

DOCKET NO. 286-SE-0616

STUDENT B/N/F PARENT AND  
PARENT,  
Petitioner

v.

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§

BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

\*\*\* (Student) by next friends \*\*\* and \*\*\* (Parents) (collectively, Petitioner) requested impartial due process hearing (Complaint) pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq. The Killeen Independent School District (Respondent or the District) is the respondent to the Complaint. The Complaint was subsequently amended (Amended Complaint). Petitioner alleges the District denied Student a free appropriate

give the District's Board of Trustees (Board) time to consider the proposed settlement agreement. The Board met on August 23, 2016, and did not approve the proposed settlement agreement. The due process hearing was reset to November 15, 2016.

On November 2, 2016, the due process hearing was continued to February 2017, to give the Admission, Review, and Dismissal committee (ARDC) time to review and file a report in October 2016 and for Petitioner to decide whether to file an amended due process hearing request after the ARDC meeting.

On December 7, 2016, Petitioner filed the Amended Complaint—per agreement of the parties—the due process hearing remained scheduled for February 6, 2017. The parties agreed

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due May 5, 2017, and the decision due date was extended to ~~10~~ 19, 2017, for good cause shown.

5. Does the November 2016 IEP deprive Student of a FAPE designed to meet Student's unique educational needs in that it: (1) fails to recognize Student's SLD in \*\*\*; (2) fails to include measurable objectives in the goal; (3) fails to ensure sufficient \*\*\* instruction; (4) fails to provide Student with Extended School Year (ESY) services for summer 2017 or create any procedure in which Student's needs for ESY will be determined; and/or (5) fails to provide a Behavioral Intervention Plan (BIP) for Student.

B. Petitioner's Requested Relief

1. Find that Student is eligible as a student with an SLD pursuant to the IDEA.
2. Order the District to hire an independent expert qualified to provide direction and guidance to Student's ARDC



\*\*\* Grade/ \*\*\* Grade, \*\*\* school (October 2015present)

10. Principal<sup>18</sup>
11. Assistant Principal, \*\*\* school<sup>19</sup>
12. \*\*\* teacher, \*\*\* grade<sup>20</sup>
13. \*\*\* teacher, \*\*\* grade<sup>21</sup>
14. General Education Counselor, \*\*\* grade<sup>22</sup>
15. General Education \*\*\* teacher, \*\*\* grade<sup>23</sup>
16. Inclusion \*\*\* teacher, \*\*\* grade<sup>24</sup>
17. Intervention \*\*\* teacher, \*\*\* grade<sup>25</sup>
18. \*\*\* teacher, \*\*\* grade<sup>26</sup>
19. \*\*\* teacher, \*\*\* grade, spring 2017<sup>27</sup>

#### IV. FINDINGS OF FACT

##### A. Background

1. Student resides with Parents within the boundaries of the District, and Student has attended school since \*\*\*.<sup>28</sup>
2. Student age \*\*\*, attends \*\*\* grade at a District \*\*\* school.<sup>29</sup>
3. At age \*\*\*, Student was diagnosed with ADHD, for which Student continues to take medication.<sup>30</sup>

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<sup>18</sup> Tr. at 1326 (credentials).

<sup>19</sup> Tr. at 588589 (credentials).

<sup>20</sup> Tr. at 876877 (credentials).

<sup>21</sup> Tr. at 831, 842 (credentials).

<sup>22</sup> Tr. at 1449, 1485 (credentials).

<sup>23</sup> Tr. at 12361237 (credentials).

<sup>24</sup> Tr. at 466467 (credentials).

<sup>25</sup> Tr. at 10061007, 1082 (credentials).

<sup>26</sup> Tr. at 11081110, 1152 (credentials).

<sup>27</sup> Tr. at 937, 992 (credentials).

<sup>28</sup>



12. In April 2014, Student did not meet the minimum on the STAAR in \*\*\* and \*\*\*.<sup>40</sup>
13. The District provided Student with \*\*\* (\*\*\* ) and tutoring, both strategies for assisting students at risk of failing the STAAR.
14. In September, January, and May of 2014, Student received a “proficient” score in \*\*\* on the \*\*\* (\*\*\*). The \*\*\* report noted that Student may need to work on quick retrieval of \*\*\* facts.<sup>42</sup>
15. Student’s April 2014 Section 504 accommodations included checking for understanding; \*\*\*; using an assignment notebook and organizational strategies; and extended time for written assignments.<sup>43</sup> Student was not provided small group instruction as recommended by Student’s pediatrician.<sup>44</sup>
16. On May \*\*\*, 2014, the Section 504 committee determined Student continued to qualify for services due to ADHD, but that diagnoses of developmental delay and \*\*\* did not substantially limit any of Student’s major life activities.<sup>45</sup>
17. Student’s attendance was average throughout the second semester when Student missed \*\*\* days.<sup>46</sup>
18. Student passed all of Student’s grade classes.<sup>47</sup>

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24. The ARDC, including Parents, met on April \*\*\*, 2015, consider the IHI form and letter from Student's pediatrician. The ARDC decided Student did not need specialized instruction.<sup>57</sup>
25. The Section 504 committee met on May \*\*\*, 2015, for a periodic evaluation of Student's eligibility and service plan. Accommodations were added to Student's plan in

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distractible<sup>72</sup> Mother did about 80 percent of Student's<sup>\*\*\*</sup> homework because she did not want Student to fail. District staff asked Mother to stop helping Student with homework so they could determine what Student could do on Student's<sup>own</sup>.<sup>73</sup>

38. Mother tutored Student in <sup>\*\*\*</sup> for 15-20 hours per week.<sup>74</sup>
39. Student usually scored in the 20s or 30s on tests<sup>\*\*\*</sup>. The tests were sent home so Student could correct the missed problems and bolster Student's<sup>grade</sup>. Mother made the corrections for Student, who did not understand how to do the problems correctly.<sup>75</sup>
40. Parents and Student's <sup>\*\*\*</sup>teacher regularly communicated via email about Student's assignments, progress, and health.<sup>76</sup>
41. In to

- 45. In \*\*\* class, Student was respectful to the teacher and had several <sup>82</sup>friends.
- 46. Student's time spent on social media and \*\*\* absences from\*\* class affected Student's ability to timely turn in work.<sup>83</sup> When Student performed the tasks, Student~~s~~<sup>84</sup> as well as other students in the \*\*\* class and grasped the concepts.
- 47. Student's\*\*\* grade for the year was \*\*\*.The grade reflects \*\*\*grade\*\*\* curriculum in general education, with regular assignments. Student's missing and late work~~ed~~<sup>85</sup> contributed to Student's low average for the year.

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d. Spring 2016 STAAR

53. Student did not pass the \*\* or \*\*\* sections of the spring 2016 STAAR even with Section 504 accommodations. Student met the STAAR progress measure in \*\*\* but not in \*\*.
- a. Student missed passing the \*\* STAAR by one answer demonstrating progress from the previous year's \*\*\* STAAR results. When students show progress, the STAAR is compared with the previous year's STAAR to ascertain if students are meeting expected growth, even if the STAAR is failed. Student met expected growth from the previous STAAR.
  - b. To prepare Student for the STAAR, Student's \*\*\* teacher included Student in a

### 3. Dyslexia Screening

55. On April \*\*\*, 2016, the Section 504 committee met to review Student's dyslexia screening conducted at Parents' request February \*\*\*, 2016.<sup>99</sup> The committee determined Student does not exhibit characteristics of dyslexia and, therefore, did not qualify for dyslexia services.<sup>100</sup> The Section 504 committee considered Student's other diagnoses by Student's pediatrician, including \*\*\*.<sup>101</sup>
- a. Mother and Father were in attendance and agreed with the Section 504 committee's determinations, including revisions to Student's Section 504 plan.<sup>102</sup>
  - b. The Section 504 committee developed an updated plan effective April \*\*\*, 2016. Accommodations in all classes included note taking assistance; extended time for test taking, with minimized distractions; \*\*\*; reminders to stay on task; permission to \*\*\*. In \*\*\*, Student was to receive shortened assignments and additional tutoring during \*\*\*. STAAR test accommodations included small group administration; extra time; the use of \*\*\*; and frequent breaks.<sup>103</sup>
- 56.

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- i. During the 2015~~2016~~ school year, Mother sent numerous emails to school staff stating Student would not be at school due to illness. The emails did not divulge that Student was \*\*\*.<sup>117</sup>
- ii. On June \*\*\*, 2016, Mother emailed the Principal and General Education Counselor, thanking them for “nurturing the minds and spirits of my girls this year. \*\*\* spirits soar and \*\*\* look forward to coming to school each day. . . . [S]eeing how happy \*\*\* truly makes my job as a mother so much easier.”<sup>118</sup> Not until the due process hearing in February 2017 did Mother admit she sent the June \*\*\*, 2016 email to ensure Student’s transfer from the \*\*\* school to the \*\*\* school would be approved for \*\*\* grade.<sup>119</sup>
- iii. None of Mother’s emails gave the District a reason to suspect Student’s absences were due to an ED or another disability.

### C. Summer (2016)

60. At the June 8, 2016 resolution session held after the Complaint was filed, Parents declined the District’s offer to provide an FIE to include cognitive, achievement, and psychological evaluations.<sup>120</sup>
61. By letters dated June \*\*\*, 2016, and August \*\*\*, 2016, Student’s pediatrician recommended Section 504 accommodations for Student. Except for reduced paper/pencil tasks, the District had already implemented all of the recommended accommodations.<sup>121</sup>
62. In the summer of 2016, Mother suspected Student might have an ED. She did not convey her suspicion to the District because the District did not ask.<sup>123</sup>
63. Upon referral by Petitioner’s attorney, Petitioner’s expert Clinical Psychologist completed a private psychological evaluation of Student on August \*\*\*, 2016.<sup>124</sup> The Clinical

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<sup>117</sup> Tr. at 713714 (Mother).

<sup>118</sup> Resp. Ex. 57 at 12; see also at 694695 (Mother).

<sup>119</sup> Tr. at 694695, 736737 (Mother); Resp. Ex. 57 at 12.

<sup>120</sup> Tr. at 76, 93 (Exec. Dir. of Special Ed.); Resp. Ex. 34.

<sup>121</sup> Tr. at 410411 (Special Ed. Coord. for Campus Ops.); Pet. Ex. 124; Resp. Ex. 151.

<sup>122</sup> Resp. Ex. 64 at 6, 9, 11. The Clinical Psychologist recommended similar accommodations. Tr. at 197; 200 (Clinical Psychologist); Pet. Ex. 14 at 10.

<sup>123</sup> Tr. at 619 (Mother).

<sup>124</sup> Pet. Ex. 14 at 10.



had 45 school days excluding days Student was absent to complete the FIE.<sup>133</sup> The FIE was timely completed in October 2016.<sup>134</sup>

69. The District provided Parents with a Notice of Procedural Safeguards on August \*\*\*, 2016.<sup>135</sup>

D. \*\*\* Grade (2016-2017)

1. Beginning of \*\*\* grade

70. At the beginning of \*\*\* grade Mother—\*\*\*—\*\*\*. \*\*\*. 136

71. From the first day of school until implementation of Student's IEP November \*\*\*, 2016, Student received accommodations in all classes through a Section 504 plan.<sup>137</sup>

72. As of August \*\*\*, 2016, Mother no longer did Student's homework and Student should not complete it \*\*\*self. Student \*\*\*.<sup>138</sup>

73. Although Student was not in special education the beginning of the year Student was enrolled in an inclusion\*\* class, a general education class in which a special education teacher gives support to students. Student received inclusion support for \*\*\* minutes daily. Student also received\*\* intervention for \*\*\* minutes\*\*\* a week.<sup>139</sup> In addition, Student was pulled out for test administration in small groups.<sup>140</sup>

74. On September \*\*\*, 2016, the Section 504 committee met to address Student's attendance issues. Student had missed at least one class period on T ~~Outs~~ ~~By~~ ~~10~~ / MCB >> BDC .0 Tc -0.03 T

- a. Parents did not attend the meeting because they believed the District would never find Student eligible for special education.<sup>142</sup>
  - b. All Section 504 classroom and STAAR test accommodations from the 2016 plan were to remain in place, with the following additions: checks for understanding; extended time for assignments in all subject areas; and \*\*\* assignments reduced by 50%, with the teacher ensuring all concept areas are covered.
  - c. Beginning September \*\*\*, 2016, Student was to receive \*\*\* minutes of one-to-one sessions of \*\*\* intervention \*\*\* weekly during Student's class.
  - d. To help Student improve Student's self-esteem, weekly counseling with the General Education Counselor was added to the Section 504 plan.<sup>143</sup>
  - e. The Section 504 committee agreed pending Parents' consent to consider evaluating Student to determine if Student is substantially limited by \*\*\*. The Section 504 committee decided Student's diagnosis of ODD does not limit Student in the academic setting.<sup>144</sup>
75. By letter dated October \*\*\*, 2016, Petitioner's attorney notified the District that Student had \*\*\*, stating Parents wanted the District to be aware of Student's academic struggles and feelings of being overwhelmed and \*\*\*. The letter was provided to the District Social Worker and the FIE multidisciplinary team.<sup>145</sup>
76. On October \*\*\*, 2016, Student's Section 504 committee, including Parents, met to revise Student's Section 504 services plan due to the changes in Student's emotional health and Student's struggles with attending school. \*\*\* and \*\*\* were added as areas of Section 504 eligibility for Student.<sup>146</sup>
- a. Student's \*\*\* total or partial absences during the first \*\*\* school days were the biggest hindrance to Student's academic success.<sup>147</sup>
  - b. Student was to begin having \*\*\* with the General Education Counselor, who would help Student overcome pending challenges for the day.<sup>148</sup>

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<sup>142</sup> Resp. Ex. 150 at 1617.

<sup>143</sup> Tr. at 1364-1365 (Principal); Tr. at 1457 (Gen. Ed. Counselor); Resp. Ex. 112.

<sup>144</sup> Tr. at 552-554 (Section 504 Coord.); Tr. at 1362 (Principal); Pet. Ex. 23 at 1; Pet. Ex. 2 Resp. Ex. 112 at 1910-1912; Resp. Ex. 116 at 25.

<sup>145</sup> Tr. at 424-

c. A \*\*\*

- f. The FIE report contained recommendations for the ARD Committee in developing Student's IEP, including recommendations related to inattention/executive functioning, \*\*\*, academics, and ADHD.<sup>156</sup>
78. At the time of the FIE, Student had been absent<sup>157</sup> \*\*\* full days and \*\*\* partial days out of \*\*\* days of school, including \*\*\* absences in General Education and \*\*\* absences in Inclusion<sup>157</sup>. Student returned with doctor's notes for many of Student's absences<sup>157</sup>.
79. When the FIE was conducted, Student was failing \*\*\* with a 48 average and \*\*\* with a 51 average had "incomplete" in \*\*\* and \*\*\*; and was passing \*\*\* and \*\*\* with a 100 average in each class.<sup>158</sup>
80. Student was assessed in all areas of suspected disability and the FIE was sufficiently comprehensive to identify all of Student's educational and related services needs, whether or not those services are ~~only~~ linked to the disability category in which Student has been classified.<sup>159</sup>
- a. Student met criteria for eligibility as a student with ED. For a period of 2 months or more, Student had exhibited \*\*\*.<sup>160</sup>

- i. The Woodcock Johnson IV Tests of Achievement covered all eight areas for learning disability under the IDEA.<sup>165</sup>
- ii. Student did not demonstrate academic or cognitive weakness in any area on the Woodcock Johnson IV Tests of Achievement.<sup>166</sup> Student's overall









- b. Student's placement is not anticipated to harmfully affect Student or other students<sup>209</sup>
- c. Student does not need to be placed in a\*\*\*\* classroom. Student's\*\* skills

- a. The above information is not a violation of the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a) or the Access to Information Act (R.S.Q. 3.01) or the Access to Information Act (R.S.Q. 3.01).



- c. The \*\*\* score was in the average range. The progress trend was upward with scores of \*\*\* in spring 2016; \*\*\* in fall 2016; and \*\*\* in winter 2017.<sup>238</sup>
108. The ARDC reviewed Student's progress on three measurable annual IEP goals that had been effective since November \*\*\*, 2016.<sup>239</sup> During the \*\*\*-week period since the IEP had been implemented, Student was performing at the same level on the \*\*\* goal and Student's work completion in the four core subjects had improved.<sup>240</sup>
- a. On the \*\*\* goal, Student had applied strategies to come up with the correct answer \*\*\*% of the time. Student was to achieve \*\*\*% accuracy by November \*\*\*, 2017. By January 2017, Student's progress remained at \*\*\*%. Student's progress
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112. Efforts to support Student in the educational setting as set out in the revised IEP include Counseling services; intensive, individual interventions other than special education (Tier

## V. APPLICABLE LAW, ANALYSES, AND CONCLUSIONS

### A. The IDEA and Its Implementing Regulations

Under the IDEA, and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet state standards (including IDEA requirements); (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in accordance with a properly developed IEP. States receiving federal assistance under the IDEA must: (1) provide a FAPE to each disabled child within its boundaries and (2) ensure that such education is in the best possible.<sup>263</sup>

### B. Child Find

Student's eligibility for special education services as a child with OHI and ED is not in dispute. Instead, Petitioner alleges --2(, e)udool, o0.021 Tcde, el

from grade to grade.<sup>266</sup> A request for an initial FIE may be made by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.<sup>267</sup> But, because the Child Find obligation is affirmative one, a parent is not required to request that the school district identify and evaluate a child.<sup>268</sup>

Under Texas law referral of students for an FIE must be a part of the district's overall, general education referral or screening system.<sup>269</sup> Prior to referral, students experiencing difficulty in the general education classroom should be considered for support services available to students, such as tutorial, remedial, compensatory, and other academic or behavior support services. If a student continues to experience difficulty after the provision of interventions, district personnel must refer the student for an FIE.<sup>270</sup> A district can violate its Child Find duty by repeatedly referring a student for interventions rather than evaluating the student's need for special education and related services.<sup>271</sup>

Petitioner argues the District has known since Student was in \*\*\* grade Student has ADHD and inappropriately provided Student with Section 504 accommodations instead of placing Student in special education.<sup>272</sup> But the existence of a disability such as ADHD does not automatically trigger a duty to conduct an FIE. Even if the student has some academic difficulties. The Child Find duty is triggered when the school district has reason to suspect the disability may need to be addressed with special education services. Then, the school district must evaluate the student within a reasonable amount of time.<sup>273</sup>

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<sup>266</sup> 34 C.F.R. § 300.111(c).

<sup>267</sup> 34 C.F.R. 300.301(b); 9 Tex. Admin. Code § 89.10(a).

<sup>268</sup> D.G. v. Flour Bluff Indep. Sch. Dist., 481 Fed. App'x 887 (5th Cir. 2012, unpublished).

<sup>269</sup> 19 Tex. Admin. Code § 89.1011.

<sup>270</sup> El Paso Indep. Sch. Dist. v. R.R., 567 F. Supp. 2d 918, 947 W.D. Tex. 2008, rev'd on o.g., 591 F.3d 417 (5th Cir. 2009).

<sup>271</sup> The appropriateness of the Section 504 plan is outside the hearing officer's jurisdiction and is not at issue.

<sup>272</sup> Alvin Indep. Sch. Dist. v. A.D., 503 F.3d 378, 383 (5th Cir. 2007); Richard R., 567 F.Supp.2d at 950; Flour Bluff, 481 Fed. App'x at 893.

The evidence shows that until August 2016, the District had no reason to suspect Student needed special education and related services to address Student's



Petitioner did not meet Petitioner's burden of proof to show the District violated Child Find duty by failing to timely identify Student as a child with an eligible disability in need of special education and related services.

## 2. The District properly evaluated Student

The District's October 2016 FIE was appropriate, timely, and correctly identified Student as a child with OHI and ED, but not an SLD. Petitioner presented no evidence to challenge the appropriateness of the 2016 FIE except for the way in which Student was assessed for an SLD. Petitioner did not prove the FIE was incomplete or insufficient, or that it failed to comply with IDEA requirements. The hearing officer finds that the FIE does, in fact, comply with all IDEA requirements.<sup>277</sup>

Specifically, Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information from Parents which enabled the multidisciplinary team to determine Student's eligibility as a child with OHI and ED. The FIE multidisciplinary team assessed Student in all areas of suspected disability. The FIE report was sufficiently comprehensive to identify all of Student's educational and related services' needs and provided the ARDC with information necessary to develop Student's IEP.

The FIE multidisciplinary team correctly used the patterns of strengths and weaknesses model to determine Student does not have an SLD. The model is consistent with the IDEA and Texas law.<sup>278</sup> Petitioner referenced no legal requirement that the District provide Parents with the criteria used to assess Student for an SLD. As such, the hearing officer finds the District committed no procedural violation in that regard. Even if Petitioner prevailed on this issue, Petitioner's requested remedy that the District must post the SLD criteria it uses on its website is moot. The evidence shows the District's SLD criteria are already posted on its website.

<sup>277</sup> 34 C.F.R. §§ 300.301, 300.303, 300.311.

<sup>278</sup> 34 C.F.R. §§ 300.8(c)(10), 300.307, 300.309(a)(1); 19 Tex. Admin. Code § 89.040(c)(9)(B)(ii)(11).

The hearing officer concludes that prior to November \*\*\*, 2016, the District did not deny Student a FAPE by failing to correctly identify and evaluate Student. The hearing officer also finds the District was not legally required to provide Parents with written criteria identifying Student would qualify for an SD. Finally, the hearing officer finds the District utilized criteria consistent with the IDEA and Texas law in denying Student eligibility as a student with an SLD.

C.

However, at an ARDC meeting held May \*\*\*, 2015, just \*\*\* days before the accrual date for this proceeding, the District gave Parents a Notice of Procedural Safeguards.

As relevant to this proceeding, a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a

involved in the decisionmaking process regarding Student's IEP. Parents were not denied opportunity for meaningful participation in Student's educational process and Student did not suffer any loss of educational opportunity as a result of any procedural error by the District.<sup>285</sup>

#### D. Provision of FAPE

Upon a finding that a child has a disability, an ARDC must develop an IEP for the child.<sup>286</sup> The IEP must meet specific requirements of IDEA and Texas law.<sup>287</sup>

The U.S. Supreme Court first addressed the question of what an IEP provides a FAPE 35 years ago in Board of Education of Hendrick Hudson Central School District v. Rowley, Westchester County, 458 U.S. 176 (1982). The Fifth Circuit summarized the Rowley standard:

[An IEP] need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him 'to benefit' from the instruction. In other words, the IDEA guarantees only a 'basic floor of opportunity' for every disabled child, consisting of 'specialized instruction and related services which are individually designed to provide educational benefit.' Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum, denominated rather, an IEP must be 'likely to produce progress, not regression or trivial educational advancement.' In short, the educational benefit that an IEP is designed to achieve must be 'meaningful.' (internal citations omitted).<sup>288</sup>

In 2017, in *Endrew F. v. Douglas Cnty. Sch. Dist.*, the Supreme Court revisited the question of what constitutes a FAPE and concluded a FAPE "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>289</sup>

<sup>285</sup> 34 C.F.R. § 300.13(a)(2)(ii), (iii).

<sup>286</sup> *R.H. v. Plano Indep. Sch. Dist.* 307 F.3d at 1007; *Cypress Fairbanks Indep. Sch. Dist.* 118 F.3d at 247; 20 U.S.C. § 1415(b)(1).

<sup>287</sup> 34 C.F.R. §§ 300.320-300.324; 19 Tex. Admin. Code § 89.1055.

<sup>288</sup> *Bobby R.* 200 F.3d at 347, citing to *Cypress Fairbanks*, 118 F.3d at 247.

<sup>289</sup> *Endrew F. v. Douglas Cnty. Sch. Dist.* 137 S. Ct. 988, 1001 (2017); *Rowley* 458 U.S. 176, 181 (1982); *Sed. v. Warren Indep. Sch. Dist.* 117 LRP 17212 (E.D. Tex. 2017) (unpublished).

Since at least 1997, the Fifth Circuit has tied the provision of a FAPE to an inquiry into a child's unique circumstances, a standard that is in alignment with the Endrewing.<sup>290</sup> The Fifth Circuit has set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These factors are whether (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the LRE; (3) the services are provided in a coordinated and collaborative manner by the key "stakeholders;" and (4) positive academic and nonacademic benefits are demonstrated.<sup>291</sup> The factors need not be accorded any particular weight or be applied in any particular way. Instead, they are indicators of an appropriate IEP.<sup>292</sup>

The evidence shows that the ARDC complied with the IDEA's regulatory requirements, Texas law, and relevant case law in developing an IEP reasonably calculated to provide a meaningful educational benefit to Student.<sup>293</sup>

1. Student's IEP was individualized, based on Student's assessments and performance

The evidence shows that, when developing Student's IEP, the ARDC considered Student's strengths, Parents' concerns, the results of Student's most recent evaluations, and Student's

Petitioner complains that the IEP ~~does~~ recognize Student's SLD in <sup>\*\*206</sup>. But, as addressed ~~supra~~, Student has no SLD in <sup>\*\*\*</sup>. Petitioner further contends the IEP does not include measurable <sup>\*\*\*</sup>

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2. The IEP was administered in the LRE

The IDEA's LRE provision requires that students with disabilities receive their education

district's administrators.<sup>304</sup> All members of the ARDC must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARDC concerning required elements of the IEP must be made by mutual agreement, ~~in~~<sup>305</sup>

Petitioner offered no evidence of any lack of coordination or collaboration in the development of Student's IEP. Instead, the evidence shows Parents fully participated in the ARDC meetings. Although Parents have the right to provide meaningful input, the right "is simply not the right to dictate the outcome and obviously cannot be measured as<sup>306</sup> such." The ARDC was not required to rely solely on outside assessments or to act as Parents requested.<sup>307</sup>

Since implementation of the IEP, ~~the~~<sup>308</sup> Student's \*\*\* teachers and the \*\*\* School Principal confer at least weekly about Student's progress; the Social Worker converses weekly with Mother; and there is regular communication between Parents and District personnel regarding Student's education.

The hearing officer finds that, ~~no~~<sup>309</sup> these facts, Student's educational services are being provided in a collaborative and coordinated manner by key stakeholders.

#### 4. Positive academic and nonacademic benefits

The evidence shows ~~the~~<sup>310</sup> IEP was reasonably calculated to provide Student with academic and nonacademic benefits given ~~the~~<sup>311</sup> Student's unique circumstances. Nothing in the IDEA requires a school district to guarantee progress<sup>308</sup>. At the time of the due process hearing, the IEP had been in effect for a little more than \*\*\* months, during which time Thanksgiving holidays and the winter break occurred. Even though Student missed \*\*\*\* times after the IEP was implemented, Student had maintained ~~the~~<sup>312</sup> Student's baseline score on the IEP \*\*\* goal as of the January \*\*\*, 2017

<sup>304</sup> 34 C.F.R. § 300.321(a).

<sup>305</sup> 19 Tex. Admin. Code § 89.1050(g).

<sup>306</sup> White ex rel. White v. Ascension Rb Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003).

<sup>307</sup> Warren Indep. Sch. Dist., 117 LRP 17212 (E.D. Tex. 2017).

<sup>308</sup> Cypress Fairbanks, 118 F.3d at 242-48, quoting Rowley, 458 U.S. at 188-89.





ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's requested relief is denied

SIGNED May 23, 2017.

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