

**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT, bnf  
PARENTS,  
    Petitioner,**

§  
§  
§  
§  
§  
§  
§

v.

**DOCKET NO. 030-SE-1009**

**KELLER INDEPENDENT  
SCHOOL DISTRICT,  
    Respondent.**

**DECISION OF THE HEARING OFFICER**

Introduction

Petitioner, Student ) brings this action against the Respondent Keller Independent Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Party Representatives

Student has been represented throughout this litigation by legal counsel, Elizabeth Russell, Attorney at Law. Beginning on October 26, 2009 Student -counsel, Dorene Philpot, Attorney at Law with The Philpot Law Office. Respondent Keller Independent School District has been represented beginning on November 2, 2009 by its outside legal counsel, Nona Matthews with Walsh, Anderson, Brown, Gallegos & Brown and from the inception of this litigat -counsel Amanda Bigbee, General Counsel for KISD.

Resolution Session and Mediation

The parties submitted written waivers of the opportunity to convene a Resolution Session on October 23, 2009

give the hearing officer an opportunity to rule on all pending motions and jurisdictional issues, and, to

2. Whether the school district failed to develop appropriate Individual Educational Plans (IEPs) reasonably calculated to provide Student with a free, appropriate public education (FAPE) beginning with the 2005-2006 school year up through the present; specifically:

- a. whether the school district failed to develop and implement individualized IEPs based on Student

9.  
October 9, 2008.

Requested Relief

Petitioner seeks the following items of requested relief:

1. An order that establishes that Student \*\*\* School, a private school in \*\*\*, is the appropriate educational placement for the current school year based on individual needs and the failure of the school district to provide Student with an appropriate program under IDEA;
2. An order instructing the school district to convene an ARD meeting with all legally required members ff member from \*\*\* School who has worked with Student) for the purpose of developing an appropriate IEP to be implemented at \*\*\* School for the remainder of the current school year;
3. Compensatory special education and related services specifically: (i) reimbursement for tuition and all costs associated with Student \*\*\* School beginning in August 2009, (ii) reimbursement for the costs associated with private tutoring secured by Student the 2005-2006 school year up through the 2008-2009 school year and, (iii) as prospective relief, tuition and all costs associated with Student \*\*\* School until student \*\*\* or \*\*\* School determines student no longer requires services and instruction there;
4. An order directing the school district to conduct one full day of district wide in-service training for all school district educators on the identification, evaluation and instruction of students with special needs specifically students with dyslexia and ADHD;
5. Any other remedies or relief the Hearing Officer deems equitable and appropriate.

---

and reimbursement requests arising prior to October 9, 2008 were barred by 73(ior)-669ef

---

7. Not all students with dyslexia will be eligible for special education services under IDEA. Some others may be eligible for classroom accommodations under Section 504 of the Rehabilitation Act of 1973 (504) and/or for accommodations in taking the state-mandated curriculum mastery tests known as the Texas Assessment of Knowledge and Skills (TAKS). Texas has passed legislation to ensure students with dyslexia, not otherwise served under IDEA, are identified and provided with appropriate instruction. (P. Ex. 57, pp. 16-17, 18, 24, 29-32, 36) (P. Ex. 58).
  
8. KISD conducted a three year re- - Student \*\*\* grade year

14.

dyslexia in taking the TAKS. A student must be receiving the accommodations in classroom as a threshold requirement. (R. Ex. 28, pp. 33-34). Student met that criteria and took the \*\*\* grade TAKS using the dyslexia bundle. Student achieved a score of \*\*\* which met the state standard for \*\*\* grade reading. Student also met the state standards for \*\*\* grade math, social studies, and science. (P. Ex. 27, p. 11) (P. Ex. 57, pp. 33, 34) (R. Ex. 29).

15. Student

-2009 \*\*\*

20. Student [redacted] \*\*\* grade were as follows: English, \*\*\*, \*\*\* with a final semester grade of \*\*\*; Math \*\*\*, \*\*\* and final semester grade of \*\*\*; Science \*\*\*, \*\*\* with a final semester grade of \*\*\*; Career Investigation \*\*\*, \*\*\* with a final semester grade of \*\*\*; Theater I \*\*\*, \*\*\* with a final semester grade of \*\*\*; History \*\*\*, \*\*\* with a final semester grade of \*\*\*; and, Athletics/PE \*\*\*, \*\*\* with a final semester grade of \*\*\*. (R. Ex. 25, p. 3). Student passed [redacted] classes and was promoted to the \*\*\* grade. (R. 25) (Tr. Vol. III, p. 128).
21. Student [redacted] at the \*\*\* school for \*\*\* grade in the 2009-2010 school year included \*\*\* electives and continued Content Mastery support. Classroom accommodations in all classes included oral tests, and note taking assistance. The use of \*\*\* was also an accommodation in the science class and \*\*\* classes. The ARD also recommended TAKS with the dyslexia bundle accommodations. (P. Ex. 27, p. 12) (P. Ex. 37) (R. Ex. 31, p. 12).
22. An annual ARD was conducted for Student on December 4, 2008. Members of the ARD included the assistant prin

result of parental concerns about Student academic

expenses for unilateral private placement at \*\*\* School for the 2009-2010 school year and for continued placement there through \*\*\* as prospective relief.

Right to Reimbursement

In order to receive reimbursement for the unilateral private placement of a child with a disability the parent was proper under IDEA. *Sch. Comm. of Burlington v. Dept. of Educ. of Mass, 471 U.S. 359, 370 (1985); Richardson Ind. Sch. Dist. v. Michael Z., 580 F. 3d 286, 293 (5<sup>th</sup> Cir. 2009).*

-2009 and the proposed program for 2009-2010 were appropriate. If so, the inquiry ends there and Petitioner is not entitled to reimbursement for the unilateral private placement or continued prospective placement at \*\*\* School. If not, I must next consider whether the private school placement i Id.

The Four Factors Test

meets IDEA requirements. Those factors are:

- The program is individualized on the basis of the
- The program is administered in the least restrictive environment;
- 
- Positive academic and non-academic benefits are demonstrated.

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

These 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 *Richardson*

*Ind. Sch. Dist. v. Michael Z., 580 F. 3d at 294.*

First Factor: Individualized IEP

The credible evidence shows the program, although not perfect, met the minimum legal standards of the IDEA. *Rowley v. Bd. of Educ. of Hendrick Hudson Sch. Dist., 458 U.S. 176, 206-207 (1982).* Student demonstrated mastery of the \*\*\* school curriculum on the basis of state-wide assessments. placement in regular education classes and the IEP goal of passing those classes was individualized to the extent it reflected the assessment data and Student classroom. It is true that neither the \*\*\* grade IEP nor the proposed \*\*\* grade IEP included specific IEP goals and objectives addressing Student composition.

Student, the IDEA does not demand that it do so. A school district is legally obligated only to provide the al. *Rowley*, 458 U.S. at 198. See also, *W.R. v. Union Beach Bd. of Educ.*, 110 LRP 23989, (D. C. N.J. 2010)(same IEP goals from previous year did not render subsequent IEP inappropriate where students needs were same).

Second Factor: LRE

Student was educated to the maximum extent appropriate under IDEA: i.e. with non-disabled peers. Student was fully mainstreamed and learned and socialized at school with non-disabled peers. The educational program was provided at home school in own community. The record supports the conclusion the program was provided in the least restrictive environment. 34 C.F.R. § 300.114 (a) (2) (i) (ii).

Third Factor: Collaboration

Services were provided in a collaborative manner by key stakeholders. Student performance was supported by the Content Mastery teacher. The evidence shows the Content Mastery teacher reconfigured and modified the format of tests, assignments and/or quizzes and the evidence suggests this was entirely acceptable and approved by Student. The teachers worked with Student in organizing and completing assignments. School staff communicated frequently with Student

Fourth Factor: Benefit

The evidence established Student

## State Dyslexia Standards

Petitioner argues the school district failed to provide Student with FAPE because it failed to follow state dyslexia rules. *Texas Education Code* § 38.003 (1) defines dyslexia and related disorders, (2) mandates testing and instruction for students with dyslexia, and (3) gives the State Board of Education (SBOE) the authority to adopt rules and standards for administering testing and instruction. *Texas Administrative Code* § 74.28 outlines school district responsibilities in delivering services to students with dyslexia.

Beginning in 1986 the Texas Education Agency prepared an SBOE approved handbook to address the needs of children with dyslexia. The handbook has been revised numerous times the most recent version is known as *The Dyslexia Handbook – Revised 2007: Procedures Concerning Dyslexia and related Disorders* (the *Dyslexia Handbook*). The purpose of the *Dyslexia Handbook* is to provide flexible guidelines for school districts and parents in the identification and instruction of students with dyslexia. See, 19 *Tex. Admin. Code* § 74.28 (b); *Dyslexia Handbook*, p. v.

Significantly, *the Dyslexia Handbook* states that school districts are to follow the IDEA if a student with dyslexia is referred for special education. A student may be referred for an evaluation for special education at any time during an assessment for dyslexia, the identification process, or dyslexia instruction. *Dyslexia Handbook*, p. 10; Appendix A, p.17 (emphasis added).

State guidelines recognize that it is the policy of the State of Texas that a student eligible for special education who also meets Texas criteria for dyslexia may not be denied access to the general education program unless the ARD committee determines such a program would deny the student access to a free appropriate public education. *Dyslexia Handbook*, Appendix

F, Q & A, pp. 38-39 (emphasis added).

Student was able to understand the instructional content, engage in English class reading and writing activities at a satisfactory level, and demonstrated mastery of the regular \*\*\*

school district resources; and, nd



**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT, bnf**

**PARENTS,**

**Petitioner,**

§

§

§

**v.**

§

**DOCKET NO. 030-SE-1009**

§

**KELLER INDEPENDENT**

§

**SCHOOL DISTRICT,**

§

**Respondent.**

§

**SYNOPSIS**

**Issue:**

Whether school district failed to identify and assess \*\*\* grader with dyslexia and ADD in all areas of suspected disability.

**Held:**

**FOR THE SCHOOL DISTRICT.** School district identified student as eligible for special education as a student with a learning disability when student enrolled in \*\*\* school. School district responsible for conducting re-evaluations under IDEA and did so the most recent FIE included intelligence and academic performance assessments.

continued to be identified as LD throughout \*\*\* school.

Although school district never formally identified student as eligible for special education



**Issue:**

whether failure to do so constitutes denial of FAPE.

**Held: FOR THE SCHOOL DISTRICT.**