

**ARKANSAS DEPARTMENT OF EDUCATION  
Special Education Unit**

**IN RE:**

**XXXXX**, Parent on behalf of  
**XXXXXXXX**, Student

**PETITIONER**

VS.

**CASE NO. H-19-28**

**LITTLE ROCK SCHOOL DISTRICT**

**RESPONDENT**

**HEARING OFFICER’S FINAL DECISION AND ORDER**

**ISSUES PRESENTED:**

Whether the Little Rock School District (hereinafter “District” or “Respondent”) denied XXXXX (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”) between February 20, 2019 and May 9, 2019,<sup>1</sup> in violation of certain procedural and substantive requirements of the Individuals with Disabilities in Education Act of 2004, 20 U.S.C. §§ 1400-1485, as amended (hereinafter “IDEA”), by: (1) failing to develop and implement an individual education plan (hereinafter “IEP”) which includes appropriate goals and programming designed to provide educational benefit, i.e. allow Student to make progress appropriate in light of her circumstances; and (2) failing to properly calculate

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<sup>1</sup> The time period covered by this action is extremely limited. This is because Parent previously filed a due process complaint on January 24, 2019 that was dismissed with prejudice on February 20, 2019 (Case H-19-17). A comparison of the complaints filed in H-19-17 and the above-captioned matter indicated that Parent’s claims in both were essentially the same. As such, all claims prior to February 20, 2019 were dismissed with prejudice and cannot be relitigated pursuant to *res judicata*.

regression analysis of Student for purposes of determining need for extended school year services.<sup>2</sup>

### **PROCEDURAL HISTORY:**

On May 9, 2019, the Arkansas Department of Education (hereinafter “Department”) received a written request from Parent, acting *pro se*, to initiate due process hearing procedures on behalf of Student.<sup>3</sup> In response to Parent’s request for hearing, the Department assigned the case to an impartial hearing officer. Although Parent filed the initial complaint *pro se*, the complaint indicated that she would be represented in the due process hearing of this matter.<sup>4</sup> Upon assignment of the case, this Hearing Officer confirmed with attorney Lawrence Walker, who was referenced by Parent in her complaint, that Parent would indeed be represented by him for the duration of proceedings. On May 24, 2019, District filed a motion entitled “Notice of Petitioner’s Failure to Meet Sufficiency Requirements.”<sup>5</sup> This Hearing Officer determined the complaint to be sufficient in light of IDEA requirements and thereafter issued an Order Regarding Sufficiency of Complaint.<sup>6</sup>

Thereafter, the dates of June 19-20, 2019 were set as the dates on which a hearing would commence if the Parent and District failed to reach resolution prior to that time.<sup>7</sup> On June 17, 2019, a prehearing conference regarding this matter was conducted, via telephone.<sup>8</sup> Counsel for both parties participated in the hearing. During the prehearing conference, the

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<sup>2</sup> See Due Process Complaint and Transcript, Prehearing Conference.

<sup>3</sup> See Due Process Complaint.

<sup>4</sup> *Id.*

<sup>5</sup> See Notice of Petitioner’s Failure to Meet Sufficiency Requirements.

<sup>6</sup> See Order Regarding Sufficiency.

<sup>7</sup> See Scheduling Order.

<sup>8</sup> *Id.*; See also Tr., Prehearing Conf.

parties discussed unresolved issues to be litigated at the hearing of this matter, as well as the witnesses and evidence necessary to address same.

On June 19, 2019, the open hearing of this matter commenced.<sup>9</sup> Testimony was heard on June 19, 2019, and June 20, 2019.<sup>10</sup> All testimony was heard in person at the Little Rock School District Administrative Offices. The hearing concluded on June 20, 2019. The following witnesses testified in this matter: Parent, Cassandra Steele, Kim Hart, Charita Futrell, Vivian Harris, and Dr. Danyell Crutchfield Cummings.<sup>11</sup> Parent had the burden of proof regarding the issues raised in this case.

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Danna J. Young, J.D., Hearing Officer for the Arkansas Department of Education, conducted an open, impartial hearing. Parent was represented by Lawrence Anthony “Tony” Walker (Little Rock, Arkansas) and the District was represented by Khayyam M. Eddings (Little Rock, Arkansas).

Both parties were offered the opportunity to provide post-hearing briefs. Counsel for Parent submitted a brief for consideration by this Hearing Officer.

**FINDINGS OF FACT:**

Student is a fifteen-year-old female (DOB 02/27/2004) who is enrolled in the Little Rock School District. Between February 20, 2019 and May 9, 2019, the time period

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<sup>9</sup> Hr’g Tr., Vol. I, p. 11.

<sup>10</sup> Hr’g Tr., Vols. I-II.

<sup>11</sup> *Id.*

statutorily covered in this action, Student was enrolled in the eighth grade at Mabelvale Middle School.<sup>12</sup>

Student has a long history of medical issues. Specifically, Student has been diagnosed with Attention Deficit Hyperactivity Disorder (hereinafter “ADHD”) and seizure disorder to include absence epilepsy; however, the record indicates that Student was also previously diagnosed with hypertension, irregular heartbeat, asthma, astigmatism, seasonal allergies, dairy allergy, frequent headaches, otitis media, frequent nosebleeds, and a history of high fevers.<sup>13</sup> In addition, Student has taken numerous medications to address these conditions.<sup>14</sup> Student’s health issues have resulted in numerous absences from school in previous years.<sup>15</sup> Student’s health issues were so severe that she was unable to attend pre-kindergarten, missed a significant portion of kindergarten, and ultimately had to be retained for the purpose of repeating first grade.<sup>16</sup> Since the year 2014, Student has received special education services pursuant to the IDEA, with the eligibility category being that of other health impaired.<sup>17</sup>

Student’s most recent psychoeducational evaluation was completed on January 22, 2018 by Kim Hart, M.S., School Psychology Specialist. At the time of the evaluation, Student was in the seventh grade. Student was administered the Kaufman Assessment Battery for Children, Second Edition.<sup>18</sup> Student’s performance on this test indicated that Student’s

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<sup>12</sup> Hr’g Tr., Ex. Vol. I, Ex. 1.

<sup>13</sup> Hr’g Tr., Ex. Vol. I, Exs. 6, 7, 15; see also Hr’g Tr., Vol. II, pp. 107-08.

<sup>14</sup> *Id.*

<sup>15</sup> Hr’g Tr., Ex. Vol. I, Ex. 12.

<sup>16</sup> Hr’g Tr., Ex. Vol. I, Exs. 6, 7, 17.

<sup>17</sup> Hr’g Tr., Ex. Vol. I, Ex. 6; see also Hr’g Tr., Vol. 1, p. 23.

<sup>18</sup> Hr’g Tr., Ex. Vol. I, Ex. 6.

overall functioning was within the “Below Average” range noting that Student was performing at that time at or better than 5% of same-aged peers.<sup>19</sup> It was further noted that Student had below average short-term memory, “suggesting poorly developed ability to encode, maintain and manipulate information in immediate awareness.”<sup>20</sup> As a result, Student struggles to decode multisyllabic words, orally retell or paraphrase what she has read, and comprehend what she has read.<sup>21</sup>

In addition, Student was administered the Wechsler Individual Achievement Test, Third Edition, for the purpose of evaluating academic achievement.<sup>22</sup> Student’s performance on this test indicated that she was a fast, but inaccurate, reader. It was concluded that Student’s word reading speed, pseudoword decoding speed, and oral reading rate were within the average range; however, she exhibited difficulty with word reading and word attack skills resulting in significant inaccuracies in her reading.<sup>23</sup> She further demonstrated below average reading comprehension and spelling skills.<sup>24</sup> Student also struggled with math computation and application, with the evaluator noting that Student demonstrated an understanding of single digit addition but was unable to perform on single digit subtraction or multiplication.<sup>25</sup> Student was able to interpret a simple graph, identify the missing number in a pattern of numerals, and determine how many pennies were in a dime.<sup>26</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

As part of the January 22, 2018 reevaluation, Student was also administered two assessments to determine adaptive behavior and social skills. Specifically, Student was administered the Conners, Third Edition, and the Behavior Rating Inventory of Executive Function, Second Edition.<sup>27</sup> These assessments indicated that Student exhibits a typical level of activity, but has difficulty learning and/or remembering concepts in reading, spelling and math. It was noted that Student may also have difficulty completing projects, may procrastinate, and may have poor planning and organizational skills.<sup>28</sup>

In summary, the evaluator concluded that Student had a cognitive profile typical of a “slow learner.” As such, Student “may exhibit immature language patterns or speech problems, use poor judgment, demonstrate immature social behavior . . . easily frustrate, demonstrate proficiency with particular tasks rather than a subject area, demonstrate poor memory, experience difficulties understanding several steps in a task, require new information linked to previously learned information, and . . . experience difficulty transferring information learned in one situation to others.”<sup>29</sup> It was also concluded that Student would likely have reading difficulties to include confusing similar words and letters, losing place while reading, repeating words, exhibiting poor reading fluency, using incorrect order of letters in words, having difficulty with associating correct sounds with appropriate letters, and reversing letters.<sup>30</sup> The evaluator ultimately made five pages of recommendations, with specific recommendations to address deficits regarding short-term memory, visual processing, automaticity of mental operations, acquisition of specific

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

culturally related information, sustained attention, shifting, working memory, planning, and organizing.<sup>31</sup>

The record also contains a speech and language evaluation report dated November 13, 2017.<sup>32</sup> As part of this evaluation, Student was administered the Clinical Evaluation of Language Fundamentals, Fifth Edition, as well as the Comprehensive Assessment of Spoken Language.<sup>33</sup> In addition, Student's most recent ACT Aspire scores (Spring 2017) were reviewed. The speech-language pathologist conducting the evaluation, specifically Kimberly Wallas, M.S., SLP, concluded that Student has a mild to moderate language disorder. It was recommended that Student receive direct speech therapy instruction to address improving "written expression skills for syntax, grammar, and semantics in sentences, paragraphs, and short essays and comprehending paragraph or multi-step level material presented to her, orally and in written form, in order to recall key information and details, make inferences, understand nonliteral language, recognize context clues, and expand her understanding of word and concept relationships."<sup>34</sup>

During the 2018-2019 school year, Student's eighth grade year, she received special education and related services pursuant to an IEP developed on March 8, 2018 (duration of services from August 11, 2018 through August 10, 2019).<sup>35</sup> Regarding the content of the March 8, 2018 IEP, in the portion of the present level of academic achievement, the IEP provided a summary of the January 22, 2018 psychoeducational evaluation for Student.<sup>36</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> Hr'g Tr., Ex. Vol. 1, Ex. 8.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Hr'g Tr., Ex Vol. II, Ex. 16.

<sup>36</sup> *Id.*

The March 8, 2018 IEP further provided that Student was to receive 113 minutes of co-taught English instruction in the special education classroom (5x per week), 225 minutes of direct math instruction in the special education classroom (5x per week), 30 minutes of direct instruction in occupational therapy (1x per week), and 30 minutes of speech therapy (1x per week).<sup>37</sup> Also addressed were program modifications and accommodations to be received by Student, including, but not limited to: (1) use of notebook/agenda; (2) encouragement for classroom participation; (3) additional time for completing assignments; (4) additional time for written and oral responses; (5) reduced assignments; (6) short instructions; (7) extended time; (8) text to speech for allowable sections; (9) use of calculator; (10) note taker or use of copy of teacher notes; and (11) frequent breaks.<sup>38</sup> The IEP further contained goals for Student. Specifically, there were three math goals, two reading intervention goals, one English/writing goal, and three speech therapy goals.<sup>39</sup>

Student's IEP was revised throughout the course of the spring 2019 semester. On February 5, 2019, Parent was sent a Notice of Conference scheduling an IEP committee meeting for February 7, 2019. Shortly thereafter, a Notice of Action dated February 20, 2019 was sent to Parent scheduling an IEP committee meeting for February 22, 2019.<sup>40</sup> These meetings dealt with the addition of occupational therapy and speech goals, as well as the administration and review of a dyslexia screener, issues which had been addressed in a resolution conference between the parties.<sup>41</sup> The resolution conference resulted when

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Hr'g Tr., Ex. Vol. I, Ex. 3.

<sup>41</sup> *Id.*

Parent filed a previous request for a due process hearing.<sup>42</sup> The parties reached a settlement in that case and the matter was dismissed with prejudice on February 20, 2019.

On April 26, 2019, a Notice of Conference scheduling an IEP committee meeting for May 15, 2019 was sent to Parent.<sup>43</sup> On May 15, 2019, the IEP committee met to conduct an annual review of Student's progress. In addition, the IEP committee developed an IEP for the upcoming school year to address Student's deficits and considered extended year services for Student.<sup>44</sup> The IEP committee meeting was approximately three hours long and Parent and her advocate participated fully in the meeting.<sup>45</sup>

The May 15, 2019 IEP developed for Student for the upcoming 2019-2020 school year (duration of services from May 15, 2019 to May 14, 2020) indicates that Student will continue receiving special education and related services.<sup>46</sup> Regarding the content of the May 15, 2019 IEP, in the portion designated for a description of present level of academic achievement, the IEP provides that Student is "pleasant" and "self-motivated," but that she continues to have achievement and language deficits that need addressed.<sup>47</sup> It was reported that Student's handwriting was legible, but that the mechanics of handwriting were an issue for Student at times.<sup>48</sup> It was also stated that Student had been administered a dyslexia screener in the spring of 2019 and appeared to exhibit some characteristics of individuals with dyslexia.<sup>49</sup> The IEP explained that Student had been receiving interventions between

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<sup>42</sup> *Id.*

<sup>43</sup> Hr'g Tr., Ex. Vol. I, Ex. 1.

<sup>44</sup> *Id.*

<sup>45</sup> Hr'g Tr., Vol. II., pp. 115, 118.

<sup>46</sup> Hr'g Tr., Ex. Vol. 1, Ex. 1.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

the time that the screener was administered and May 15, 2019, when this IEP was developed.<sup>50</sup> It was stated that Student struggles with short and long vowel sounds, as well as control 'r' vowels, and that Student continued to have difficulty with reading comprehension during her dyslexia intervention sessions.<sup>51</sup> The record contains an email in which it was suggested that Student be provided interventions using the Kilpatrick Equipped for Reading Success Program to address Student's deficits.<sup>52</sup> Finally, it was noted that Student has maintained consistent progress in speech therapy and occupational therapy, but that services are still required to address deficits.<sup>53</sup>

The May 15, 2019 IEP further provides that Student is to receive 90 minutes of direct instruction in math in the special education classroom (10x per month), 90 minutes of direct instruction in reading in the special education classroom (10x per month), 45 minutes of co-taught services in English in the special education classroom (10x per month), 30 minutes of direct instruction in occupational therapy (1x per week), and 30 minutes of speech therapy (1x per week).<sup>54</sup> Also addressed were program modifications and accommodations to be received by Student, including, but not limited to: (1) extended time for classwork and homework; (2) small group instruction; (3) preferential seating; (4) reduced assignments; (5) reduction of open response questions; (6) ability to orally response to test questions; (7) use of speech to text for writing assignments; (8) breakdown of instructions into small steps; (9) use of an agenda book in class; and (10) use of visual supports.<sup>55</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Hr'g Tr., Ex. Vol. II, Ex. 17.

<sup>53</sup> Hr'g Tr., Ex. Vol. I, Ex. 1.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

Student's May 15, 2019 IEP includes a total of nine goals. Specifically, there were three math goals, two reading intervention goals, one English/writing goal, and three speech therapy goals.<sup>56</sup> Regarding the goals for reading intervention (goals #2 and #4), it is provided that Student will "increase reading readiness skills in the area(s) of decoding to understand word meaning as measured by work samples with 70% accuracy" and that Student will "improve reading skills by completing tasks related to phonics, phonemic awareness, vocabulary development, reading fluency, and reading comprehension strategies (short vowel sounds, long vowel sounds, and diagraphs) utilizing an evidence based reading program with 90% accuracy" by the end of the 2019-2020 school year.<sup>57</sup>

At the May 15, 2019 IEP meeting, regression analysis was discussed by the IEP committee members, but no data was brought to the meeting for review.<sup>58</sup> The IEP team discussed the issue of extended year services with Parent, but it did not physically present Parent with any data at this meeting.<sup>59</sup> Following the IEP meeting, Student's teachers pulled data and completed regression recoupment analyses.<sup>60</sup> It was determined that Student was not eligible for extended year services, confirming what had been reported to Parent in the May 15, 2019 IEP meeting.<sup>61</sup> Parent was thereafter sent the regression recoupment calculation pages along with the finalized IEP for the 2019-2020 school year.<sup>62</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Hr'g Tr., Vol. I, pp. 60-64, 84-85, 90, 222-23.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

Student was administered the NWEA test in the fall of 2018, winter of 2018, and also in the spring of 2019 for the purpose of determining her academic achievement and progress.<sup>63</sup> In the fall of 2018, Student was at approximately the 12<sup>th</sup> percentile for academic achievement.<sup>64</sup> In the winter of 2018, Student had progressed, with her scores falling at approximately the 22<sup>nd</sup> percentile for academic achievement.<sup>65</sup> Although Student's growth was less between winter 2018 and spring 2018, her NWEA scores indicate that she remained at the 22<sup>nd</sup> percentile.<sup>66</sup> The spring 2018 NWEA test was administered to Student on March 8, 2019, around the same time that Student began reading interventions for dyslexia.<sup>67</sup> At that time, Student's reading level ranged between 4.4 (fourth grade, fourth month) and 5.1 (fifth grade, first month).<sup>68</sup>

Parent was offered the opportunity to bring Student to a summer literacy reading camp that was being implemented during the 2019 summer break. Parent declined to enroll student in the camp, noting that she had already made arrangements for Student to attend a different program.<sup>69</sup>

### **CONCLUSIONS OF LAW AND DISCUSSION:**

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412(a); 34 C.F.R. §300.300(a). In 1982, in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, the United States

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<sup>63</sup> Hr'g Tr., Vol. II, pp. 255-63; *see also* Hr'g Tr., Ex. Vol. II, Exs. 11, 17.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*; *see also* Hr'g Tr., Vol. I, p. 29.

<sup>68</sup> Hr'g Tr., Vol. I, p. 53.

<sup>69</sup> Hr'g Tr., Vol. I, p. 91.

Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by courts and hearing officers in determining whether a school district has failed to provide FAPE as required by federal law. 458 U.S. 176, 206-07 (1982); *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804 (8th Cir. 2011). The first inquiry that a court or hearing officer must make is that of whether the State, *i.e.* local educational agency or district, has complied with the procedures set forth in the IDEA. Thereafter, it must be determined whether the IEP(s) developed pursuant to IDEA procedures was reasonably calculated to enable the student to receive educational benefits. *Id.*; *K.E. ex rel. K.E.*, 647 F.3d at 804.

### **Procedural Violations of FAPE**

It must first be determined whether District complied with the procedures set forth in the IDEA. In the present case, Parent has alleged no procedural violations of the IDEA in her complaint or at the prehearing conference of this matter. Parent acknowledges that Student has an IEP but alleges that the IEP lacks appropriate goals and programming to provide FAPE to Student. Parent further alleges that District failed to properly calculate the regression analysis of Student for purposes of determining need for extended school year services.<sup>70</sup> As these are purely substantive allegations, there are no allegations of a procedural nature stated by Parent that require analysis by this Hearing Officer.<sup>71</sup>

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<sup>70</sup> See Due Process Complaint and Transcript, Prehearing Conference.

<sup>71</sup> These allegations were determined on the basis of Parent's Complaint, as well as the statements of Parent's attorney at the prehearing conference in this matter. It is noted that Parent alleged during the due process hearing of this matter that District failed to provide her with reports of progress at various IEP meetings. This allegation, however, is not procedural, but, instead, goes to the substantive nature of Parent's claims. Specifically, Parent alleges that Student has not made progress with regard to her reading deficits between February 20, 2019 and May 9, 2019 as a result of the actions of District, and for that reason no progress reports have been provided.

### **Substantive Violations of FAPE – Appropriateness of IEP**

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that no such violations occurred, it is now necessary to consider whether the District’s actions resulted in a substantive denial of a FAPE to Student. Prior to March 22, 2017, Eighth Circuit law provided that if a student received “slight” or “de minimis” progress, then he or she was not denied educational benefit. *K.E. ex rel. K.E.*, 647 F.3d at 810; *Paris Sch. Dist. v. A.H.*, 2017 WL 1234151 (W.D. Ark 2017). On March 22, 2017, however, the United States Supreme Court “rejected the ‘merely more than *de minimis*’ standard that had previously been the law of the Eighth Circuit.” *Paris Sch. Dist.*, 2017 WL at 4 (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, No. 15-827*, 2017 WL 1066260, 580 U.S. \_\_ (2017)).

In *Endrew F.*, the standard set forth by the Court is “markedly more demanding” as compared to the “merely *de minimis*” test outlined in *Rowley*. *Endrew F.*, 2017 WL 1066260, at \*1000. The Court stated the following:

It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot. When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to “drop out.”

*Endrew F.*, 2017 WL 1066260, at \*1001 (citations omitted). The Court held that the IDEA requires, even demands, more. Specifically, the IDEA requires that students under the Act be provided with an “educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.*

The IEP is the guiding document and primary method for providing special education services to disabled children under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). “Through the development and implementation of an IEP, the school provides a FAPE that is ‘tailored to the unique needs of a particular child.’” *Paris Sch. Dist.*, 2017 WL 1234151, at \*5 (citing *Endrew F.*, 2017 WL 1066260, at \*1000). An IEP is not designed to be merely a form but, instead, a substantive document that is developed only after a district has carefully considered a student’s “present levels of achievement, disability, and potential for growth.” *Id.* (citations omitted). Pursuant to *Endrew F.*, a district “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 2017 WL 1066260, at \*1000. For most students, to comply with this standard, providing FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.” *Id.* However, in the event that this is not possible, the education of a disabled child still needs to be “appropriately ambitious” in light of a student’s individual circumstances. *Id.*

Every IEP, pursuant to the IDEA, is required to include the following: (1) a statement of a student’s present levels of academic achievement and functional performance; (2) a description of how a student’s disability affects his or her involvement and progress in the general education curriculum; (3) annual goals that are measurable, as well as a description as to how progress toward stated goals will be measured; and (4) a description of special education and related services provided to student. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV).

In the present case, Parent alleges that Student was denied FAPE on two bases. First, Parent alleges that the programming, services, and goals stated in Student’s 2018-2019 and

2019-2020 IEPs were or are not reasonably calculated to enable Student to make progress appropriate in light of her circumstances. Second, Parent alleges that Student was denied FAPE on May 15, 2019 when members of the IEP team failed to bring to the meeting physical data to support the decision that Student did not qualify for extended year services.<sup>72</sup> Based on the analysis herein, neither of these allegations is supported by the evidence in this case.

Regarding Parent's allegation that Student's IEP resulted in a denial of FAPE between February 20, 2019 and May 9, 2019, Parent made vague allegations that the District was not adequately serving Student, citing the fact that Student is not reading at grade level. After reviewing the evidence in the record, this Hearing Officer hereby concludes that Student's 2018-2019 IEP, which provided services during the relevant time period, was reasonably calculated to enable Student to make progress in light of her circumstances. First, it is necessary to look at Student's circumstances. The record clearly establishes that Student has a very long history of serious medical issues. Student's IEP addresses not only academic issues, but medical needs as well. Student's January 22, 2018 psychoeducational evaluation addressed these health issues and the impact that they had on Student's ability to learn, noting that Student is classified as a "slow learner." Of note is Parent's testimony that Student's health issues prevented Student from attending pre-kindergarten, part of kindergarten, and resulted in Student being retained in first grade. Essentially, this demonstrates that Student has struggled to perform on grade level during the entire tenure of her school years. Also complicating the matter is the fact that Student's medical issues

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<sup>72</sup> These issues were addressed in the prehearing conference of this matter.

cause her to accrue a significant number of absences each year, exacerbating Student's current learning deficits.

Second, it is necessary to consider the programming and goals stated in Student's 2018-2019 IEP. Student's IEP provided for Student to receive co-taught English instruction and direct math instruction in the special education classroom, as well as occupational and speech therapy. The IEP further contained a total of nine goals, with three of these being specific to math, two being specific to reading intervention, one focusing on English and writing, and the remaining three being specific to speech therapy. The goals stated in the IEP were specific and appeared measurable. The record indicates that these services and goals resulted in Student making progress throughout the year, specifically growing on her NWEA test from an academic achievement score at the 12<sup>th</sup> percentile to a score at the 22<sup>nd</sup> percentile by the spring of 2018. This was prior to the start of dyslexia interventions, indicating that even without such interventions, Student's IEP was appropriate to enable her to make progress in light of her circumstances.

It is noted that Parent alleges that District failed to implement appropriate dyslexia interventions following the resolution conference and ultimate dismissal of her previously-filed due process complaint. However, this allegation fails. Between February 20, 2019 and May 9, 2019, the District took steps to have Student evaluated for dyslexia and to implement interventions. This time period, which constitutes barely more than two months, was not sufficient so as to allow District to conduct the necessary screener, implement interventions, and have ample time to determine whether such interventions were effective. It is likely that District will not have adequate data to determine effectiveness of interventions until

sometime in the fall of 2019. It is clear that Parent is frustrated with Student's progress, but it is too premature at this point to determine if interventions which were started in March 2019 are having a significant impact on Student's reading deficits. District is responsible for continuing to monitor the interventions being provided to Student and monitoring progress going forward.

In sum, given Student's severe medical issues and resulting learning deficits, the adequacy of the programming and goals on Student's 2018-2019 IEP, the fact that Student progressed during the academic year, and, finally, the fact that recently initiated interventions are too new to evaluate for effectiveness, it is the conclusion of this Hearing Officer that Student was not denied FAPE between February 20, 2019 and May 9, 2019 in violation of the IDEA.

Regarding Parent's allegation that Student's 2019-2020 IEP for the upcoming school year is not reasonably calculated to allow Student to make progress in light of her circumstances, this Hearing Officer disagrees. First, it should be noted that Student's 2019-2020 IEP for the upcoming school year was developed on May 15, 2019, which falls outside of the relevant timeframe in this case. Even if the date of this IEP resulted in it being within the relevant timeframe, it is difficult to predict at this time whether the IEP is appropriate. The May 15, 2019 IEP is similar to the 2018-2019 IEP that Student has been operating under during the past school year. Given that Student made progress this past year, and that Student will have the benefit of receiving additional interventions in the next school year, it is likely that the 2019-2020 IEP will provide FAPE to Student. There is no way to definitively know at this point without additional information and data.

Turning to Parent's second allegation, specifically that Student was denied FAPE on May 15, 2019 when members of the IEP team failed to bring to the meeting physical data to support the decision that Student did not qualify for extended year services, this Hearing Officer disagrees. Again, May 15, 2019 falls outside of the relevant timeframe in this case. Even if this allegation were considered, the evidence in the record shows that the May 15, 2019 IEP meeting was nearly three hours long and Parent fully participated in the meeting. In addition, Parent had an advocate to assist her. District does not deny that it failed to bring physical data to the IEP meeting to complete the regression recoupment analysis, but testimony established that the data in question was presented orally to Parent and the decision that Student did not qualify for extended year services was communicated during the meeting. Following the meeting, the regression recoupment forms were completed and added to the finalized IEP. Based on these facts, Parent has failed to present sufficient evidence to support her allegation in this regard.

**Conclusion.** Having considered Parent's allegations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that Student was not denied FAPE between February 20, 2019 and May 9, 2019 as a result of procedural and substantive violations of the IDEA.

**ORDER:**

The results of the testimony and evidence warrant a finding for District. Specifically, Parent introduced insufficient evidence in the record to establish by a preponderance of the evidence that District denied Student FAPE between February 20, 2019 and May 9, 2019.

**FINALITY OF ORDER AND RIGHT TO APPEAL:**

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

**IT IS SO ORDERED.**

/s/ Danna J. Young

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**HEARING OFFICER**

07/23/2019

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**DATE**