, Petitioner must establish that the

School District significantly impeded the parent's opportunity to participate in the decision-making process. See Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 857-58 (6th Cir. 2003) (analyzing predetermination under procedural prong of Rowley test); Rockwall Indep. Sch. Dist. v. M.C., No. 3:12-CV-4429, 2014 WL 112642573, at *9 (N.D. Tex. 2014), *aff'd*, 816 F.3d 329 (5th Cir. 2016); see also Adam J., 328 F.3d at 811-12. To do so, Petitioner must present "evidence of bad faith exclusion...or refusal to listen to or consider [the parent's] input." Rockwall, *supra*.

When Student enrolled in CCISD, Student already had valid evaluations from Student's prior school. Student's struggles were well-documented in Student's *** IEP. Student received *** in the general education environment, *** services, and specific goals targeted at Student's unique areas of need. The parent indicated that Student continues to struggle with reading and math but did not request additional testing in these areas.

The new district is only required to conduct a new evaluation "if determined to be necessary by the new public agency." 34 CFR §300.323. CCISD did not determine it to be necessary.

Petitioner asserts that the District should have evaluated Student for dyslexia at an earlier time before Spring 2017. A school district must conduct an evaluation "within a reasonable time after the school district is on notice of facts or behavior likely to indicate a disability." Dallas Indep. Sch. Dist. v. Woody, 865 F.3d. 303 (5th Cir. 2017). North East Indep. Sch. Dist., Dkt. No. 098-SE-0117 (TX SEA 2017).

Student's teacher did not see any indications that Student had dyslexia over the first three months that Student was enrolled. Student knew ***, was able to ***, ***, and was able to ***. (Tr. 461). A dyslexia evaluation was therefore not suspected before the parent's request.

Parent first brought forward a concern regarding dyslexia at the ARD meeting on January ***, 2018. On the basis of the parent's request, the District did initiate a dyslexia screener. Student was not screened for dyslexia services upon enrollment in CCISD because CCISD screeners take place during a student's *** grade year, ***. (R10: Tr. 153:23-25).2

The dyslexia screener was completed on February ***, 2018. (R11:1). The screener did indicate a reason to suspect dyslexia characteristics. However, in accordance with the Dyslexia Handbook, for students currently receiving special education and related services, consent for formal dyslexia testing must be decided by ARD Committee. (P14:82).

The ARD Committee convened to discuss formal dyslexia testing on April ***, 2018. The time frame between the completion of the dyslexia screener and the ARD date was thirty school days, due to the intervening time for Spring Break and other District holidays. (J42).

The formal dyslexia evaluation report was reviewed in ARD thirty school days after the report was completed, on September ***, 2018. (J19). The parent and the dyslexia teacher agreed prior to the ARD to start Student's dyslexia instruction the same date as the other students, which was about a week before the ARD Committee met on September ***, 2018. (Tr. 600:9-19; P9:7).

Although the global length of time between the time frame of the dyslexia screener and the ARD Committee meeting to formally accept the dyslexia evaluation may seem long, "the District is entitled to follow the procedures it did." See, Dallas ISD v. Woody (finding that a delay of 245 days from initial notice of Student's possible needs and completion of the evaluation were reasonable).

During Student's *** grade year, Student did receive instruction in the *** Program ***, which assisted with *** in *** grade reading, Student ***, participated in embedded reading, whole-group reading, and reading comprehension questions. (Tr. 462:9-21). These services were provided in combination with Student's *** instruction in math and ELA.

Student's dyslexia teacher indicated that although dyslexia services would have been helpful during Student's *** grade year, they were not critical because "[Student] was getting support and accommodations" in *** grade and "was getting support from the special education department [***]." (Tr. 173:8-15).

REQUEST FOR IEE

A parent has a right to an Independent Educational Evaluation (IEE) at public expense if the parent disagrees with the school district's evaluation subject to certain regulatory conditions. 34 C.F.R. § 300.502(b)(1). In response to the request for an IEE, the school district must either request a due process hearing to demonstrate that its evaluation is appropriate or ensure the IEE is provided. 34 C.F.R. § 300.502(b)(2).

If the school district provides evidence that its evaluation is appropriate then the parent may still obtain an independent evaluation, but it will not be provided at the school district's expense. 34 C.F.R. § 300.502(b)(3).

On April ***, 2018, Petitioner requested an IEE be conducted by the School District.

The IDEA's Child Find requirement obligates public school districts to identify, locate, and evaluate students with suspected disabilities "within a reasonable time after the school district is on notice of facts or behavior likely to indicate a disability." Dallas Indep. Sch. Dist. v. Woody, 865 F.3d 303, 320 (5th Cir. 2017). An unreasonable delay in complying with this duty "may constitute a procedural violation of the IDEA." D.K. v. Abington Sch. Dist., 696 F.3d 233, 249–50 (3d Cir. 2012).

The presumption of the appropriateness of the District's general education program for the Student withstands challenge in this dispute. Petitioner did not meet Petitioner's burden to show that the District's program for the Student failed to provide a FAPE, the District violated the IDEA, or the Student needed specially designed instruction.

FINDINGS OF FACT

1. CCISD did not violate the IDEA and deny Student a free appropriate public education during the relevant time period.

2. CCISD did not violate the IDEA by failing to evaluate Student in all areas of suspected disability and need, including a failure to evaluate Student for a Specific Learning Disability (SLD) and an auditory processing disorder under the IDEA.
3. CCISD did not violate the IDEA by failing to grant Parent's request for an Independent Educational Evaluation (IEE) of Student in all areas of suspected disability and need.
4. CCISD did not fail to identify Student as eligible for special education and related services as a Student with a Specific Learning Disability in Basic Reading, Reading Fluency, Reading Comprehension, and Written Expression.
5. CCISD did not violate the IDEA by failing to provide Student with comparable services in speech therapy and ***/reading comprehension intervention between September **, 2017 and October **, 2017.

CONCLUSIONS OF LAW

1. The student is eligible for a free appropriate special education program under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 CFR §300.301 and 19 T.A.C. §89.1011, and related statutes and regulations.
2. The Texas one-year statute of limitation (SOL) began running one year before the date the Complaint was originally filed on January **, 2018. 19 Texas Administrative Code § 89.1151(c).
3. The District is a Local Education Agency responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding. The District is required to properly identify, evaluate, and serve the student, and provide each disabled child with a FAPE pursuant to the IDEA, 20 U.S.C. §§ 1400 et seq., 34 CFR §300.301, and 19 T.A.C. §89.1011.
4. Petitioner bears the burden of proof on all issues raised in Petitioner's complaint,

including challenges to the proposed IEP, BIP, and LRE placement. Schaffer v. Weast, 546 U.S. 49, 62 (2005) , 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); Teague Ind. Sch. Dist. v. Todd L., 999 F. 2d 127, 131 (5th Cir. 1993).

5. Petitioner did not meet the burden of proving the School District failed to provide FAPE during the 2017-2018 school year. Petitioner did not meet the burden of proving the current educational plan for 2018-2019 fails to provide FAPE. Petitioner did not meet the burden of proving the district failed to provide an appropriate educational placement for the student. Schaffer v. Weast, *supra*; Andrew F. v. Douglas County School District RE-1, 137 S.Ct. 988 (2017); and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997); 34 C.F.R. §§ 300.1, 300.17.
6. IDEA creates a presumption under the law favoring a school district's educational plan. Schaeffer v. Weast, *supra*; and Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984).
7. Petitioner did not prove that the district's proposed educational plan fails to contain the essential components of an IEP including baselines, present levels of performance, and measurable goals. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a); 19 Tex. Admin. Code § 89.1055.
8. The IEP developed by the ARD Committee is reasonably calculated to enable the student to make meaningful progress and is appropriately individualized to meet Student's needs. Rowley, *supra*.
9. Student's educational program satisfied the standard required at all relevant times. The educational program is individualized on the basis of the student's assessment and performance; the program is administered in the least restrictive environment; the services and supports are provided in a coordinated and collaborative manner by the key stakeholders; and positive academic and non-academic benefits are demonstrated. Rowley, *supra*; 34 C.F.R. §300.552, and 19 T.A.C. §89.1055; Andrew F., *supra*; and Michael F., *supra*; 34 C.F.R. §300.300, 34 C.F.R. §300.530, 19 T.A.C. §89.1055, and Tex. Educ. Code §37.004.

10. Student's IEP during the relevant time period was individualized and appropriately ambitious to ensure Student made meaningful educational progress. The IEP is written to meet Student's unique needs even if it is not in the exact manner an outside expert recommends. The IEP provided Student a FAPE during the relevant time period and was consistent with the requirements. 20 U.S.C. §1414(c)(1)(B)(iii)-(iv); 34 C.F.R. § 300.324(a)(2)(v), (a)(3)(ii), Andrew F., 137 S.Ct. at 999-1000 (2017).
11. The district's procedures in making decisions about the least restrictive educational placement for the student meet the requirements articulated in Rowley, *supra*, and 19 T.A.C. §89.1055; Andrew F., *supra*; and Michael F., *supra*; 34 C.F.R. §300.300, 34 C.F.R. §300.530, 19 T.A.C. §89.1055, and Tex. Educ. Code §37.004.
12. The Student's placement and schedule of services for the 2017-2018 school year, and the District's current placement and schedule of services for the 2018-2019 school year, place the Student in the LRE. 20 U.S.C. § 1412(a)(5)(A), 34 CFR §300.300, and 19 T.A.C. §89.1055. See Daniel R.R., *supra*, and Michael F., *supra*.
13. The combination of regular education and special education instruction complies with the IDEA's mandate that Student be included with non-disabled peers to the maximum extent appropriate. See Daniel R.R., 874 F.2d 1036 at 1050 (5th Cir. 1989) (explaining IDEA's mandate for a continuum of placements may require a combination of regular education and special education instruction).
14. Student was placed in the general education environment to the maximum degree feasible that allowed Student to continue to make academic and non-academic progress. Student's placement meets the statutory preference for educating Student, to the maximum extent appropriate, in general education. 20 U.S.C. § 1412(a)(5)(A).
15. The School District is fulfilling the obligation to notify parents early of upcoming meetings and schedule meetings at an agreeable time and place. 34 C.F.R. 300.322(a). Parent has attended every ARD meeting and been a key participant.
16. The School District did not fail to provide a collaborative and cooperative ARDC process

that resulted in denying Parents the meaningful opportunity to participate in the IEP planning process. 20 U.S.C. § 1414(d)(1)(B)(i), 34 C.F.R. § 300.322(a), and 19 Tex. Admin. Code § 89.1050(g).

17. The School District's failure to provide all required components of prior written notice explaining its proposed actions or refusals did not result in a loss of educational opportunity or infringe upon Parents' opportunity to participate in the IEP process. The errors were educationally harmless. Adam J. ex rel. Robert J. v. Keller Independent School Dist., 328 F.3d 804, 812 (5th Cir. 2003).
18. The School District has developed an educational program for the student allowing the student an opportunity to make educational and non-educational progress in accordance with the standard of Rowley, supra; 34 CFR §300.552; and 19 T.A.C. §89.1055.
19. The School District's program was reasonably calculated to provide Student with the requisite educational benefits. Student's IEPs are designed to and did provide Student with a "meaningful" educational benefit." Michael F., 118 F. 3d 245, 248, 253 (5th Cir. 1997); Richardson Independent School Dist. v. Michael Z., 561 F.Supp.2d 589, 602 (N.D. Tex. 2007). Rowley, 458 U.S. at 192, 102 S.Ct. 3034.
20. Petitioner did not meet Petitioner's burden of demonstrating the District did not timely re-evaluate Student in all areas of suspected need. 34 C.F.R. § 300.303(b)(2).
21. There is no data supporting the regression/recoupment concerns necessary to support Student's eligibility for ESY under State law. See 19 T.A.C. § 89.1065 (providing ESY is only appropriate when it is reasonably expected the student will suffer severe and substantial regression on critical goals (goals established by the ARD Committee) over the summer that cannot be recouped within a reasonable time).
22. Petitioner is not entitled to any award or reimbursement as Petitioner did not meet Petitioner's burden to prove any violation of the IDEA by Respondent.

ORDERS

1. Based upon the foregoing findings of fact and conclusions of law, it is ORDERED:
2. All claims arising before September ***, 2017 are DISMISSED.
3. All claims arising under any law other than the Individuals with Disabilities Education Act (IDEA) are DISMISSED as outside the jurisdiction of the hearing officer including Petitioner's requests for attorneys' fees, expert witness costs, and other litigation costs.
4. CCISD is ORDERED to convene an ARD Committee meeting within 15 school days to consider the December ***, 2018 recommendations of the independent evaluator, and to determine whether student is eligible for special education and related services as a Student with a Specific Learning Disability in Basic Reading, Reading Fluency, Reading Comprehension, and Written Expression, and to develop an IEP based thereon.
5. CCISD is ORDERED to convene an ARD Committee meeting within 15 school days to provide an appropriate plan for the provision of special education services during the 2019 summer to address student's deficits in Basic Reading, Reading Fluency, Reading Comprehension, and Written Expression, including but not limited to:
 - a. academic language therapy services by a Certified Academic Language Therapist, licensed dyslexia therapist, or licensed dyslexia practitioner, licensed under Chapter 403 of the Texas Occupations Code;
 - b. *** support in the form of occupational therapy and assistive technology by a qualified provider of the District's choosing.
6. CCISD is ORDERED to fund independent Occupational Therapy, Assistive Technology, and Speech Evaluations of Student by an evaluator of the Parent's choosing so as to obtain recommendations relating to Student's programming and services to address Student's educational needs.
7. CCISD is ORDERED to fund an independent evaluation of Student for an Auditory Processing Disorder by an evaluator of the Parent's choosing so as to obtain

recommendations relating to Student's programming and services to address Student's educational needs.

8. CCISD is ORDERED upon receipt of the above evaluations, within fifteen school days to convene an ARD meeting and develop a new IEP for Student which:
 - a. Accurately reflects the Student's present levels of academic achievement and functional performance;
 - b. Includes appropriate goals and short-term objectives that address the Student's academic and behavior needs;
 - c. Includes appropriate related services as recommended by the evaluators referenced above.
9. All other of Petitioner's requests for relief are DENIED.
10. All other relief requested by either party not specifically granted in these Orders is hereby DENIED.

SIGNED on February 5, 2019.

Ray E Green

RAY E. GREEN
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NOTICE TO THE PARTIES

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