### **DOCKET NO.219-SE-0721**

STUDENT b/n/f PARENT	§ BEFORE A SPECIAL EDUCATI	ON
W.	§ HEARING OFFICER FOR THE	
v.	§ HEARING OFFICER FOR THE	
PEARLAND INDEPENDENT SCHOOL DISTRICT	§ § STATE OF TEXAS	

# DECISION OF HEARING OFFICER

# Introduction

Petitioner,\*\*\* <sup>3</sup> 6 W X G H Q W ´ E\* Q B D W H Q W H Q G L O H G D U H T X H V W I R U pursuant to the Individuals with Disabilities Education Improvement 3, '(\$ ´ - X O \

regardingthe Stay Put provision of the DEA1, an issue that Petitioner dimot previously raise The two exhibits contained email exchanges took places fter Petitioner filed the complaint.

The party requesting the due process aring may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees of therthis enstant action, Repondent did not agree otherwise.

After consideration of the notion and arguments of the parties this hearing officer determined that a Stay Put issue is not among those is supled by Petition and granted the Motion in Limine. The only issues to be heard and considerethose issues that Petitioner confirmed at the Autos 2021 prehearing conference.

#### Findings of Fact

% DVHG RQ WKH SDUWLHV¶ GRFXPHQWDU\ HYLGHQFH DQG WH RIILFHU EHORZ DUH WKH ILQGLQJV RI IDFW LQ WKH LQVWDQW D Exhibits, and Respondent's Exhibits are designated with 12 MotLRQ RI 33 ′ 3 - ′ RU 5 UHVSH followed by exhibit number, and page numbers as appropriate. Citations to the transcript are designated ZLWK D QRWDWLRQ RI 37′ IROORZHG E\ WKH SDJH QXPEHUV

- 1. At the time of hearing, Student,\*\*å\* grader, resided in the geographical boundaries of District.
- 3. 'LVWULFW PRQLWRUV VWXGHQWV¶ UHDGLQJ SURJUHVV WKUR 3'5\$ ´ DQG WKH\$% HYGD KIPBIQNW 6\VWHP 3%\$6 ´ ,W GHYHORSHG &RUUHODWLRQV ´ FKDUW WKDW FRUUH OTHE MASS SESSIMENTS a GOEHYHOV ZLY given in the fall and spring of each year through grade. BAS levels begin with the fall and spring with level Z.\*\*\* grade levels are DH. Level I falls between \*\*\* grade \*\*\* grade levels go from level J through Levels B-G indicate early stages of

Student vPearlandSD

3 3 HWLWLRQHU¶V 5 HR —@ VœÎ 'a"à SX'a#>î¿7˝ð 'a"A >\$\$\$\$ 'a"àV íAy• 4"a)tš tR @Lñy• •'PîÀ U¶V 5 HR ˝ñ E! 'a"à"

¹ During the pendency of any administrative or judicial proceeding regarding a due process complaint notice requestions subsequently, must remain in his or her current educational placentum between the States District and the parents of the child agoetherwise, the child involved in the complaint must remain links or her current educational placement C3.4F. R. §300.518 (a) O P P R Q O V U H I H U U H G W R D V 3 6 W I Put 1

<sup>&</sup>lt;sup>2</sup> 34 C.F.R§300.511(d)

- reading. Levels HM indicated transitional stages of reading. Levels here self-extending and U-Z are advanced stages of reading.
- 4. 3DUHQW¶V FRQFHUQV DERXW 6WXGHQW¶V HGXFD\*WLRQ SDUV grade At parent reques Student was evaluated for dyslexia th grade and did not qualify Student experienced a handful of behavioral outbursts described as nothing that was beyond other students. Academicall Studentwas progressing adequately.
- 5. Parent requested a behavioral consultation while Student with id UDGH 'LVWULFW¶V /LF 6SHFLDOLVW LQ 6FKRRO 3V\FKRORJ\ 3/663´ FRQGXFWHG WK symptoms of a disability condition. The LSSP observed some behavioe possibil Student, but the behaviors were comparable to other children in the classroom.
- 6. In \*\*\* gradeclass 6 W X GteaChter \$\text{\$\text{the achter \$\text{\$\text{Chterion}}}\$ and ultimatelywent on\*\*\* leave. The class themada series of horterm substitute teach runtil District found along term substitute in January2020 As a result, gided reading groups that are used to encourage reading growth (considered Tier I interventional) d not occurconsistently Students with and without disabilities struggled academically and behaviora District attempted to make up some of the reading learningloss experienced in the fall semesterKH VFKRRO¶V DVVLVWDQW SULQFL long-term substitute thold reading groups and implement veled Literacy Intervention <sup>3</sup>//, .´ In January 2020, onlealf of the students were reading between levels D and March of \*\*\* grade,the COVID pandemicaused schools to closeirtual learning began and ontinued to the end of the school year our ing \*\*\* JUDGH 61 War of the work of the school year our ing \*\*\* to level \*\*\* .8
- 7. District uses the ontas Pinne LLI program It is considered Tier 2 instruction. The program is scripted, structured and designed to accelerate reading progress to close read I/V the graps. implemented with fidelity, it can accelerate reading progress at twice the material accelerate reading progress accelerate reading progress at twice the material accelerate reading progress at the material accelerate reading progress accelerate reading progress at the material accelerate reading progress at t minutes, Students work in small groups with a classroom aide to build their reading skills. Student received LLI in\*\* grade until the pandemic when LLI was not offered.
- 8. During the fall semeste2020 (\*\*\* grade year) parents were given an option to return to classoom learning or continue virtual learning arent electeto continue virtual learning for Student; thus\$tudentdid not receive LLI during that timeDistrict staff contacted Parent and

<sup>&</sup>lt;sup>5</sup> J-24; T-pg. 315

<sup>&</sup>lt;sup>6</sup> R-2; T-pgs.114115,130, 134.

<sup>&</sup>lt;sup>7</sup> T-pgs. 226228

<sup>&</sup>lt;sup>8</sup> T- pgs. 115117, 168, 38688, 390393, 397401,414. <sup>9</sup> R-5, pgs.12; -7, pg.12; Fpgs. 8489,116,392395.

- suggestein-person learning Studen in order to be able to wowith Student Student remained thome untillanuary 2021District resumed LLI at that time
- 9. In early to mid-October 2020, Parentgave District a copy of a Junter, 2020 outside clinical evaluation of Studentand requested a dyslexistal uation. The outside evaluation thing agnosed Studentwith DWWHQWLRQ GHILFLWAD HDS 1, I TO P V L, Specific leads in MgR UGHU GLVDESLOLW \ 3

- 14. With respect to written expression, the FIIE concluded that Student performed adequately on a norm-referenced measure of sentence composition, and below average on a measure of spelling.
- 15. The FIIE did not find that Student met the criteria as a student with dyslexia.
- 16. Student presented with symptoms consistent with ADHD predominantly related to inattention and difficulty focusing. Neither the examiner nor teachers report any significant to the compart of the examiner nor teachers report any significant to the compart of the compart of
- 17. At the FRPSOHWLRQJaRularyl20/20/FILE\_LDF3/th/qf; S/taff sent a copy of threport to Parent. Prior to the ARDC meetings, District sent drafts of the proposed IEPs to Parent.
- 18. 6 W X G H Q W ¶ V L Q L W L D O D G P L V V L R Q U H Y L H Z D Q 6 G G L V P L V V D O 2021. Parent was present student met eligibility for special education under the classifications of OHI due to ADHD and SLD in the areas of basic reading and readling ncy. At that time, Student was reading 6 AS level\*\*\*, at a rate of \*\* % accuracy 20

- 6 W X GOHQdMsapWity. District provided Notice oDecision Prior Written NoticeParent waived the 5 days and Student begat to receive support.<sup>23</sup>
- 22. At the end of April 2021, Student was readtht % accuracy?
- 23. In the fall 2021 after working with Studenthe special edication teacher observed that dent would stop reading to make connections in the text or give input between sentences. This impacted 6 W X GfHetady. The ARDC met Octobët\*, 2021 and added a behavioral/fluency JRDO WR 6 WFX GHQW TV, (3
- 24. Student made\*\*\* in \*\*\* grade. 6 W X Greba@in/vg fg/ra/des we/fe\* 6 W X G H Q W ¶ V I L Q D O in \*\*\* grade ranged from\*\*\*.<sup>26</sup>
- 25. In \*\*\* JUDGH 6WXGHQW¶\*\*\*.FLQDO JUDGHV ZHUH
- 26. Student scored\*\* on the\*\*\* section of the State of Texas Assessments of Academic Readiness 3 6 7 \$ \$ 5\*\*\* grade assessment, considered S H U I R U P H G V StWdentdidDnFtW R U L O \ ´ perform satisfactorily in the\*\*\* grade \*\*\* section of the STAARmaking a score off\*\*. As a result, Respondent placestudentin an Accelerated Learning plan for \*...28
- 27. In \*\*\*, Student made adequate progress.
- 28. On the fall assessment Three sphing & stess of the Windictar was five first of the fall assessment of the sphing assessment indicated and level of \*\* . William 0 g 0 G [(\*\*\*)] TJ ET C

When a child is suspected of having specific learning disability a school must determine that underachievements not due to lack of appropriate instruction in reading or reference argues WKDW 3HWLWLRQHUIDLOHG WR VKRZ WKDW 6WXGHQW¶V XQGHUD qualifying condition, rather than a lack of appropriate instruction.

In discussing student performante Office of Special Education and Rehabilitative Services addressed instruction during the COVID pandemic

Levels of student performance pr

### Issue: FAPE

7KH, '(\$ JXDUDQWHHV D VWXGHQW ZLWK D GLVDELOLW\ PXVV RSSRUWXQLW\ FRQVLVWLQJ RI VSHFLDOL]HG LQVWUXFWLRQ DQC provide the student with an educational bendemnowever, the educational benefit must be more than a <sup>3</sup>PHUH PRGLFXP DQG QRW <sup>3</sup>GH PLQLPLV , QVWHDG WKH, (3 PXV regression or trivial advancement. The educational benefit the IEP is designed to achieve must be <sup>3</sup>PHDQLQ DJI Ki@jufisdiction the Fifth Circuit has established a four factors test to determine ZKHWKHU WKH VFKRRO GLVWULFW¶V HGXFDWLRQDO SURJUDP PH appropriate public education under the IDEAThose four factors are:

- (1) : DV WKH SURJUDP LQGLYLGXDOL]HG RQ WKH EDVLV RI WKH V\
- (2): DV WKH SURJUDP DGPLQLVWHUHG LQ WKH OHDVW UHVWULFW
- (3) Were the services provided incaordinated and collaborative maer by key stakeholders?

(4)

The initial ARDC metin March 2021 and reviewed the FIIE data attimbely determined that Student has a disability and is in next special eduction services. 6 W X G H Q W ¶ V thother Z D V discussed. Teachers reported no significant concerns regarding hyperactivity in Studtentt

#### Conclusions ofLaw

- Student is eligible for special education services as a student with a disability under IDEA, 20
  U.S.C. §1400 et. seq. and its implementing regulational regulational responsible for providing the student with a FAPE.
- 2. The oneyearstatute of limitations rule applies in the instant actilities relevant time period is July 24, 2020July 24, 202134 C. F. R. 34 C.F.R. §300.507; 20 U.S.C. §1415(f)(3)(C).