

**ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit**

████████████████████
Parents on behalf of
████████████████████ Student

PETITIONERS

VS.

CASE NO. H-24-02

PULASKI COUNTY SPECIAL SCHOOL DISTRICT

RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether, as alleged in ADE H-24-02, the Pulaski County Special School District (hereinafter "District" or "Respondent") denied ██████████ (hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE") between October 19, 2022 and July 13, 2023, 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 provide IEPs that were reasonably calculated to enable Student to make progress appropriate in light of her circumstances; (2) failing to include special education services in IEPs to address Student's dyslexia; and (3) failing to provide extended school year services to Student during Summer 2023.

PROCEDURAL HISTORY:

On July 13, 2023, the Arkansas Department of Education (hereinafter referred to as "Department") received a request from ██████████ (hereinafter referred to as "Parents" or "Petitioners"), the parents and legal guardians of Student in the

above-referenced case, to initiate due process hearing procedures. Parents asserted that District failed to comply with the IDEA, as well as the regulations set forth by the Department, between October 19, 2022 and July 13, 2023, the majority of Student's second-grade year, by failing to provide IEPs that included special education services for dyslexia and were otherwise reasonably calculated to enable Student to make progress appropriate in light of her circumstances, as well as failing to provide extended school year services for Student during Summer 2023.

ADE H-24-02 is the second due process complaint filed by Parents against District. The first due process request filed by Parents was ADE H-23-18 and was filed on October 19, 2022 (hereinafter referred to by ADE Case Number or, alternatively, "Hearing #1"). This Hearing Officer issued a Final Decision and Order on May 8, 2023 in Hearing #1, finding for Parents and ordering District to comprehensively evaluate Student, develop a new IEP, and engage in regular monitoring of academic progress. The second due process request, ADE H-24-02 (hereinafter referred to by ADE Case Number or, alternatively, "Hearing #2") was filed on July 13, 2023.

In response to Parents' request for hearing in the above-referenced case, ADE H-24-02, the Department assigned the case to an impartial hearing officer. A due process hearing, Hearing #2, was held to address all issues covered in the due process complaint. Testimony was heard on October 26, 2023, October 27, 2023, and December 13, 2023.¹ At the hearing, Parents and District stipulated and agreed to all prior testimony given during Hearing #1, ADE H-23-18. As such, all testimony taken in Hearing #1 was incorporated into the record for the above-referenced matter. The following witnesses testified in Hearing #2:

¹ See generally ADE H-24-02 Transcript, Vols. I-III.

[REDACTED]

[REDACTED]

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 a closed impartial hearing. Parents were represented by Theresa Caldwell (Little Rock, Arkansas), and District was represented by Jay Bequette (Little Rock, Arkansas). Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing arguments, and both timely submitted briefs in accordance with the deadline set by this Hearing Officer.³

FINDINGS OF FACT:

Student is an eight-year-old female (DOB 07/20/2015) who is enrolled in the Pulaski County Special School District. Between October 19, 2022 and July 13, 2023, the time period covered in this action, Student attended school at Chenal Elementary School in Little Rock, Arkansas. Student was in the second grade during the 2022-2023 school year. Student is currently in the third grade.

Student was adopted by Parents on April 30, 2018 after being placed in several foster homes.⁴ Student was physically and emotionally neglected before she was placed with Parents.⁵ Prior to starting kindergarten, Student received special education services, specifically 30 minutes per week, through the District's Early Childhood Program at

² *Id.*

³ See Post-Hearing Briefs.

⁴ ADE H-23-18 Parent Exhibits, pp. 169-70.

⁵ *Id.*

Robinson Elementary. The purpose of this instruction was to address Student's social emotional deficits.⁶ Thereafter, in the year 2020, Student was diagnosed with adjustment disorder and anxiety.⁷ At the time of this diagnosis, it was noted that Student had a history of exhibiting inappropriate behaviors and feelings under normal circumstances, resulting in an impact to her ability to learn, build and maintain satisfactory interpersonal relationships with peers and teachers.⁸ As such, Student was deemed eligible for special education services in October 2020 pursuant to the category of Emotional Disturbance.⁹

On October 19, 2022, Parents filed ADE H-23-18, Hearing #1, alleging that Student had been denied FAPE. On May 8, 2023, this Hearing Officer issued a Final Decision and Order in response to ADE H-23-18.¹⁰ This Hearing Officer determined that Student had been substantively denied FAPE between October 19, 2020 and October 19, 2022.¹¹ Specifically, this Hearing Officer determined that Student's IEP during the 2021-2022 school year, Student's first-grade year, was reasonably calculated to enable Student to make academic progress in light of her circumstances based on the data that was known to District at the time of IEP creation.¹² However, given Student's performance during the 2021-2022 school year, and particularly in light of the fact that District made numerous adjustments during that year to address data indicating academic loss, Student's IEP during the 2022-2023 school year, Student's second-grade year, was not appropriate for Student.¹³ As of the date of filing in ADE H-23-18, Hearing #1, Student's NWEA Map score in reading

⁶ *Id.* at p. 79.

⁷ *Id.* at p. 103.

⁸ *Id.*

⁹ *Id.*

¹⁰ ADE H-23-18 Final Decision and Order.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

placed Student at the 9th percentile, lower than her percentile rank at the end of first grade. In addition, Student's NWEA Map score in math had fallen to nearly the same percentage observed at the end of first grade, despite the fact that Student had been in school for two months of the second-grade year at that time.¹⁴ Essentially, Student's second-grade IEP as of October 19, 2022 had resulted in a loss of academic progress.

Having found in ADE H-23-18 that District had substantively denied FAPE to Student, this Hearing Officer ordered that Student be comprehensively evaluated by June 15, 2023, to include evaluations designed to determine Student's current achievement levels, academic deficits, IQ, speech and language deficits, and occupational therapy needs.¹⁵ In addition, this Hearing Officer ordered District to convene an IEP meeting with Parents by or before August 1, 2023 for the purpose of developing a new IEP for Student that contained appropriate goals and objectives, addressed specific programming and modifications for Student, and allowed for adequate progress monitoring.¹⁶ Finally, District was ordered to convene an IEP meeting with Parents at the end of each nine-week period of the 2023-2024 school year, Student's third-grade school year, for the purpose of determining Student's progress and making adjustments to her IEP as necessary.¹⁷

Subsequently, on July 13, 2023, Parents filed the above-referenced case, ADE H-24-02, alleging that Student was denied FAPE between October 19, 2022 and July 13, 2023, the specific time period that Hearing #1 was pending, as well as approximately two

¹⁴ ADE H-23-18 Final Decision and Order.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

months following the May 8, 2023 Final Decision and Order issued by this Hearing Officer in ADE H-23-18.

During the 2022-2023 school year, Student's second-grade year, she received special education services pursuant to an IEP start date of April 29, 2022. On April 29, 2022, prior to the end of Student's first-grade year, Student's IEP team convened for the purpose of conducting an annual review conference and creating an IEP for Student's second-grade year.¹⁸ As part of this review, the IEP team considered Student's present level of academic achievement as of the date of the meeting.¹⁹ The team noted that Student had mastered all three of her English Language Arts goals, and also her behavior goal pertaining to tasks.²⁰ Student had demonstrated the ability to listen and comply with requests when given directives.²¹ Student's IEP noted that, although Student's NWEA Map scores fell in the "in need of support" range for reading and math, Student had made gains from the fall semester to the spring semester, as evidenced by the increase in her test scores.²² It was also noted that Student had been receiving Dyslexia interventions for 35 minutes, 3 times per week.²³ Regarding Student's behavior, the IEP noted that Student had demonstrated improvements with overall behavior, attention, and focus at school.²⁴ The IEP provided that positive interventions and supports were still needed to ensure that Student remained on task, specifically stating that Student continued to benefit from the use of fidget toys and other sensory tools.²⁵

¹⁸ ADE H-23-18 Parent Exhibits, p. 15.

¹⁹ *Id.* at p. 16.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at p. 17.

²⁵ *Id.* at p. 18

Student's April 29, 2022 IEP contained numerous accommodations, including, but not limited to: (1) preferential seating/proximity to teacher; (2) short instructions; (3) reduced assignments; (4) extra time for written response; (5) frequent feedback; (6) fidgets for sensory needs; (7) two-way communication between home and school; (8) extra time for completing assignments; (9) sensory breaks; (10) calm down areas; (11) supervision during transition times; and (12) sensory diet.²⁶ The schedule of services provided that Student would receive special education services for 150 minutes per week in literacy, 90 minutes per week in social skills, and 60 minutes per week in speech and language.²⁷ Student's occupational therapy services were decreased from 60 minutes of consultation per month to 30 minutes monthly on account of the fact that Student had shown improvements with overall behavior, attention, focus at school, staying in her area in the classroom, following directives, making better choices, requiring less redirection, and demonstrating increased compliance with classwork.²⁸

On August 26, 2022, Student's April 29, 2022 IEP was amended in light of the updated speech and language evaluation that Parents obtained at the start of the 2022-2023 school year.²⁹ Specifically, Student's IEP team determined that the results of Student's August 17, 2022 speech and language evaluation indicated that Student no longer had a deficit that required speech therapy.³⁰ It was noted that Student had made remarkable improvement in all areas evaluated, and that it did not appear that continued

²⁶ ADE H-23-18 Parent Exhibits, p. 19.

²⁷ *Id.* at p. 20.

²⁸ *Id.* at pp. 17, 141.

²⁹ *Id.* at p. 140.

³⁰ *Id.*

speech therapy was warranted.³¹ It was noted, however, that Student would continue to receive social skills reinforcement through goals addressed in the resource setting.³²

Student's IEP included four English Language Arts goals and two behavior goals (one related to others and one specific to tasks). Student's English Language Arts goals included the following: (1) substitute an individual sound in a word to make a new word with 80% accuracy in four of five trials by the end of the IEP term; (2) demonstrate knowledge of the silent e and vowel team correspondences with 80% accuracy in four of five trials by the end of the IEP term; (3) retell stories, including key details, and understand the main topic of a text with 80% accuracy in four of five trials by the end of the IEP term; and (4) write and tell a story with 80% accuracy in four of five trials by the end of the IEP term.³³ Student mastered three of four English Language Arts goals by the end of the 2022-2023 school year.³⁴ Student's behavior goal regarding her relation to others stated that she would demonstrate the ability to react appropriately to her peers' emotions and wants with 80% accuracy in four of five trials by the end of the IEP term.³⁵ Finally, Student's behavior goal pertaining to tasks provided that she would follow directions by looking at the teacher, verbally acknowledging the direction, or asking for clarification with three or less incidences of non-compliance per day by the end of the IEP term.³⁶ Student mastered one of two behavioral goals during the 2022-2023 school year, specifically the behavioral

³¹ ADE H-23-18 Parent Exhibits, p. 140.

³² *Id.*

³³ *Id.* at pp. 8-9.

³⁴ ADE H-24-02 Parent Exhibits, pp. 29-30.

³⁵ ADE H-23-18 Parent Exhibits, p. 9.

³⁶ *Id.*

goal pertaining to following directions, verbally acknowledging directions, and asking for clarification from teachers.³⁷

During the 2022-2023 school year, Student received dyslexia intervention via the Sunday System 3 times per week, for 35 minutes per session, with the exception of days in which she was absent.³⁸ At the beginning of the school year, Student began the Sunday System on Level 12 and, as of April 2023, was working on Level 21.³⁹ Between September 2022 and May 2023, Student was administered the STAR reading test six times.⁴⁰ Student's scores ranged from a grade equivalent of 0.8 on September 2, 2022 to a grade equivalent of 1.0 on February 7, 2023.⁴¹ These scores placed Student at the 4th percentile in reading in September 2022, and at the 3rd percentile as of February 2023.⁴² Student was administered the STAR reading test at the end of the 2022-2023 school year, specifically in May 2023, and was at the 7th percentile for reading.⁴³ Throughout the school year, Student's Lexile range was BR400L - BR350L, with the exception of the May 2023 STAR test administration which indicated that Student's Lexile range was BR375L - BR225L.⁴⁴ Student's Lexile scores indicated that she was at a first grade reading level throughout the entirety of the 2022-2023 school year.⁴⁵ As of May 2023, Student's STAR reading test indicated that she was in urgent need of intervention.⁴⁶

³⁷ ADE H-24-02 Parent Exhibits, pp. 29-30.

³⁸ *Id.* at p. 232.

³⁹ *Id.* at pp. 175-76.

⁴⁰ *Id.* at pp. 175-76, 222.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at pp. 190-91.

⁴⁶ *Id.* at p. 222.

On May 30, 2023, approximately two weeks following this Hearing Officer's Final Decision and Order in ADE H-23-18, Student's IEP team conducted an annual review conference.⁴⁷ The Notice of Action provided to Parents following the meeting stated that the IEP team met to complete Student's annual review and address extended school year services. The IEP team determined that Student was ineligible for extended school year services, despite Parents' disagreement.⁴⁸ The IEP team also considered numerous evaluations that had been completed at the time of the May 30, 2023 conference, and addressed additional evaluations that were needed.⁴⁹ Finally, the team created an IEP for Student for the 2023-2024 school year, Student's third-grade year.⁵⁰ Student's May 30, 2023 IEP was not completed during the IEP meeting because District was waiting on some pending evaluations, as ordered by this Hearing Officer, to be completed.

A psychological evaluation was conducted on April 6 and 11, 2023. This evaluation included a clinical interview, review of Student's records, and seven different assessments. These assessments included the following: (1) Wechsler Intelligence Scale for Children - 5th Edition (WISC-V); (2) Woodcock Johnson Tests of Achievement - 4th Edition (WJ-IV ACH); (3) Gray Oral Reading Test - 5th Edition (GORT-5); (4) Behavior Rating of Executive Function - 2nd Edition (BRIEF-2); (5) Achenbach Child Behavior Rating Forms: Parent and Teacher; (6) Autism Diagnostic Observation Schedule - 2nd Edition (ADOS-2); and (7) Childhood Autism Rating Scale - 2nd Edition (CARS-2-HF).⁵¹

⁴⁷ ADE H-24-02 Parent Exhibits, p. 100.

⁴⁸ *Id.* at pp. 100, 81, 93-94.

⁴⁹ *Id.* at p. 100.

⁵⁰ *Id.*

⁵¹ *Id.* at pp. 112-127.

Student's scores on the WISC-V indicated that her full scale IQ was 89 (23rd percentile), and her verbal comprehension score was 81 (10th percentile).⁵² Both of these scores were below the range of average scores, which is 90-109.⁵³ Student's scores with regard to visual spatial (50th percentile), fluid reasoning (50th percentile), working memory (42nd percentile), and processing speed (50th percentile) were all within the average index score range.⁵⁴

With regard to the WJ-IV ACH, Student's academic achievement was assessed in the areas of reading, math, and written language skills.⁵⁵ With regard to reading, Student was assessed with regard to letter word identification, passage comprehension, sentence reading fluency, word attack, and oral reading.⁵⁶ Student's scores were at the 16th, 13th, 9th, 30th, and 10th percentiles, respectively.⁵⁷ The grade equivalent for Student with regard to each of these skills was 1.3 (first grade, third month), 1.2 (first grade, second month), K.8 (kindergarten, eighth month), 1.6 (first grade, sixth month), and 1.0 (first grade, beginning of year), respectively.⁵⁸ Student's broad reading, basic reading, and reading fluency skills were in the low or low average ranges.⁵⁹ With regard to math, Student was assessed with regard to calculation, math facts fluency, and applied problems.⁶⁰ Student's scores were at the 30th, 29th, and 3rd percentiles, respectively.⁶¹ The grade equivalent for Student with regard to each of these skills was 1.7 (first grade, seventh month), 1.6 (first grade, sixth

⁵² ADE H-24-02 Parent Exhibits, pp. 116-17.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at p. 118.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

month), and K.4 (kindergarten, fourth month).⁶² Student's broad mathematics and math calculation skills were in the average range.⁶³ With regard to written language, Student was assessed with regard to spelling, writing, and sentence writing fluency. Student's scores were at the 15th, 42nd, and 29th percentiles, respectively. The grade equivalent for Student with regard to each of these skills was 1.3 (first grade, third month), 2.0 (second grade, beginning of year), and 1.6 (first grade, sixth month), respectively.⁶⁴ Student's broad written language and written expression skills were in the average range.⁶⁵

With regard to the GORT-5, which measured reading rate, accuracy, fluency, and comprehension, Student's reading rate was in the below average range, and her reading accuracy rate was average.⁶⁶ These scores when combined comprised Student's reading fluency score, which fell in the below average range.⁶⁷ Finally, Student's reading comprehension score was in the below average range. Student's scores regarding reading rate, accuracy, fluency, and comprehension were at the 25th, 9th, 16th, and 9th percentiles, respectively.⁶⁸ Student's reading rate showed a grade equivalent of 1.0 (first grade, beginning of year), and her reading accuracy, reading fluency, and reading comprehension scores indicated a grade equivalent below first grade.⁶⁹

Student's scores on the BRIEF-2, which measured memory and executive functioning, indicated that Student had elevated scores with regard to inhibitory control,

⁶² ADE H-24-02 Parent Exhibits, p. 118.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at p. 120.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

self-monitoring, ability to initiate, working memory, organization, and task monitoring.⁷⁰ Student's scores on the CBCL, which is a behavior rating scale, indicated that Student had scores in the clinical range with regard to thought problems, attention problems, rule breaking behavior, and conduct problems. In addition, Student had borderline scores regarding social problems, aggressive behaviors, and ADHD.⁷¹ Student's scores on the ADOS-2 indicated a low level of autism spectrum-related symptoms. Similarly, the CARS2-HF indicated severe symptoms of autism spectrum disorder.⁷²

Dr. Sabine Falls, who conducted Student's psychological evaluation, diagnosed Student with Specific Learning Disorder with impairment in reading and reading fluency (dyslexia).⁷³ Student was also diagnosed with ADHD and Autism Spectrum Disorder.⁷⁴ In addition, Dr. Falls made numerous recommendations including, but not limited to, the following: (1) individual attention in a consistent, structured learning environment with focus on positive reinforcement; (2) shortened assignments for in-class work and homework; (3) reduction in the amount of homework; (4) priority seating; (5) obtain attention before giving directions to Student; (6) brief and concise directions, using simple language; (7) visual aids and several sensory modalities of instruction to maintain attention; (8) physical breaks between academic tasks; (9) redirection when Student shows frustration; and (10) use of a formal handwriting program.⁷⁵

⁷⁰ ADE H-24-02 Parent Exhibits, pp. 121-22.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at p. 124.

⁷⁴ *Id.*

⁷⁵ *Id.* at p. 125.

On June 17, 2023, District administered a KeyMath Diagnostic Assessment (KeyMath-3) to Student.⁷⁶ Student was specifically administered the following subtests: Numeration, Algebra, Geometry, Measurement, Data Analysis and Probability, Mental Computation and Estimation, Addition and Subtraction, Multiplication and Division, Foundations of Problem Solving, and Applied Problem Solving.⁷⁷ Student's scores on all of these subtests were in the average range, with the exception of Numeration and Foundations of Problem Solving, which were in the below average range.⁷⁸

Additionally, Student was evaluated on May 26, 2023 to determine whether she had speech therapy needs.⁷⁹ As part of this evaluation, Student was administered the following assessments: (1) Clinical Evaluation of Language Fundamental - 5th (CELF-5); (2) Comprehensive Assessment of Spoken Language -2 (CASL-2); and (3) Clinical Assessment of Articulation and Phonology - 2nd Edition (CAAP-2).⁸⁰ The results of the CELF-5 indicated that Student had a profound delay in pragmatic social language skills, as well as understanding spoken paragraphs.⁸¹ The results of the CASL-2 indicated that Student had a mild delay in expressive language.⁸² The results of the CAAP-2 indicated that Student's articulation of consonants in words and sentences, as well as phonological error patterns, was within normal limits.⁸³ Based on these assessments, the speech and language evaluator recommended direct speech-language therapy services, specifically 120 minutes per week,

⁷⁶ ADE H-24-02 Parent Exhibits, p. 132.

⁷⁷ *Id.* at pp. 133-35.

⁷⁸ *Id.*

⁷⁹ *Id.* at p. 138.

⁸⁰ *Id.* at pp. 138-42.

⁸¹ *Id.* at p. 140.

⁸² *Id.*

⁸³ *Id.* at p. 141.

to address social pragmatic language skills.⁸⁴ The speech language evaluator also provided several goals that Student could work on as part of her therapy.⁸⁵

Finally, Student was evaluated on May 26, 2023 to determine whether she had occupational therapy needs.⁸⁶ As part of this evaluation, Student was administered the following assessments: (1) Bruininks-Oseretsky Test of Motor Proficiency - 2nd Edition (BOT-2); (2) Developmental Test of Visual Motor Integration (VMI); (3) Miller Function and Participation Scales (M-FUN); and (4) Sensory Profile and Sensory Profile School Companion.⁸⁷ Student's scores on these evaluations indicated that Student had a moderate to severe fine motor delay, below average motor coordination skills, and moderate to severe sensory processing delays.⁸⁸ The evaluator recommended that Student receive 60 minutes of occupational therapy each week within the school setting to address these deficits.⁸⁹

On May 30, 2023, prior to the end of Student's second-grade year, Student's IEP team convened for the purpose of conducting an annual review conference and creating an IEP for Student's third-grade year.⁹⁰ As part of this review, the IEP team considered Student's present level of academic achievement as of the date of the meeting.⁹¹ The team noted the results of Student's recent evaluations, the fact that Student had mastered three of her English Language Arts goals, and that she had mastered her behavior goal pertaining to tasks.⁹² The team also noted Student's academic strengths and weaknesses.⁹³ Student's IEP

⁸⁴ ADE H-24-02 Parent Exhibits, p. 143.

⁸⁵ *Id.*

⁸⁶ *Id.* at pp. 146-56.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at pp. 28-41.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

noted that, although Student's NWEA Map scores fell in the "in need of support" range for reading and math, Student had made gains from the fall semester to the spring semester, as evidenced by the increase in her test scores.⁹⁴ It was also noted that Student had been receiving dyslexia interventions for 35 minutes, 3 times per week.⁹⁵ In addition, it was noted that Student had begun a reading program, specifically Lexia, and that she began the 2022-2023 school year on level 9, but had progressed to level 11 throughout the school year.⁹⁶

Student's May 30, 2023 IEP contained numerous accommodations, including, but not limited to: (1) preferential seating/proximity to teacher; (2) short instructions; (3) reduced assignments; (4) extra time for written response; (5) frequent feedback; (6) fidgets for sensory needs; (7) two-way communication between home and school; (8) extra time for completing assignments; (9) sensory breaks; (10) supervision during transition times; (11) sensory diet; and (12) extra time and text to speech for interim and state assessments.⁹⁷ The schedule of services provided that Student would receive special education services for 150 minutes per week in literacy and 90 minutes per week in social skills.⁹⁸ Student's IEP did not provide for speech or occupational therapy.⁹⁹

Student's IEP included two goals, one for English Language Arts/Written Expression and another specific to behavior. Student's English Language Arts/Written Expression goal provided that, given direct instruction and guided practice, Student would "write to tell a story (narrative sequence, detail, closure) with 80% accuracy in 4 of 5 trials by the end of

⁹⁴ ADE H-24-02 Parent Exhibits, pp. 28-41.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

the IEP term.¹⁰⁰ Student's behavior goal regarding her relation to others stated that she would demonstrate the ability to react appropriately to her peers' emotions and wants with 80% accuracy in four of five situations by the end of the IEP term.¹⁰¹

Student's IEP team considered ESY during the May 30, 2023 IEP meeting.¹⁰² An "IEP Calculation of Regression" form is attached to Student's IEP, along with a checklist of factors to consider for extended school year services.¹⁰³ The checklist of factors for extended school year services is checked "yes" indicating significant concern with Student's rate of progress and the fact that there are areas of Student's curriculum that need continuous attention.¹⁰⁴ The checklist of factors is marked both "yes" and "no" with regard to the degree of Student's impairment and Student's behavioral problems because these two factors were a source of disagreement for Parents and District. Student's IEP team determined that extended school year services were not warranted because Student did not show sufficient regression.¹⁰⁵ Parents were not in agreement with the decision of the team in this regard.¹⁰⁶

On July 6, 2023, after all evaluations had been received, Student's IEP team met and amended the May 30, 2023 IEP. The team added information about Student's recent evaluation results to the section of the IEP outlining present levels of academic achievement.¹⁰⁷ There were also changes to Student's accommodations. Student's July 5, 2023 IEP included the following accommodations: (1) preferential seating; (2) shortened assignments and reduced amount of assignments; (3) frequent feedback; (4) short, clear,

¹⁰⁰ ADE H-24-02 Parent Exhibits, pp. 28-42.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at p. 36.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at pp.42-59.

and sequential directions; (5) visual aids; (6) provision of sufficient information for independent work; (7) examples of correct or complete work as a model of reference; (8) physical movement breaks between academic tasks; (9) sensory breaks; (10) buddy system when transition or going to therapies or resource; (11) visual schedule for transitions; (12) verbal prompts and cues to initiate tasks; (13) provision of copies of class notes; (14) sentence stems and paragraph frames; (15) opportunity to repeat and explain instructions; and (16) agenda sent home on daily basis.¹⁰⁸ The amended IEP also included additional services. The schedule of services provided that Student would receive special education services for 150 minutes per week in reading, 150 minutes per week in math, 90 minutes per week in social skills, 120 minutes per week in speech/language services pertaining to pragmatics, and 60 minutes per week of occupational therapy.¹⁰⁹

In addition to amending Student's present levels page, accommodations, and schedule of services, Student's IEP team also added additional goals for Student.¹¹⁰ Student's IEP as of July 6, 2023 contained three English Language Arts goals, three math goals, three speech language therapy goals, two behavior goals, and one occupational therapy goal.¹¹¹ Student's English Language Arts goals were as follows: (1) when given a list of 40 multi syllable words, containing closed, open, consonant-vowel-e, and vowel team syllable types, Student will be able to decode 32/40 words correctly in 3 of 4 trials by end of the IEP term; (2) when given text or reading passages at her independent reading level, Student will use knowledge of decoding skills and word recognition to increase her oral

¹⁰⁸ ADE H-24-02 Parent Exhibits, pp. 42-59.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

reading fluency with appropriate rate and expression to 80 words per minute with no more than 3 errors in 3 of 4 trials by the end of the IEP term; and (3) when asked to answer an open ended question about a passage that has been read aloud, Student will be able to independently restate the question, provide an answer, and provide two pieces of evidence to support her answer in 3 of 4 trials by the end of the IEP term.¹¹²

Student's math goals were as follows: (1) given four problems, Student will use addition and subtraction within 100 to solve one and two-step word problems involving situations of adding to, taking from, putting together, taking apart, and comparing, with unknowns in all positions with 80% accuracy in 3 of 5 trials by the end of the IEP term; (2) given a line, pie, or bar graph, Student will independently answer questions about each set of data with 80% accuracy on 3 of 4 trials by the end of the IEP term; and (3) given a real-life analog clock face . . . , Student will tell the time on the clock to the nearest minute, with 80% accuracy in 4 of 5 trials by the end of the IEP term.¹¹³

Student's speech language goals were as follows: (1) given appropriate stimuli, in a variety of activities, Student will demonstrate the ability to state a problem in a given social scenario and state two solutions with 80% accuracy . . . over three consecutive sessions, by 5/9/2024; (2) given appropriate stimuli, in a variety of activities, Student will demonstrate the ability to participate in conversational activities on grade level topics, with peers and adults, using appropriate conversational rules . . . with 80% accuracy . . . over three consecutive sessions by 5/9/2024; and (3) given appropriate stimuli, in a variety of activities, Student will demonstrate the ability to interact socially appropriate, with peers

¹¹² ADE H-24-02 Parent Exhibits, pp. 42-59.

¹¹³ *Id.*

while playing games or other grade level social activities, with 80% accuracy . . . over three consecutive sessions by 5/9/2024.¹¹⁴

Student's behavior goals were as follows: (1) given social stories, social games, and role play activities, Student will recognize how others may be feeling based on their actions, body language, and facial expressions with 70% accuracy in 3 of 4 scenarios by the end of the IEP term; and (2) given social stories, role play activities, and models of appropriate interaction, Student will identify acceptable ways of joining her peers during recess or a group activity . . . with 70% accuracy in 3 of 4 scenarios by the end of the IEP term.¹¹⁵

Finally, Student's occupational therapy goal provided that "Student will demonstrate improved fine motor, visual motor, handwriting, and self regulation skills and explore use of assistive technology to enhance ability to participate in academic/school activities with 80% accuracy by end of IEP duration."¹¹⁶

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 U.S. 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). Pursuant to *Rowley*, the first inquiry that a court or hearing officer must make is that of whether the State, *i.e.* local

¹¹⁴ ADE H-24-02, pp. 42-59.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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 make appropriate progress in light of his specific circumstances. *Id.*

Procedural Violations of FAPE

Regarding the first inquiry, that of whether District complied with the procedures set forth in the IDEA, counsel for Parents did not allege any procedural violations of law.¹¹⁷ In this case, only substantive violations were alleged, and these violations are hereby addressed below.

Substantive Violations of FAPE

Having considered the first prong of the FAPE analysis, it is now necessary to analyze whether the District substantively denied FAPE to Student, *i.e.* whether the District failed to provide IEPs that were reasonably calculated to enable Student to make appropriate progress in light of her individual circumstances. 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.*, 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), 137 S.Ct. 988 (2017)).

¹¹⁷ See Petitioner’s Post-Hearing Brief.

In *Andrew F.*, the standard set forth by the Court is “markedly more demanding” as compared to the “merely *de minimis*” test outlined in *Rowley*. *Andrew F.*, 137 S. Ct. 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.”

Andrew F., 137 S.Ct. 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.*

In the present case, ADE H-24-02, Parents asserted that Student’s IEPs dated April 29, 2022 (as amended on August 26, 2022), May 30, 2023, and July 6, 2023 were inappropriate and constituted a violation of FAPE. Parents also asserted that Student was denied FAPE in May 2023 when her IEP team determined that extended year services were not necessary for Student.

IEPs.

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 *Andrew 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). 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).

Pursuant to *Andrew 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.*

April 29, 2022 IEP (Second Grade). In the present case, Parents alleged that Student's second-grade (2022-2023 school year) IEP was inappropriate and resulted in a denial of FAPE because it generally failed to include sufficient special education instruction pertaining to social skills, reading, math, written expression, and dyslexia intervention, as well as failed to include appropriate related services, specifically speech and occupational therapies. For the reasons set out below, it is the opinion of this Hearing Officer that

Student's second-grade IEP, which was in effect between October 19, 2022 and the end of the 2022-2023 school year was not reasonably calculated to allow Student to make appropriate progress in light of her individual circumstances and, therefore, constituted a violation of FAPE.

As outlined in this Hearing Officer's May 8, 2023 Final Decision and Order in ADE H-23-18, this Hearing Officer found Student's April 29, 2022 IEP, as amended on August 26, 2022, to be inappropriate on account of the fact that it lacked appropriate reading goals, failed to provide for more robust dyslexia intervention, failed to provide speech services, showed a reduction in special education instruction pertaining to social skills, and failed to address Student's math deficits. In the present case, specifically Hearing #2, ADE H-24-02, the issue to be determined is whether Student was similarly denied FAPE between October 19, 2022 and July 13, 2023, which includes the period that ADE H-23-18 was pending. It is the opinion of this Hearing Officer that Student was, in fact, denied FAPE between October 19, 2022 and the end of the 2022-2023 school year, which is the portion of the above-referenced timeframe in which Student was in the second grade and receiving services pursuant to the April 29, 2022 IEP. All of the programming that this Hearing Officer found inappropriate for Student in ADE H-23-18 was in effect during the time period raised in ADE H-24-02. It can hardly be said that Student was denied FAPE up through October 19, 2022, but then received FAPE for approximately seven months thereafter, despite the same exact programming.

In addition to creating an IEP that was inappropriate for Student, as fully explained in ADE H-23-18 and referenced above, District failed to adequately monitor Student's progress between October 19, 2022 and the end of the 2022-2023 school year so as to

make adjustments to Student's IEP in response to lack of academic progress, thus denying Student FAPE. Throughout Student's second-grade year, there were inconsistencies in Student's progress that should have caused District to reconsider Student's special education programming and curriculum. For example, Student received dyslexia intervention via the Sonday System 3 times per week, for 35 minutes per session, with the exception of days in which she was absent, and it appeared that Student made progress between October 19, 2022 and April 2023. Specifically, Student began the Sonday System on Level 12 and, as of April 2023, was working on Level 21. However, this progress was suspect in light of the fact that Student's STAR reading tests showed zero progress between October 19, 2022 and the end of the 2022-2023 school year. Despite apparent growth through the Sonday System, Student's STAR reading scores indicated that Student's reading level remained that of a first grader, placing her more than a year below grade level as of October 19, 2022, and two years below grade level by the end of the 2022-2023 school year. At the beginning of Student's second-grade year, she was at the 4th percentile in reading. Despite having worked through several levels of the Sonday System, as of February 2023, halfway through the school year, Student was at the 3rd percentile in reading. Similarly, Student's Lexile level, which also indicated that Student was reading on a first grade level, was unchanged during this same period. These inconsistencies should have caused District to reconvene Student's IEP team, at least as of February 2023, to adjust Student's curriculum and IEP services accordingly. Certainly, by that time, Student was mid-year and making little to no academic progress.

Parents allege in the present case, as they did in ADE H-23-18, Hearing #1, that Student was denied FAPE between October 19, 2022 and July 13, 2023 because Student's

IEP lacked special education instruction in dyslexia, as well as dyslexia goals. This Hearing Officer disagrees with this contention. As stated previously in ADE H-23-18, District has the option of providing dyslexia services through the schedule of services, *i.e.* providing special education instruction in this regard, or providing these services in the general education and referencing them on the IEP. The fact that there are no special education minutes specifically devoted to dyslexia intervention instruction does not, standing alone, result in Student's IEP being inappropriate. In the present case, ADE H-24-02, Student's IEP referenced that Student was receiving dyslexia services and provided details regarding those services. The fact that these services were provided through the general education curriculum was not specifically what resulted in Student's IEP for the 2022-2023 school year being inappropriate.

May 30, 2023 IEP and July 6, 2023 IEPs (Third Grade). Parents asserted in ADE H-24-02 that Student's May 30, 2023 and July 6, 2023 IEPs were inappropriate and constituted a violation of FAPE. This Hearing Officer disagrees.

First and foremost, this Hearing Officer agrees that Student's May 30, 2023 IEP, on its face, appeared deficient. It provided for special education services only in the areas of reading and social skills, with no provision for related services. It also had a total of two goals, which was insufficient given the results of Student's recent evaluations. District witnesses, however, provided testimony that Student's IEP team was waiting on additional evaluations that were pending as of May 30, 2023, specifically evaluations that were ordered by this Hearing Officer on May 8, 2023 in ADE H-23-18. This Hearing Officer finds this testimony to be credible and compelling. In addition, the record indicates that District scheduled a subsequent IEP meeting for July 6, 2023, shortly after receiving the missing

evaluations. As such, Student's May 30, 2023 IEP was simply incomplete at the time of creation, with good reason, as opposed to inappropriate.

Regarding Student's July 6, 2023 IEP, this Hearing Officer finds that it was appropriate as written as of the date of creation. The IEP contained a lengthy and comprehensive statement of Student's present levels of academic achievement and functional performance, listing all evaluation results and recent test scores, as well as Student's diagnoses, strengths, and weaknesses. In addition, the present levels page specifically indicated how Student's disability affected her progress in the general education curriculum. Unlike Student's April 20, 2022 IEP during her second-grade year, the July 6, 2023 IEP outlined numerous goals relating to Student's deficits. Specifically, there were three goals pertaining to English Language Arts, three pertaining to math, three pertaining to speech therapy, two pertaining to behavior, and one pertaining to occupational therapy. These goals, unlike those in the prior year, were much more detailed and pertained to the recommendations outlined in the most recent evaluations. Student's July 6, 2023 IEP also contained numerous accommodations, which also aligned with recommendations that had been stated in Student's evaluations. Finally, Student's July 6, 2023 IEP referenced that Student would continue to receive dyslexia intervention and included a robust schedule of services across all academic areas of deficit. Specifically, the schedule of services provided that Student would receive special education services for 150 minutes per week in reading, 150 minutes per week in math, 90 minutes per week in social skills, 120 minutes per week in speech/language services pertaining to pragmatics, and 60 minutes per week of occupational therapy. On its face, Student's July 6, 2023 IEP for the

2023-2024 school year appears to be reasonably calculated to enable Student to make progress appropriate in light of her circumstances.

This Hearing Officer notes that the timeframe that is relevant in this hearing is October 19, 2022 through July 13, 2023. As such, this Hearing Officer is limited to evaluating the July 6, 2023 IEP as written and based on the evaluation data available to Student's IEP team at the time of IEP creation.

Conclusion. In summary, Student's IEP dated April 29, 2022, which covered the time period of October 19, 2022 through the end of the 2022-2023 school year, Student's second-grade year, was not appropriate for Student. District had data throughout the year that should have triggered the IEP team to reconvene and revise Student's IEP to address her deficits. Student's IEPs dated May 30, 2023 and July 6, 2023, however, are deemed appropriate by this Hearing Officer based on the information that was known to the District at the time of creation. Although the May 30, 2023 IEP was incomplete, District adequately explained that it was waiting on the completion of evaluations ordered by this Hearing Officer on May 8, 2023 before meeting again in July and finalizing Student's IEP for the 2023-2024 school year, Student's third-grade year.

Extended School Year Services (Summer 2023)

In addition to Parents' assertions that Student's IEPs were inappropriate, they also argue that District procedurally violated the IDEA when it failed to provide Student with extended school year services in Summer 2023. Parents loosely argue that District failed to properly analyze the required factors, pursuant to Arkansas regulations, to determine whether Student was entitled to extended school year services following her second-grade year.

Federal regulations address extended school year services. 34 C.F.R. § 300.106 (2024). Specifically, the relevant federal regulation provides that “[e]ach public agency must ensure that extended school year services are available as necessary to provide FAPE,” and that a child’s IEP team is responsible for determining whether extended school year services are required.” *Id.* Arkansas regulations provide additional guidance with regard to this issue. Specifically, Arkansas regulations provide that extended school year services must be provided in situations in which it is determined by a child’s IEP team that the child has regressed or is predicted to regress “to such a substantial degree in a critical skill area that recoupment of such skill following a break in programming . . . is unlikely or would require an unusually long period of time.” *Richardson v. Omaha Sch. Dist.*, 2020 WL 5535012, *11 (W.D. Ark. 2020) (citing Ark. Admin. Code 005.18.19 - 19.06). Arkansas regulations also set forth factors that must be considered by an IEP team in determining eligibility for extended school year services. *Id.* Specifically, a school district is required to consider “the degree of a child’s impairment, the degree of regression experienced by the child, recovery time from this regression, ability of the child’s parents to provide educational structure at home, the child’s rate of progress, the child’s behavior problems, the availability of alternative resources, the ability of the child to interact with nondisabled children, which areas of the child’s curriculum require continuous attention, the child’s vocational needs, and whether the requested services are “extraordinary” for the child’s condition.” *Id.*

In the present case, Student’s IEP team addressed extended school year services during the May 30, 2023 annual review conference. The relevant documents that were attached to Student’s May 30, 2023 IEP indicate that the IEP team walked through all of the

factors referenced above, and also conducted a regression analysis for Student. The regression analysis indicated that there had been no regression with regard to two different reading goals for Student. Regarding the factors, however, Student's IEP team marked "yes" with regard to two factors on the factors checklist, indicating that Student's rate of progress was an issue, as well as the fact that she was deficit in areas of her curriculum that needed continuous attention. There were two other factors that were marked both "yes" and "no" on account of disagreement between District and Parents. Based on the regression analysis and the IEP team's consideration of factors pertaining to eligibility for services, Student's IEP team determined that extended school year services were not warranted.

It is the opinion of this Hearing Officer that District denied a FAPE to Student when it determined at the May 30, 2023 IEP meeting that extended school year services were not warranted for Summer 2023. It appears from the exhibits and testimony in the record that District placed greater significance on the regression analysis that it conducted, as opposed to the other factors of significant concern as required by regulation. In doing so, District failed to adequately consider whether other factors indicated that regression was *predicted* for Student over the summer. Certainly, Student's regression analysis indicated that Student was retaining skills following short school breaks. The summer, however, is a much longer term. In addition, District and Parents were both in agreement that there was significant concern regarding Student's rate of progress in reading, as well as the fact that there were areas in the student's curriculum that needed continuous attention. These two factors, in light of the fact that Student had made little to no progress in reading during the 2022-2023 school year and was facing a lengthy school break, should have prompted Student's IEP team to provide extended school year services to Student. Although there was no actual

regression at the time of the IEP meeting, the IEP team certainly should have predicted that Student would regress over the summer term based on the evidence in the record.

ORDER:

The results of the testimony and evidence warrant a finding for Parents in ADE H-24-02. Specifically, Student was denied FAPE between October 19, 2022 and the end of the 2022-2023 school year on account of receiving services pursuant to an inappropriate IEP. Student was also denied FAPE by District when her IEP team determined on May 30, 2023 that extended school year services were not warranted. These violations of the IDEA resulted in Student falling significantly behind her peers academically throughout her second-grade school year. As such, this Hearing Officer orders the following:

1. Student shall be awarded compensatory education in the form of a reading tutor/coach for one hour per week beginning February 5, 2024 and continuing through the end of July 2024. The reading tutor/coach may be an outside provider or a District employee, but it is required that both Parents and District are in agreement with regard to the reading tutor/coach. District is responsible for all costs associated with this service.
2. The compensatory education ordered in the preceding paragraph (Paragraph 1) does not constitute extended school year services during Summer 2024, as contemplated by Federal and state regulations. As such, Student's IEP team must consider whether Student is entitled to extended school year services during her annual conference at the end of the 2023-2024 school year. To the

extent that she is, extended school year services will be above and beyond the compensatory education provided in Paragraph 1.

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

HEARING OFFICER

1/22/2024

DATE