

*** (Student), by next friend *** (Parent, and collectively, Petitioner), brings this action





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

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



9. When Student returned to school in person in the fall 2020 semester, the general education *** class teacher did a mastery check, which showed that Student had regressed on some skills in the dyslexia curriculum when compared to a January 2020 mastery check.⁹

10. A revision ARD Committee meeting was held on September ***, 2020. Based on current data, the ARD Committee agreed that Student needed modified curriculum in **. The ARD Committee agreed to modify Student's schedule of services to add pull- out services in the ** classroom (60 minutes per day (3) 9(d) 72:5 5)-Tm()n13.8 n(s)-4 (le5 (u)4 -4 (0 3)9 (e)-74 (v)1)5.

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35. An AT evaluation was completed, report dated November ***, 2022. The evaluator collected information from Student's teachers and parents, conducted a classroom observation, administered several assessment tools, and trialed different AT options with Student. The evaluation recommended speech-to-text when writing and continued practice with additional AT tools.³⁵

36. An ARD Committee meeting was held to review the AT evaluation on December ***, 2022.

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

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). A school district has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001. The District is responsible for providing Student with specially-designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982).CDist.





and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a).

The District's obligation when developing Student's IEP is to consider Student's strengths, Student's parents' concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1)(i). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a



At the beginning of the relevant time period, in *** grade, Student's IEP provided 60 minutes per day of *** time for ***, as well as approximately 30 minutes per day of in-class support for ***. Student also had an IEP goal that targeted dyslexia-related decoding skills. Student was no longer attending the general education day program on 10/25/16. 307-429384-37.052x0.020ng0)jgdT0



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

The IDEA requires that a student with a disability shall be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment requirement." 34 C.F.R. § 300.114(a)(2)(i-ii).

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

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

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





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

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



These paperwork deficits seemingly begat the greatest coordination failure that has occurred here: the revelation in the *** grade annual ARD Committee meeting that staff working with Student did not know that Student had dyslexia. At that time, Student's IDEA eligibility was only OHI for ADHD, but Student also had documented dyslexia. The ARD Committee deliberations confusingly stated that "student has not been serviced through dyslexia since being placed in Special Education." The record does not reflect explanation to Parents of this statement or how in Special Edu



The evidence also shows some effective collaboration among the key stakeholders, including through Parents' participation in all of the ARD Committee meetings. The effort to offer compensatory services was collaborative, although the communication about it was confusing. School staff demonstrated openness to Parents' input and that of Dr. **, the IEE h c4 0 5 TD()TJ0 Tc 0 T



slower pace with a special education teacher.⁴⁵



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781, 796 (5th Cir. 2020). To prevail on Student's claim under the IDEA, Petitioner must show more than a *de minimis* failure to implement all elements of Student's IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

The primary allegation of failure to implement relates to Student's removal from the general education *** class in September 2020, that continued through November ***, 2021. As discussed above, the Hearing Officer concludes this was an intentional decision. The general education *** class was not clearly reflected in Student's IEP at any point before the November ***, H







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

All other relief not specifically stated herein is .

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 is hereby notified that they may file a written appeal with the State Education Department within 60 days of the date of this decision. The appeal must be filed with the State Education Department, Office of Statewide Assessment and Accountability, 125 West 31st Street, New York, NY 10001. For more information, please contact the State Education Department at (516) 485-2000 or www.stateed.org.