

**ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit**

IN RE:

XXXXXXXXX, Parent on behalf of
XXXXXXXXXXXX, Student

PETITIONER

VS.

CASE NO. H-22-30

BRYANT SCHOOL DISTRICT

RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Bryant School District (hereinafter "District" or "Respondent") denied XXXXXXXX (hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE") between February 1, 2020 and February 1, 2022 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 referred to as "IDEA"), by: (1) failing to evaluate Student, resulting in an alleged child find violation, when Student showed characteristics of dyslexia during his kindergarten year (2019-2020 school year); (2) failing to make a written referral after Parent provided independent evaluations regarding Student on approximately August 19, 2020; (3) failing to include required personnel, specifically an individual qualified to discuss Student's psychological evaluation, in Student's August 26, 2020 referral conference, as well as Student's accompanying existing data review; (4) predetermining that Student did not have a specific learning disability (SLD) prior to Student's August 26, 2020 referral conference, resulting in parent being prohibited in participating in Student's education; (5) failing to hold an annual review conference for

Student at the end of his first grade year (2020-2021 school year); (6) failing to consider extended school year (hereinafter “ESY”) services until August 2021, following the completion of the 2021 summer; (7) failing to properly evaluate Student in spring of 2020, prior to discontinuing speech services; (8) failing to hold an individualized educational plan (hereinafter “IEP”) meeting to dismiss Student from dyslexia intervention services in October 2021; and (9) failing to provide IEPs reasonably calculated to enable Student to make progress appropriate in light of his circumstances (inappropriate goals, speech therapy services, dyslexia services, behavior interventions, and occupational therapy services).

PROCEDURAL HISTORY:

On February 1, 2022, the Arkansas Department of Education (hereinafter referred to as “Department”) received a request to initiate due process hearing procedures from XXXXXXXXXX (hereinafter referred to as “Parent” or “Petitioner”), the parent and legal guardian of Student. Parent requested the hearing because she believed that District failed to comply with the IDEA, as well as regulations set forth by the Department, by not providing Student with appropriate special education services, as noted *supra* in the statement of issues.¹ Parent seeks a comprehensive evaluation, compensatory education to address an alleged denial of FAPE, an appropriate IEP for Student, and reimbursement for all out-of-pocket therapy services paid for by Parent.²

¹ See Hearing Officer File – Petitioner Complaint.

² *Id.*

In response to Parent's request for hearing, the Department assigned the case to an impartial hearing officer. Thereafter, following continuances granted for good cause in this case, May 18, 2022 was set as the date on which a hearing would commence should the Parent and District fail to reach resolution prior to that time. A prehearing conference regarding this matter was conducted, via telephone, on May 6, 2022, and counsel for both parties participated. During the prehearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address same. Thereafter, the due process hearing in this matter began as scheduled on May 18, 2022. There were joint requests for continuances made on the record so that both Parent and District would have ample time to complete their presentation of testimony on the issues in this case. All in all, testimony was heard on May 18, 2022, May 19, 2022, May 20, 2022, May 23, 2022, June 7, 2022, June 8, 2022, and June 9, 2022.³

The following witnesses testified in this matter: Audra Alumbaugh, Carrie Clay (hereinafter "Ms. Clay"), M. Tracy Morrison, RaDia Reynolds (hereinafter "Ms. Reynolds"), Jaclyn Williams, Erica Labuda, Jeffrey Loftis (hereinafter "Mr. Loftis"), Tara Begoon (hereinafter "Ms. Begoon"), Tori Reppond (hereinafter "Ms. Reppond"), Kimberlee Langley (hereinafter "Ms. Langley"), Tracey Renard (hereinafter "Ms. Renard"), Taylor Doan, Kelly Colbert, and Parent.⁴

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-

³ See generally Transcript, Vols. I-VII.

⁴ *Id.*

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 Jeremy Lasiter, Jr. (In-House Counsel for District).

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements, and both timely submitted briefs in accordance with the deadline set by this Hearing Officer.⁵

FINDINGS OF FACT:

Student is an eight-year-old male that attends school in the Bryant School District.⁶ At the conclusion of the due process hearing in this matter, Student had completed his second-grade year at District, specifically at Hill Farm Elementary School.⁷ Parent (Mother) testified that she noticed that Student exhibited articulation issues during his preschool years and spoke to Student's physician about her observations.⁸ At that time, nothing was done to address Parent's concerns. Shortly thereafter, Parent accepted a job in the Bryant School District and Student began attending kindergarten at Hill Farm Elementary.

Kindergarten (2019-2020 School Year)

Student began kindergarten in the fall of 2019, and his teacher, Mr. Loftis, described him as a model student. Student was well-behaved, exhibited good manners at school, and worked hard in class.⁹ Mr. Loftis had no concerns about Student's behavior, executive

⁵ See Hearing Officer File – Post-Hearing Briefs.

⁶ See Hearing Officer File – Petitioner Complaint.

⁷ *Id.*

⁸ Transcript, Vol. IV, p. 53.

⁹ *Id.* at pp. 291-92. See also Parent Exhibits, p. 65; District Exhibits, Ex. 11, p. 6.

functioning skills, or ability to socialize with his peers.¹⁰ Mr. Loftis did not observe Student exhibiting any issues with verbal communication while Student was in his class.¹¹ He further reported that Student typically learned more than his peers, but was somewhat of a “slow starter,” explaining that Student was typically not in a hurry to finish his class work.¹²

In February 2020, District administered to Student an initial dyslexia screener.¹³ Student showed some risk for having characteristics of dyslexia on account of his performance on one portion of the testing, specifically the Rapid Automated Naming (hereafter “RAN”) assessment.¹⁴ The RAN specifically measures how quickly a student can recall facts.¹⁵ Parent was notified of Student’s performance on the initial dyslexia screener, and she consented to additional testing of Student.¹⁶ Student was then administered a Level I dyslexia screener, the results of which indicated that Student did not show characteristics of dyslexia.¹⁷

In March 2020, schools in Arkansas shut down on account of COVID-19, and Student received virtual instruction for the remainder of the 2019-2020 school year. Mr. Loftis reported that he had no hesitation promoting Student to the first grade on account of his academic achievement during the year.¹⁸ Student was administered the NWEA Map standardized test in both the fall and the spring semesters.¹⁹ With regard to mathematics,

¹⁰ Transcript, Vol. IV, pp. 297-98.

¹¹ *Id.* at p. 301.

¹² Parent Exhibits, p. 65; District Exhibits, Ex. 11, p. 6.

¹³ Transcript, Vol. IV, p. 293.

¹⁴ District Exhibits, Ex. 16.

¹⁵ Transcript, Vol. IV, p. 293.

¹⁶ District Exhibits, Ex. 16, p. 3.

¹⁷ *Id.* at Ex. 16, pp. 6, 12.

¹⁸ Transcript, Vol. IV, p. 301.

¹⁹ District Exhibits, Ex. 37.

Student scored in the 55th percentile in fall of 2019, and in the 59th percentile in the spring of 2020.²⁰ With regard to the academic area of reading, Student scored in the 83rd percentile in fall of 2019, and in the 86th percentile in the spring of 2020.²¹ In both semesters, Student scored higher in mathematics and reading than both the district and the norm grade level means.²²

Following Student's kindergarten year, Parent took steps to secure independent evaluations for Student, specifically, a psychological evaluation, a speech evaluation, and an occupational therapy (hereinafter "OT") evaluation. These evaluations were conducted on June 15, 2020, July 30, 2020, and August 6, 2020, respectively.²³

The psychoeducational evaluation of Student was conducted by Pediatrics Plus. The evaluator included a review of records, review of questionnaires, an intake interview, and the administration of several assessments.²⁴ Assessments administered to Student included the following: (1) Achenbach Child Behavior Checklist (CBCL – Parent and Teacher's Report Forms); (2) Behavior Rating Inventory of Executive Function (BRIEF) – Parent and Teacher Forms; (3) Comprehensive Test of Phonological Processing – 2nd Edition (CTOPP-2); (4) Conners Kiddie Continuous Performance Test – 2nd Edition (Conners KCPT-2); (5) Gray Oral Reading Test – Fifth Edition (GORT-5); (6) Test of Word Reading Efficiency-2nd Edition (TOWRE-2); (7) Wechsler Individual Achievement Test – Third Edition (WIAT-III); (8)

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at Ex. 11, Ex. 12, Ex. 13.

²⁴ *Id.* at Ex. 11.

Wechsler Intelligence Scale for Children – 5th Edition (WISC-V); and (9) Woodcock-Johnson Test of Achievement IV (WJIV Test of Achievement).

On the CBCL, Parent’s scores reached the significant range on the anxious/depressed scale, the attention problems scale, the internalizing problems scale, the total problems scale, the anxiety problems scale, the obsessive-compulsive problems scale, and the stress problems scale.²⁵ The report also noted that Parent’s scores indicated moderate concerns on the social problems scale, the externalizing problems scale, the depressive problems scale, the ADHD scale, the oppositional defiant problems scale, and the sluggish cognitive tempo scale.²⁶ District’s scores, however, all fell in the average range.²⁷ The evaluator determined that the profile of scores suggested that Student “exhibits normal, average levels of emotional and behavioral problems when compared to other boys of the same age.”²⁸ Similarly, on the BRIEF assessment, Parent’s ratings of Student showed significant elevation on all of the BRIEF composite indices (behavior regulation index, emotional regulation index, cognitive regulation index, and global executive composite index). The evaluator noted that these scores are typical of children with an ADHD diagnosis.²⁹ The teacher ratings of Student, however, did not result in any elevated BRIEF composite indices.³⁰

Regarding academic achievement, Student was administered the WISC, the WJIV Test of Achievement, and the WIAT. Pursuant to the WISC, Student’s full-scale IQ is 83, which is

²⁵ *Id.* at Ex. 11, p. 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at Ex. 11, p. 6.

³⁰ *Id.*

in the 13th percentile, or in the low average range.³¹ Student's IQ is, therefore, slightly below that expected for his age.³² Considering individual composite scores, Student is average on the verbal comprehension composition, low average on the visual spatial, working memory, and processing speed composites, and low on the fluid reasoning composites.³³ Based on the WJIV Test of Achievement, Student's reading skills at the time of evaluation were in the average to low ranges, with Student's weaknesses falling in the areas of reading fluency and oral reading.³⁴ Student's math skills fell within the average to low average ranges, with math fact fluency being an area of weakness.³⁵ Regarding written language skills, Student's scores fell within the average range, and the evaluator noted that written language appeared to be an area of strength for Student.³⁶ Student's scores were also within the average range in the areas of phoneme-grapheme knowledge, academic skills, and academic applications.³⁷ Finally, based on the WIAT, Student's early reading skills were in the high average range, and Student' math problem solving and numerical operations skills were in the average range.³⁸

Regarding language, Student was administered the CTOPP, TOWRE, and the GORT. In addition, the evaluator reviewed a writing sample completed by Student.³⁹ Regarding the CTOPP, Student's phonological awareness skills were in the average range, his phonological memory skills were in the low range, and his rapid naming skills were in the average to low

³¹ *Id.* at Ex. 11, p. 8.

³² *Id.* at Ex. 11, p. 14.

³³ *Id.* at Ex. 11, p. 8.

³⁴ *Id.* at Ex. 11, p. 9.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at Ex. 11, p. 10.

³⁹ *Id.* at Ex. 11, pp. 10-11.

average range.⁴⁰ Regarding the TOWRE, Student's sight word efficiency was in the low average range, his phonemic decoding efficiency was in the average range, and his total word reading efficiency was in the average range.⁴¹ Regarding the GORT, Student's scores on subtests pertaining to rate, accuracy, fluency, and comprehension were all below average. Student's reading rate and reading accuracy were in the 5th percentile, his reading fluency was in the 2nd percentile, and his reading comprehension was in the 16th percentile.⁴² Finally, Student's writing sample showed inconsistent capitalization, inconsistent handwriting, and no capitalization; however, Student had no spelling errors and used age-appropriate sentence structure.⁴³

Regarding attention and executive functions, Student was issued the Conners KPCT-2, which measures performance in various areas including inattentiveness, impulsivity, sustained attention, and vigilance.⁴⁴ Student's scores indicated potential issues with inattentiveness and maintaining vigilance, but there was no indication that Student had any issues with impulsivity or sustained attention.⁴⁵

In summary, the psychoeducational evaluator concluded that Student had a DSM 5 diagnosis of dyslexia.⁴⁶ The evaluation reported that Student had problems with automaticity, fluency, and recognizing words in print. It was recommended that Student undergo a mental health evaluation, although there was no indication from the evaluation

⁴⁰ *Id.* at Ex. 11, p. 10.

⁴¹ *Id.* at Ex. 11, p. 11.

⁴² *Id.*

⁴³ *Id.* at Ex. 11, p. 15.

⁴⁴ *Id.* at Ex. 11, p. 12.

⁴⁵ *Id.* at Ex. 11, p. 13.

⁴⁶ *Id.* at Ex. 11, pp. 16-19.

report whether this recommendation was directed at District or intended for Parent to seek a private evaluation.⁴⁷ The evaluation report also included a recommendation that Student be provided with a reading/writing/spelling program based on the Orton-Gillingham methodology, as well as other academic accommodations.⁴⁸

The speech evaluation of Student was conducted by Kidsource Therapy. As part of this evaluation, Student was administered the following assessments: (1) Goldman-Fristoe Test of Articulation – Third Edition (GFTA-3); (2) Clinical Evaluation of Language Fundamentals Preschool – Second Edition (CELF Preschool 2); (3) Test of Language Development – Primary – Fourth Edition (TOLD-P:4); and (4) Language Processing Test 3: Elementary (LPT 3: Elementary).⁴⁹ On the GFTA-3, Student had no articulation errors during testing, and his scores were within normal limits for his age.⁵⁰ On the CELF Preschool-2, Student's core language, expressive language, and language structure scores were all in the normal range; however, his receptive language and language content scores indicated moderate delay.⁵¹ Student demonstrated strengths in his ability to use superlatives, correct subject-verb agreement, and understand prepositions. Student's weaknesses, however, were his inability to follow two-step temporal directions, understand either/or, repeat five/six-word sentences, and tell how two items are similar.⁵² On the Told-P:4, Student's composite scores on all six subtests, specifically listening, organizing, speaking, grammar, semantics,

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at Ex. 12.

⁵⁰ *Id.* at Ex. 12, p. 2.

⁵¹ *Id.* at Ex. 12, p. 3; Parent Exhibits, pp. 89-96.

⁵² District Exhibits, Ex. 12, p. 3.

and overall spoken language, showed mild or moderate delay.⁵³ Student's strengths on this assessment included his ability to identify age-appropriate pictures, understand past tense verbs, and use plurals; however, his weaknesses included inability to tell how two items are similar, define age-appropriate vocabulary, understand past perfect tense verbs, and use reflexive pronouns.⁵⁴ In summary, the evaluator determined that Student's articulation, fluency, voice, hearing, and oral motor skills were within normal limits. Student, however, presented with a moderate delay in receptive language skills which required direct speech services on a weekly basis.⁵⁵ The evaluator recommended that Student be provided speech therapy 60 minutes per week for a total of 12 months.⁵⁶

The OT evaluation of Student was also conducted by Kidsource Therapy. As part of this evaluation, Student was administered the following assessments: (1) Bruininks-Oseretsky of Motor Proficiency – Second Decision (BOT-2); (2) Test of Handwriting Skills (THS-R); (3) BRIEF-2; and (4) Sensory Processing Measure (SPM). On the BOT-2, Student was administered subtests in the areas of fine motor control and manual coordination, and his scores were average in all areas with the exception of the area of manual dexterity, which was below average.⁵⁷ Student's score in the area of manual dexterity, although below average, was not, per the testimony of District's occupational therapist, sufficient to qualify Student for school-based occupational therapy.⁵⁸ Regarding the THS-R, Student's scores were in the 83rd percentile, and the evaluator noted that Student copied letters with nearly

⁵³ *Id.* at Ex. 12, pp. 3-4.

⁵⁴ *Id.* at Ex. 12, p. 4.

⁵⁵ *Id.* at Ex. 12, p. 8.

⁵⁶ *Id.*

⁵⁷ *Id.* at Ex. 13, p. 2.

⁵⁸ Transcript, Vol. V, pp. 107-109.

complete accuracy of form, height, and spacing.⁵⁹ It was also noted that Student was able to write letters that were verbalized to him with high accuracy, and he was able to sound out words and spell fast with decent accuracy. Student did show some difficulty in writing his entire alphabet from memory.⁶⁰ On the BRIEF-2 and the SPM, only the parent questionnaires were completed.⁶¹ The BRIEF-2 results based on Parent's questionnaire were nearly identical to those described in the psychoeducational evaluation.⁶² Regarding the SPM, Parent's scores indicated that Student had issues in the areas of social participation, hearing, vision, and planning and ideas, and the evaluator recommended that Student be provided 60 minutes of occupational therapy per week.⁶³ The record does not support that Student was having sensory issues in these areas while at school.

First Grade (2020-2021 School Year)

On August 19, 2020, three days prior to the start of the 2020-2021 school year, Parent provided the independent evaluations that she secured to the Assistant Principal of Hill Farm Elementary and requested that Student be provided with a 504 plan.⁶⁴ On this same day, District made a special education referral for Student.⁶⁵ A Notice of Conference form was sent to Parent, scheduling a referral conference for August 26, 2020.⁶⁶ Attendees at the August 26, 2020 meeting included Parent, as well as Ms. Begoon, who was Student's first grade regular education teacher, Ms. Clay, a speech language pathologist and acting as special

⁵⁹ District Exhibits, Ex. 13, p. 3.

⁶⁰ *Id.*

⁶¹ *Id.* at Ex. 13, pp. 4-5.

⁶² District Exhibits, Ex. 13, p. 4; Ex. 11.

⁶³ District Exhibits, Ex. 13, p. 5; Parent Exhibits, pp. 129, 134.

⁶⁴ Transcript, Vol. IV, pp. 60-64. *See also* District Exhibits, Ex. 58.

⁶⁵ District Exhibits, Ex. 29, p. 1.

⁶⁶ *Id.* at Ex. 29, p. 2.

education teacher for District, Amie Horn, acting in the capacity of LEA representative, and Ms. Langley, an occupational therapist for District.⁶⁷ Prior to the meeting, on August 23, 2020, Parent completed a social history form for Student.⁶⁸ In addition, the District's school psychology specialist reviewed the reports provided by Parent prior to August 26, 2020 and provided some preliminary guidance to District, noting that Student would not likely be in need of specialized academic instruction based on his previous performance in kindergarten, particularly considering that he could receive dyslexia services in the general education setting.⁶⁹

Student's IEP team conducted an existing data review and determined that no additional evaluations were needed.⁷⁰ Based on the evaluations and social history provided by Parent, the team determined that Student was eligible for an IEP pursuant to the IDEA in the eligibility category of speech/language impairment.⁷¹ An IEP was developed for Student on this same day.⁷²

Student's IEP, with dates of service from August 26, 2020 through May 28, 2021, provided a thorough description of Student's present levels of academic and functional performance, outlining the results of all three of Student's most recent evaluations, as well as Student's performance in the previous school year.⁷³ Student's IEP also indicated that he would receive numerous modifications and accommodations, specifically extended time for

⁶⁷ *Id.* at Ex. 29, p. 61.

⁶⁸ *Id.* See also Parent's Exhibits, pp. 43-44.

⁶⁹ Parent Exhibits, p. 237.

⁷⁰ District Exhibits, Ex. 29, pp. 45-49.

⁷¹ *Id.* See also Transcript, Vol 1, pp. 239-241.

⁷² District Exhibits, Ex. 29, pp. 51-66.

⁷³ *Id.* at Ex. 29, p. 52.

assignments, verbal directions, repeated instructions, checks for understanding, verbal test questions (read to Student), extended time for testing, and shortened/reduced assignments as appropriate.⁷⁴ It was also specified that Student would not be required to read out loud in class.⁷⁵ In the section of the IEP that asked if there were other factors for consideration, it was noted that Student exhibited characteristics of dyslexia and would receive appropriate interventions to address same.⁷⁶

There was one goal on Student's IEP, specifically in the area of speech/language, and this goal contained five objectives. The goal stated that, given multisensory instruction, Student would improve receptive language skills by meeting four of five objectives by the end of his first-grade year.⁷⁷ The five objectives of Student's speech goal included the following: (1) given multisensory instruction, group objects into categories and provide rationale for choice of grouping on 4 of 5 prompts across 3 sessions; (2) given multisensory instruction, look at groups of items and determine the common attribute within each group on 4 of 5 prompts across 3 sessions; (3) given a set of 4-5 pictures, place pictures in logical sequence to tell a story on 4 of 5 prompts across 3 sessions; (4) given information presented orally, recall information by using a memory strategy on 4 of 5 prompts across 3 sessions; and (5) when given oral instructions containing 3 steps, use a memory strategy to recall each step and complete the task on 4 of 5 prompts.⁷⁸ All of these goals had a deadline of May 28, 2021.⁷⁹

⁷⁴ *Id.* at Ex. 29, p. 55.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at Ex. 29, p. 56.

⁷⁸ *Id.*

⁷⁹ *Id.*

Pursuant to the schedule of services, Student was scheduled to receive 30 minutes of speech therapy, 6 times per month, to address receptive language issues, for a total of 180 minutes of speech therapy per month.⁸⁰ Finally, the team determined that Student needed individualized dyslexia intervention, but that Student could be served in the general education setting for these services.⁸¹

Student's IEP did not include weekly or monthly OT services. District's occupational therapist, Ms. Langley, conducted a form entitled "Consideration for Educationally Relevant Therapy (hereinafter "CERT").⁸² This form assists districts in determining whether occupational therapy is warranted in the educational environment.⁸³ Pursuant to this form, Ms. Langley looked at Student's complete profile and considered personal care, mobility, gross motor skills, fine motor/visual motor skills, sensory processing, and prior therapy.⁸⁴ Pursuant to the outcome of the CERT, Ms. Langley did not recommend OT services for Student, and the entire IEP team considered this information and determined that Student did not qualify for school-based OT services.⁸⁵

Regarding dyslexia intervention, Student was scheduled to receive 140 minutes per week (4 sessions, 35 minutes each) of instruction pursuant to an Orton-Gillingham based dyslexia program.⁸⁶ The District utilized the Sonday System, which met the methodology criteria and was on the ADE approved list of dyslexia reading programs.⁸⁷ All District

⁸⁰ *Id.* at Ex. 29, p. 58.

⁸¹ Transcript, Vol. I, pp. 243-44.

⁸² District Exhibits, Ex. 14.

⁸³ Transcript, Vol V, p. 102.

⁸⁴ District Exhibits, Ex. 14.

⁸⁵ *Id.* See also Transcript, Vol. V, p. 145.

⁸⁶ Transcript, Vol. I, p. 238. See also District Exhibits, Ex. 11.

⁸⁷ District Exhibits, Ex. 17, Ex. 22. See also Transcript, Vol. VI, p. 81.

personnel that provided dyslexia intervention services to Student were properly trained with regard the Souday System.⁸⁸ In addition to Souday, District supplemented Student's instruction in the areas of phonological awareness, fluency, and vocabulary using other programs, such as Lexia and Foundations.⁸⁹ District's dyslexia coordinator testified that the Souday System had been implemented with fidelity.⁹⁰

During first grade, Student received dyslexia intervention in a general education setting four times per week, specifically Monday through Thursday from 2:15 to 2:50 p.m.⁹¹ The record contains two progress reports for Student for the 2020-2021 school year.⁹² The first is dated December 14, 2020, and indicates that Student progressed from Box 1, Level 6 to Box 1, Level 20 in the Souday System during the fall semester 2020.⁹³ The second progress report is dated May 21, 2021 and indicates that Student progressed during the spring 2021 semester from Box 1, Level 20 to Box 1, Level 35 in the program.⁹⁴ The May 21, 2021 progress report includes a comment that states: "Mastery checks after every three lessons averaged in reading 96.5% and in spelling 94.5%. He has worked diligently and earnestly to accomplish his best."⁹⁵ Attached to these progress reports are 12 pages of notes documenting the sessions attended by Student and the material presented during same.⁹⁶ Considering the school calendar and occasional absences by Student, it appears that nearly

⁸⁸ Transcript, Vol. VI, pp. 81-82, 88-89.

⁸⁹ Transcript, Vol. VI, pp. 82-85.

⁹⁰ *Id.* at p. 89.

⁹¹ District Exhibits, Ex. 17, p. 1.

⁹² *Id.* at Ex. 17, p. 2.

⁹³ *Id.* at Ex. 17, p. 3.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at Ex. 17, pp. 4-16.

all possible sessions were completed.⁹⁷ In addition, a log of dyslexia therapy check-ins is included in the record.⁹⁸ Student completed a total of 10 mastery checks during the 2020-2021 school year.⁹⁹ By the end of Student's first-grade year, he had completed Box 1 of the Sonday System, which included modules ranging from beginning stages of reading through the end of the second grade reading level.¹⁰⁰

Regarding speech therapy, Student's IEP stated that Student was to receive 180 minutes per month of speech therapy, to be divided into 30-minute sessions (6 total sessions). Student received 4 sessions during September 2020, 6 sessions during October 2020, 4 sessions in November 2020, and 3 sessions in December 2020. Student missed a total of 7 speech sessions during the Fall 2020 semester, for a total of 210 minutes.¹⁰¹ By the end of the fall 2020 semester, Student had mastered his speech goal, including all five objectives, as stated on the August 26, 2020 IEP.¹⁰²

On January 1, 2021, a Notice of Conference was sent to Parent, scheduling an IEP meeting for January 15, 2021 for the purpose of conducting an existing data review and revising Student's IEP.¹⁰³ At the January 15, 2021 meeting, which Parent attended via ZOOM, Student's IEP team reviewed his speech therapy notes, most recent NWEA Map standardized test scores (reading and math), IEP goals, and progress reports.¹⁰⁴ The team amended Student's IEP by changing his direct speech services (180 minutes per month) to monthly

⁹⁷ *Id.*

⁹⁸ *Id.* at Ex. 19.

⁹⁹ *Id.* at Ex. 28.

¹⁰⁰ *Id.* at Ex. 26, p. 1. *See also* Transcript, Vol. III, pp. 91-95.

¹⁰¹ District Exhibits, Ex. 34. *See also* Transcript, Vol. I, pp. 249-251.

¹⁰² Transcript, Vol. I, pp. 249-251.

¹⁰³ District Exhibits, Ex. 30.

¹⁰⁴ *Id.*

“indirect services” wherein Student was to receive 30 minutes of speech therapy on a monthly basis for the purpose of monitoring Student’s progress.¹⁰⁵ Parent, Ms. Clay, and Ms. Begoon all attended this meeting, with Ms. Clay acting in the capacity of special education teacher, LEA representative, and individual to interpret instructional implications of evaluation results.¹⁰⁶ The Notice of Action provided to Parent on January 15, 2021 states that Student had met all of the goals and objectives as stated in the August 26, 2020 IEP, and that Student was doing well in all academic areas.¹⁰⁷ The IEP team determined that Student would be moved from direct speech therapy to indirect monitoring, and that a speech language reevaluation would be conducted by District for the purpose of determining whether Student continued to have needs related to speech and language skills.¹⁰⁸ The Notice of Action also stated that Student would not be dismissed from speech services as of January 15, 2021 because a reevaluation was needed to make further decisions.¹⁰⁹ Parent inquired about reinstating services if Student once again showed a need for speech therapy, and she was assured that the IEP team would reconvene and develop a plan for Student should he show deficits in the future.¹¹⁰

During the spring 2021 semester, Student received indirect speech monitoring. On January 19, 2021, Student’s classroom teacher completed a language skills checklist with Student and indicated that all skills were average. In February and March 2021, Student’s speech therapist contacted Student’s classroom teacher and dyslexia interventionists for the

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at Ex. 30, p. 22.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at Ex. 30, p. 23.

¹¹⁰ Transcript, Vol. 1, pp. 251-252.

purpose of checking on academic and Sonday System progress.¹¹¹ They reported that Student was “making steady gains.”¹¹²

On March 9, 2021, District’s speech therapist, Ms. Renard, completed a speech reevaluation for Student.¹¹³ Pursuant to this reevaluation, Student was administered the following assessments: (1) Oral Peripheral Exam; (2) Voice and Fluency; (3) Arizona Articulation and Phonology scale, Fourth revision (AAPS-4); (4) Goldman-Fristoe Test of Articulation and Phonology-Second Edition (CAAP-2); and (5) Oral and Written Language Scales-Second Edition (OWLS-II).

Regarding the Oral Peripheral Exam, the evaluator reported that Student was able to complete most lingual and labial tasks. She noted, however, that he did have some difficulty elevating his tongue upon protrusion.¹¹⁴ The evaluator also addressed voice and fluency, noting that the rate, rhythm, pitch, and intensity of Student’s speech were adequate, and that Student exhibited no abnormal disfluencies.¹¹⁵ Regarding articulation, the evaluator considered the results of the GFTA-3 and determined that Student’s articulation skills were severely delayed. The AAPS-4 and the CAAP-2 both confirmed this finding.¹¹⁶ The OWLS-2 was administered to Student for the purpose of determining if he continued to have any language disorders.¹¹⁷ The results of this assessment indicated that Student’s listening comprehension and oral expression were within normal limits.¹¹⁸ Finally, a curriculum-

¹¹¹ District Exhibits, Ex. 34, p. 7.

¹¹² *Id.*

¹¹³ District Exhibits, Ex. 15. *See also* Transcript, Vol. 6, pp. 10-11.

¹¹⁴ District Exhibits, Ex. 15, p. 2.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at Ex. 15, p. 3.

¹¹⁷ *Id.* at Ex. 15, p. 4.

¹¹⁸ *Id.*

based assessment regarding speaking and listening was completed on Student's behalf, and Student's skills pertaining to comprehension and oral expression were determined to be average.¹¹⁹ Based on the results of these assessments, it was determined that Student had good receptive and expressive language skills, but had a significant articulation deficit. Specifically, Student had a lisp that hindered his ability to produce the "S" and "Z" sounds, as well as "S" blends.¹²⁰ The evaluator recommended that Student continue to receive direct speech therapy for the purpose of addressing his articulation delay.¹²¹

On March 18, 2021, District sent a Notice of Conference to Parent scheduling an IEP meeting for April 9, 2021. The purpose of the IEP meeting was to determine continued eligibility for special education and related services, and review and revise Student's IEP.¹²² On April 9, 2021, Student's IEP team, including Parent via ZOOM, met to discuss the results of Student's speech reevaluation. The IEP team determined that Student continued to qualify for speech therapy pursuant to the eligibility category of speech language impairment and amended his IEP to provide for 30 minutes of direct speech therapy per week to address articulation deficits.¹²³ The IEP team also added a goal to Student's IEP which provided that, given multisensory instruction, Student would produce targeted sounds with 90% accuracy across 3 sessions by the end of the IEP. This goal had one objective, which was that Student "would produce /s/ and /z/ in words and sentences with correct tongue placement on 90% of prompts across 3 sessions by the end of the IEP."¹²⁴ Following the amendment of Student's

¹¹⁹ *Id.*

¹²⁰ Transcript, Vol. 6, pp. 24-25.

¹²¹ District Exhibits, Ex. 15, p. 5.

¹²² *Id.* at Ex. 31, p. 8.

¹²³ *Id.* at Ex. 31, p. 11.

¹²⁴ *Id.* at Ex. 32, p. 5.

IEP on April 9, 2021, Student had two speech sessions in April 2021, and three speech sessions in May 2021 before school ended for the year.¹²⁵ The expiration date for this IEP was August 25, 2021.

Student's first grade teacher, Ms. Begoon, testified that Student was average to high average academically throughout his first-grade year.¹²⁶ She did not observe Student having any issues socializing with other students or experiencing any sensory issues. She also did not observe student exhibiting hyperactive or negative behavior. Student's report card for the 2020-2021 school year indicated that he met grade-level standards in all areas of literacy with the exception of writing, which was progressing.¹²⁷ Regarding math, Student met all grade-level standards with the exception of interpreting data using tally charts, pictures, and graphs, which was also progressing.¹²⁸ In the areas of personal development, student met all grade-level standards with the exception of displaying organizational skills and maintaining focus, both of which were progressing.¹²⁹ Student's NWEA scores in the academic area of reading indicated that he was in the 88th percentile in the fall of 2020, the 68th percentile in the winter of 2021, and the 95th percentile in the spring of 2021.¹³⁰ All measured skills, including foundational skills, literature, vocabulary and language, and writing were all in the "high" or "high average" categories.¹³¹ Student's Lexile range at the end of first grade from 495L-645L, which is the equivalent of a second-grade reading level.¹³² Student's NWEA

¹²⁵ *Id.* at Ex. 34, pp. 8-9.

¹²⁶ Transcript, Vol. IV, pp. 323, 329-30.

¹²⁷ District Exhibits, Ex. 38.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at Ex. 39.

¹³¹ *Id.*

¹³² *Id.*

scores in the academic area of math indicated that he was in the 75th percentile in the fall of 2020, the 29th percentile in the winter of 2021, and the 40th percentile in the spring of 2021.¹³³ Student scored “high average” in the area of operations and algebraic thinking, “average” in the area of number and operations, “low average” in the area of measurement and data, and “low” in the geometry.¹³⁴

Second Grade (2021-2022 School Year)

On August 18, 2021, eight days prior to the expiration of Student’s IEP, District provided a Notice of Conference to Parent, scheduling a meeting for the purpose of conducting an annual review, reviewing and revising Student’s IEP, and considering ESY.¹³⁵ Student’s IEP meeting was held on August 25, 2021.¹³⁶ Parent attended the meeting.¹³⁷ At this meeting, a new IEP for Student’s second-grade year was created, with dates of service from August 25, 2021 through May 27, 2022.¹³⁸ The IEP team determined that Student was not in need of ESY services.

Student’s August 25, 2021 IEP included a statement of present levels of academic achievement and functional performance, which outlined Student’s past speech services, progress, and dyslexia intervention, as well as Student’s performance on the March 2021 speech reevaluation and first grade NWEA Map testing.¹³⁹ It was noted that Student was “able to produce /S/ and /Z/ sounds in words with 95% accuracy, but that he still has

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at Ex. 33.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at Ex. 33, p. 5.

articulation deficits that needs addressed.¹⁴⁰ This section of the IEP also stated that Student would begin working on Souday System, Box 2, for the purpose of continuing dyslexia intervention.¹⁴¹ In addition, Student's August 25, 2021 IEP included a statement of modifications and accommodations, specifically extending time for assignments, providing directions verbally, checking for understanding, repeating instructions if needed, providing single step instructions, reading test questions aloud to Student, extending time for testing, and shortening/reducing assignments as appropriate.¹⁴² Student's IEP contained one speech goal which addressed articulation, and this goal had two objectives. Specifically, Student's goal stated that, while he was participating in group activities (individual or small group), Student would demonstrate improved articulation skills by achieving the following objectives: (1) given multisensory instruction, Student would produce /S/ sound in phrases and sentences with correct tongue placement on 90% of prompts by May 27, 2022; and (2) Student would produce /Z/ sounds in phrases and sentences with correct tongue placement on 90% of prompts by May 27, 2022.¹⁴³ The schedule of services on Student's IEP stated that he would receive 90 minutes of direct speech therapy per month in the area of articulation, with these minutes divided into 30-minute session (3 sessions monthly).¹⁴⁴

Regarding dyslexia intervention, Student was scheduled to receive 160 minutes per week (4 sessions, 40 minutes each) of instruction in a general education setting pursuant to the Souday System. Specifically, Student was scheduled for dyslexia interventions Monday

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at Ex. 33, p. 7.

¹⁴³ *Id.* at Ex. 33, p. 8.

¹⁴⁴ *Id.* at Ex. 33, p. 10.

through Thursday from 7:50 a.m. to 8:35 a.m.¹⁴⁵ The record contains numerous pages of intervention logs which outline the dates that Student received intervention, as well as what the interventionist worked on each date with Student.¹⁴⁶ Considering the school calendar and occasional absences by Student, it appears that nearly all possible sessions were completed through October 21, 2021.¹⁴⁷ At that time, Student was approaching material in the Soudy System that was above grade level, and Student's dyslexia interventionist, Ms. Williams, talked with Parent at a parent-teacher conference in October about implementing a 60-day monitoring period to see if Student could maintain the progress that he had made.¹⁴⁸ Parent was made aware that Student could be immediately provided with direct dyslexia services if, at any point, something changed and he showed a continued need for same.¹⁴⁹ Ms. Williams checked in with Student's classroom teacher, Ms. Reppond, at the end of October 2021, three times in November 2021, two times in December 2021, four times in January 2022, and three times in February 2022.¹⁵⁰

Regarding speech therapy, Student's IEP stated that Student was to receive 90 minutes per month of speech therapy, to be divided into 30-minute sessions (3 sessions monthly). Student received 2 sessions during August 2021, 3 sessions during September 2021, 3 sessions during October 2021, 3 sessions during November 2021, 2 sessions during

¹⁴⁵ *Id.* at Ex. 18.

¹⁴⁶ *Id.* at ex. 18, pp. 3-16.

¹⁴⁷ *Id.*

¹⁴⁸ Transcript, Vol. III, pp. 140-41.

¹⁴⁹ District Exhibits, Ex. 18, pp. 3-16.

¹⁵⁰ *Id.*

December 2021, and 2 sessions during January 2022.¹⁵¹ Student missed a total of 3 speech therapy sessions (2 in fall 2021, and 1 in spring 2022) for a total 90 minutes.¹⁵² As of February 1, 2022, Student was mastering his speech goal and accompanying objectives.¹⁵³

Student's second grade teacher, Ms. Reppond, testified that Student was a hard worker and very determined in her class. She did not observe Student having any issues socializing with other students or experiencing any sensory issues.¹⁵⁴ She also did not observe Student exhibiting hyperactive or negative behavior.¹⁵⁵ Student's report card for the 2021-2022 school year, as of the end of the third nine weeks, indicated that he had met all grade-level standards in the areas of literacy with the exception of reading within the grade level Lexile band, describing how an author uses reasons to support points in text, and writing informative and opinion texts to examine a topic and convey ideas, all of which were "progressing."¹⁵⁶ Regarding math, Student met all grade-level standards with the exception of solving one and two-step addition and subtraction word problems, understanding strategies to add within 100, and solving one and two-step addition and subtraction word problems, knowing addition facts within 20, and solving word problems involving addition of equal groups, all of which were "progressing."¹⁵⁷ In the areas of personal development, student met all grade-level standards.¹⁵⁸

¹⁵¹ Parent Exhibits, pp. 111-12; District Exhibits, Ex. 35. Please note that the due process complaint in this matter was filed on February 1, 2022. As such, events occurring after February 1, 2022 are outside of the jurisdiction of this Hearing Officer and, therefore, are not addressed in this decision.

¹⁵² *Id.*

¹⁵³ Transcript, Vol. I, pp. 249-251.

¹⁵⁴ Transcript, Vol. V, pp. 10-12.

¹⁵⁵ *Id.*

¹⁵⁶ District Exhibits, Ex. 40.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

Student's NWEA scores in the academic area of reading indicated that he was in the 59th percentile in the fall of 2021, and the 55th percentile in the winter of 2022.¹⁵⁹ All measured skills, including foundational skills, literature, vocabulary and language, and writing were all in the "average" or "high average" categories across both test administrations.¹⁶⁰ Student's Lexile range pursuant to Student's NWEA Map winter 2022 test administration ranged from 245L-395L, which is the equivalent of a first-grade reading level.¹⁶¹ Student's NWEA scores in the academic area of math indicated that he was in the 67th percentile in the fall of 2021 and the 53rd percentile in the winter of 2022.¹⁶² Student scored "high average," "average," or "low average" on all composite areas for math on the winter 2022 test administration.¹⁶³ The NWEA Map test taken by Student in the second grade was different than that in the first grade. Specifically, on the NWEA test administered to Student during his second-grade year, the test was not read to Student, meaning that Student received no assistance with reading the passages on the exam.¹⁶⁴ Ms. Reppond reported that Student was in the second highest reading group in her class and was at grade level in literacy.¹⁶⁵ Student's Lexia level as of February 1, 2022 was a level 11, which constituted a range of 420L-650L, which represents a second-grade reading level.¹⁶⁶

CONCLUSIONS OF LAW AND DISCUSSION:

¹⁵⁹ *Id.* at Ex. 43.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Transcript, Vol. 5, pp. 20-21.

¹⁶⁵ *Id.* at pp. 24-25.

¹⁶⁶ *Id.* at p. 30

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 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 IDEA VIOLATIONS

Regarding the first inquiry, that of whether District complied with the procedures set forth in the IDEA, this Hearing Officer notes that counsel for Parent raised eight procedural violations in her Due Process Complaint. These violations were as follows: (1) failure to evaluate Student, resulting in an alleged child find violation, when Student showed characteristics of dyslexia during his kindergarten year (2019-2020 school year); (2) failure to make a written referral after Parent provided independent evaluations regarding Student on August 19, 2020; (3) failure to include required personnel in Student's August 26, 2020 referral conference; (4) predetermining that Student did not have a specific learning disability (SLD) prior to Student's August 26, 2020 referral conference, resulting in Parent being prohibited from participating in Student's education; (5) failure to hold an annual

review conference for Student at the end of his first grade year (2020-2021 school year); (6) failure to consider extended school year (ESY) services until August 2021, following the completion of the 2021 summer; (7) failure to properly evaluate Student in spring of 2020, prior to discontinuing speech services; and (8) failure to hold an IEP meeting to allegedly dismiss Student from dyslexia intervention services in October 2021.

Child Find. Congress enacted the IDEA for the purpose of ensuring that all children with disabilities have access to a “free appropriate public education.” 20 U.S.C. § 1400(d)(1)(A). In order to ensure that all children with disabilities receive a FAPE, school districts are required to satisfy a “child find” obligation. 20 U.S.C. § 1412(a)(3). Specifically, districts must ensure that:

All children with disabilities residing in the States, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3)(A).

Child find extends to children who are suspected of having a disability and in need of special education, even though they are advancing from grade to grade. 34 C.F.R. §300.111(c)(1). Once a child is identified as potentially having a disability, the child’s school district is required to conduct a full and individual evaluation to determine whether the child has a disability. The IDEA requires that initial evaluations and reevaluations meet certain requirements. 34 C.F.R. § 300.304. Specifically, a public agency must utilize a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child.” *Id.* at § 300.304(b)(1). In addition, evaluations and

reevaluations must assess all areas related to Student's suspected disability, "including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. *Id.* at § 300.304 (c)(4).

In the present case, it is the opinion of this Hearing Officer that District did not violate the IDEA by failing to fulfill its child find obligations. Parent essentially alleges that the mere fact that Student failed an initial dyslexia screener in February 2020 should have put District on notice to further evaluate Student. The evidence, however, does not support this assertion.

First, although Student showed some risk for having characteristics of dyslexia on an initial screener, it is noteworthy that he was flagged based on a single assessment that was part of the screening battery. Specifically, Student scored low on the RAN assessment, indicating that he might have issues recalling facts. District then appropriately took steps to get Parent's consent and conduct a level I dyslexia screener, which was more extensive. This battery of tests indicated that Student, in fact, did not appear to have characteristics of dyslexia.

Second, considering the data available to District at the end of Student's 2019-2020 school year, District would not have been sufficiently on notice that Student might have a need for special education services. In fact, teacher observations and standardized testing scores indicated otherwise. Student's kindergarten teacher, Mr. Loftis, testified that Student was a model student, well-behaved, and a hard worker in class. He did not observe any signs during Student's kindergarten year that Student had behavioral issues, executive functioning issues, or the ability to socialize. Although Mr. Loftis noted that student was slow to get

started on work, he reported that Student typically learned more than his peers and there was nothing that concerned him about Student's progress during the year. In addition, Student's standardized test scores at the end of his kindergarten year supported Mr. Loftis's observations. Student was administered an NWEA Map standardized test in both the fall and the spring semesters of the 2019-2020 school year. With regard to mathematics, Student scored in the 55th percentile in fall of 2019, and in the 59th percentile in the spring of 2020. With regard to the academic area of reading, Student scored in the 83rd percentile in fall of 2019, and in the 86th percentile in the spring of 2020. In both semesters, Student scored higher in mathematics and reading than both the district and the norm grade level means.

Looking at the entirety of this evidence, Student was thriving in kindergarten. While there may have been some initial concern that Student had some characteristics of dyslexia, further testing results, Student's conduct and progress in the classroom, and his performance on standardized tests alleviated those concerns. Considering this evidence, the school did not procedurally violate the IDEA by not further evaluating Student following his kindergarten year.

IDEA Referral Conference and Inclusion of Appropriate Personnel. Pursuant to ADE Regulation 4.04, when a child is referred to an LEA for special education services, a referral conference must be held by a district for the purpose of reviewing all existing information pertaining to the child and determining what actions should be taken. ADE Reg. 4.04. A school district is required "within seven (7) calendar days of the date that an LEA receives a written referral to schedule a referral conference at a time and place agreed upon by the parent(s)." ADE Reg. 4.03. In addition, the parent(s) must be provided with written

notification of the referral and referral conference and must be given notice in sufficient time to make arrangements to attend the conference. ADE Reg. 4.03. Referral conferences must be attended by a minimum of three individuals, “including the principal or a designee and one teacher directly involved in the education of the child.” ADE Reg. 4.04. Following a referral conference, decisions of the team must be recorded on a Referral Conference Decision Form and signed by the principal or a designee, as well as all other participants in the conference. *Id.* At the conclusion of a referral conference, a district can choose to comprehensively evaluate a child, conduct a specialized evaluation of child, or not evaluate child at all. *Id.*

In the present case, Parent alleges that District failed to make a written referral after Parent provided three independent evaluations to the school on August 19, 2020. The evidence, however, does not support this allegation. Instead, the evidence supports that District made a written referral on the same day that it received the evaluations, specifically August 19, 2020. A Notice of Conference Form, scheduling a referral conference for August 26, 2020, was immediately sent to Parent. On August 26, 2020, Parent, as well as Student’s classroom teacher, a speech language pathologist, an occupational therapist, and the LEA attended the conference. This team of individuals conducted an existing data review and determined that no additional evaluations were needed. Based on the evaluations and social history provided by Parent, the team determined that Student was eligible for an IEP pursuant to the IDEA in the eligibility category of speech/language impairment. An IEP was developed for Student on this same day, specifically August 26, 2020.

Here, District adhered to the regulatory requirements pertaining to referral conferences. The conference was scheduled and held in a timely manner, and the appropriate persons were included in the conference. The team of individuals that met for the referral conference made an appropriate choice per the regulations to accept the evaluations of Parent and not perform separate evaluations. This swift action by District resulted in the immediate creation of an IEP for Student. Based on all of these facts, there is no evidence that District violated the ADE regulations or the IDEA in its handling of Student's referral after Parent provided independent evaluations.

Predetermination of Eligibility Category and Parental Participation. The IDEA requires that the parents of a child with a disability either be present at each IEP meeting or be afforded the opportunity to participate. *Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 427 (8th Cir. 2010). Furthermore, a school district can neither refuse to consider parents' concerns when drafting an IEP, nor predetermine the educational program for a disabled student prior to meeting with parents. *Schaffer v. Weast*, 546 U.S. 49, 53 (2005). Such predetermination could deprive parents of a meaningful opportunity to participate in the formulation process pertaining to the IEP. *Gray*, 611 F.3d at 424 (citation omitted). "The IDEA explicitly requires school district to include parents in the team that drafts the IEP to consider 'the concerns of the parents for enhancing the education of their child' and to address 'information about the child provided to, or by, the parents.'" *M.M. ex. rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Cir. 2012). Certainly, a school district's obligation under the IDEA regarding parental participation in the development of a student's IEP "should not be trivialized." *Rowley*, 458 U.S. at 205-06.

In *Rowley*, the Court stated that “[i]t seems . . . no exaggeration to say that Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.” *Id.* It should be noted, however, that by requiring parental participation, the IDEA in no way requires a school district to accede to parents’ demands without considering suitable alternatives. A district does not procedurally violate the IDEA simply by failing to grant a parent’s request.

In the present case, Parent alleges that District predetermined, in advance of Student’s August 26, 2020 referral conference, that Student was eligible for services pursuant to the IDEA category of speech/language impairment, as opposed to the category of specific learning disability. Parent alleges that this predetermination prevented her from being able to fully participate in Student’s education. Having reviewed the testimony and documentary evidence in this case, it is the opinion of this Hearing Officer that District did not predetermine Student’s eligibility category or impede Parent’s ability to participate in Student’s educational programming.

Here, Parent asserts as evidence of predetermination that a District employee named Sarah Dowdy reviewed Student’s evaluations between August 19, 2020, when District received the documentation, and August 26, 2020, when a referral conference was held for Student. The record contains a photocopy of a sticky note that indicates, according to Parent, that Ms. Dowdy did not recommend special education placement. This Hearing Officer finds this evidence, standing alone, to be insufficient to establish predetermination. District

witnesses testified that Ms. Dowdy, as the psychological examiner, reviewed Student's psychoeducational evaluation in advance of the August 26, 2020 meeting and provided her analysis of the evaluation results to the team members that would be in the meeting. Ms. Dowdy was not in the referral conference meeting, however, and she had no part in determining Student's eligibility category or IEP programming. Having a District employee review an evaluation and provide an opinion prior to a meeting does not automatically mean that predetermination has occurred. Here, Parent attended a referral conference meeting on August 26, 2020 and had ample opportunity to discuss her concerns and opinions regarding the evaluations that she had provided. Eligibility categories and programming considerations were discussed during this meeting, with Parent and District officials providing input. The team of individuals that was present created an IEP for Student and addressed concerns raised by the evaluations provided by Parent. Given these facts, Parent has failed to meet her burden in establishing that Student's eligibility category was predetermined and that she was prevented from participating in Student's education. As such, Parent has failed to establish a procedural violation of the IDEA with regard to this allegation.

Annual Review Conference. Pursuant to 34 C.F.R. 300.324, a school district is required to review a student's IEP at least annually to review progress toward stated goals and determine what revisions in programming are required, if any. In the present case, Parent alleges that an annual review of Student's August 26, 2020 IEP was not conducted in a timely manner because it was not conducted at the end of Student's first-grade year. It is

the opinion of this Hearing Officer, however, that District did not fail to timely hold an annual review conference for Student in the summer of 2021.

Here, on August 18, 2021, eight days prior to the expiration of Student's IEP (as revised on April 9, 2021), District provided a Notice of Conference to Parent, scheduling a meeting for the purpose of conducting an annual review, reviewing and revising Student's IEP, and considering ESY. Student's IEP meeting was held on August 25, 2021, one day prior to the expiration of the IEP document. Parent attended the meeting. At this meeting, a new IEP for Student's second-grade year was created, with dates of service from August 25, 2021 through May 27, 2022. While it may be more ideal to hold annual review conferences at the end of a school year, the IDEA and accompanying regulations do not require this. It is also worth noting that Student's IEP was amended during the 2020-2021 school year, so technically Student's IEP team, with Parent present, met two additional times prior to the one-year expiration of the IEP. As such, it is the opinion of this Hearing Officer that District did not procedurally violate the IDEA with regard to the timing of the annual review for Student's 2020-2021 IEP.

ESY Services. Pursuant to ADE Regulation 19.03.1, extended school year services, or ESY, refers to special education and related services that are "provided to a child with a disability beyond the normal school year of the public agency." In the present case, Parent alleges that District procedurally violated the IDEA in the summer of 2021 when it failed to determine at the end of Student's first grade year whether he needed ESY services between the first and second grades. Based on the evidence in the record, this Hearing Officer agrees

with Parent and finds a procedural violation of the IDEA on account of failure to timely determine whether ESY was necessary for Student in May 2021.

Here, Student was served during his first-grade year of school pursuant to an IEP dated August 26, 2020, and with duration of services through August 26, 2021 (following two revisions). District did not hold Student's annual review conference until August 25, 2021. It was at this meeting that District determined whether Student needed ESY services, essentially at the end of the summer in which services, had they been warranted, should have been provided. Although District timely held an annual review conference for Student, it did not timely determine whether ESY services were necessary. As such, this constitutes a procedural violation of the IDEA.

Evaluation Prior to Dismissal of Services. Parent asserts in her due process complaint, as well as post-hearing brief, that District failed to evaluate Student prior to dismissing him from speech therapy services in January 2021. Based on the record, this assertion is not supported by evidence.

Here, Student's August 26, 2020 IEP stated that Student was to receive 180 minutes per month of speech therapy, to be divided into 30-minute sessions (6 total sessions). By the end of the fall 2020 semester, Student had mastered his speech goal, including all five objectives, as stated on the August 26, 2020 IEP. As such, on January 1, 2021, a Notice of Conference was sent to Parent, scheduling an IEP meeting for January 15, 2021 for the purpose of conducting an existing data review and revising Student's IEP.

At the January 15, 2021 meeting, which Parent attended via ZOOM, Student's IEP team reviewed his speech therapy notes, most recent NWEA Map standardized test scores

(reading and math), IEP goals, and progress reports. The IEP team determined that Student would be moved from direct speech therapy to indirect monitoring, and that a speech language reevaluation would be conducted by District for the purpose of determining whether Student continued to have needs related to speech and language skills. The Notice of Action also stated that Student would not be dismissed from speech services as of January 15, 2021 because a reevaluation was needed to make further decisions.

During the spring 2021 semester, Student received indirect speech monitoring. On March 9, 2021, District's speech therapist, Ms. Renard, completed a speech reevaluation for Student. Pursuant to this reevaluation, Student was administered the following assessments: (1) Oral Peripheral Exam; (2) Voice and Fluency; (3) Arizona Articulation and Phonology scale, Fourth revision (AAPS-4); (4) Goldman-Fristoe Test of Articulation and Phonology-Second Edition (CAAP-2); and (5) Oral and Written Language Scales-Second Edition (OWLS-II).

Regarding the Oral Peripheral Exam, the evaluator reported that Student was able to complete most lingual and labial tasks. She noted, however, that he did have some difficulty elevating his tongue upon protrusion. The evaluator also addressed voice and fluency, noting that the rate, rhythm, pitch, and intensity of Student's speech were adequate, and that Student exhibited no abnormal disfluencies. Regarding articulation, the evaluator considered the results of the GFTA-3 and determined that Student's articulation skills were severely delayed. The AAPS-4 and the CAAP-2 both confirmed this finding. The OWLS-2 was administered to Student for the purpose of determining if he continued to have any language disorders. The results of this assessment indicated that Student's listening comprehension

and oral expression were within normal limits. Finally, a curriculum-based assessment regarding speaking and listening was completed on Student's behalf, and Student's skills pertaining to comprehension and oral expression were determined to be average. Based on the results of these assessments, it was determined that Student had good receptive and expressive language skills, but had a significant articulation deficit. Specifically, Student had a lisp that hindered his ability to produce the "/S/" and "/Z/" sounds, as well as "/S/" blends. The evaluator recommended that Student continue to receive direct speech therapy for the purpose of addressing his articulation delay.

On March 18, 2021, District sent a Notice of Conference to Parent scheduling an IEP meeting for April 9, 2021. The purpose of the IEP meeting was to determine continued eligibility for special education and related services, and review and revise Student's IEP. On April 9, 2021, Student's IEP team, including Parent via ZOOM, met to discuss the results of Student's speech reevaluation. The IEP team determined that Student continued to qualify for speech therapy services pursuant to the eligibility category of speech/language impairment and amended his IEP to provide for 30 minutes of direct speech therapy per week to address articulation deficits.

Based on these facts, District did not dismiss Student from speech therapy services in January 2021 without conducting a reevaluation, as alleged by Parent. The change to Student's speech services in January 2021 was a change in services, from direct speech therapy to monthly monitoring, as opposed to a discontinuance of services. In addition, this change in services was an IEP team decision. As soon as Student's speech reevaluation was completed in March 2021, the IEP team reconvened and determined that speech therapy

services were still necessary and revised Student's IEP accordingly. As such, there is no procedural violation of the IDEA with regard to this issue.

Dismissal from Dyslexia Intervention Services. Parent alleges in her due process complaint that District violated the IDEA when it dismissed Student from dyslexia intervention services in October 2021 without holding an IEP meeting. Pursuant to the Arkansas Dyslexia Resource Guide, if a student with a disability exhibits the characteristics of dyslexia, the IEP committee would determine whether the student needs special education services in this area, if the student's needs can be met through the district's general education dyslexia intervention program, or if a combination of the two are needed." Ark. Dyslexia Res. Guide, p. 39.

It is the opinion of this Hearing Officer that District did not procedurally violate the IDEA in October 2021 when it made a change to Student's dyslexia services without holding an IEP meeting. In the present case, Student's August 25, 2021 IEP stated that Student would receive dyslexia intervention in a general education setting. Student was scheduled to receive 160 minutes per week (4 sessions, 40 minutes each) of instruction in a general education setting pursuant to the Souday System. Specifically, Student was scheduled for dyslexia interventions Monday through Thursday from 7:50 a.m. to 8:35 a.m. Because Student's dyslexia interventions were being provided in the general education setting, Student's IEP did not contain goals specific to these interventions.

In October 2021, Student was approaching material in the Souday System that was above grade level, and Student's dyslexia interventionist, Ms. Williams, talked with Parent at a parent-teacher conference about implementing a 60-day monitoring period to see if

Student could maintain the progress that he had made. Parent was made aware that Student could be immediately provided with direct dyslexia services if, at any point, something changed and he showed a continued need for same.

Here, it is important to note that Student's dyslexia interventions were not discontinued in October 2021, as alleged by Parent. Because Student's IEP referenced that Student was receiving dyslexia services in a general education setting, to completely discontinue those services without an IEP meeting and revision of the IEP would be a procedural violation of the IDEA. That is not what happened in this case though. Here, Student's services were changed in the sense that District moved from direct dyslexia interventions to indirect monitoring to determine if Student could maintain the progress that he had made. The dyslexia interventions that were modified were not services that required special education instruction pursuant to Student's IEPs. For these reasons, an IEP meeting was not needed to simply alter those services. Both before and after October 21, 2021, Student was receiving dyslexia interventions in the general education, as stated in his IEP.

Conclusion. In sum, this Hearing Officer hereby finds that District committed only one procedural error pursuant to the IDEA. Specifically, District failed to timely determine at the end of Student's first grade year whether ESY services were necessary.

SUBSTANTIVE IDEA VIOLATIONS

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 his 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)).

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.*, 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.”

Endrew 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.*

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). 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.*

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 alleged that District failed to provide appropriate IEPs for Student between February 1, 2020 and February 1, 2022, specifically asserting the following: (1) failure to contain sufficient goals; (2) failure to provide sufficient speech therapy minutes on both 2020-2021 and 2021-2022 IEPs; (3) failure to address Student's dyslexia by failing to provide goals and progress monitoring on Student's IEPs related to same; (4) failure to address bullying of Student by other students; (5) failure to address alleged behavior issues

of Student; and (6) failure to include OT services. In addition, it is also necessary to determine whether District's failure to timely consider whether Student was in need of ESY services at the end of Student's 2020-2021 school year, which constituted a procedural violation of the IDEA, was significant to the point that it also constituted a substantive violation of the Act.

IEP Goals. Parent alleges that the goals on Student's 2020-2021 and 2021-2022 IEPs were insufficient to provide FAPE to Student. Based on the evaluations in the record, and testimony from witnesses, this Hearing Officer disagrees with this assertion.

During the 2020-2021 school year, Student's IEP contained one speech/language goal, and this goal contained five objectives. The goal stated that, given multisensory instruction, Student would improve receptive language skills by meeting four of five objectives by the end of his first-grade year. The five objectives of Student's speech goal included the following: (1) given multisensory instruction, group objects into categories and provide rationale for choice of grouping on 4 of 5 prompts across 3 sessions; (2) given multisensory instruction, look at groups of items and determine the common attribute within each group on 4 of 5 prompts across 3 sessions; (3) given a set of 4-5 pictures, place pictures in logical sequence to tell a story on 4 of 5 prompts across 3 sessions; (4) given information presented orally, recall information by using a memory strategy on 4 of 5 prompts across 3 sessions; and (5) when given oral instructions containing 3 steps, use a memory strategy to recall each step and complete the task on 4 of 5 prompts. All of these goals had a deadline of May 28, 2021.

Following reevaluation of Student in March 2021 for the purpose of determining continued eligibility for speech services, Student's IEP team reconvened and revised Student's speech goal in accordance with updated evaluation results. Specifically, Student's reevaluation indicated that Student no longer had an expressive or receptive language issue, but, instead, showed articulation deficits. The IEP team added a goal to Student's IEP which provided that, given multisensory instruction, Student would produce targeted sounds with 90% accuracy across 3 sessions by the end of the IEP. This goal had one objective, which was that Student "would produce /S/ and /Z/ in words and sentences with correct tongue placement on 90% of prompts across 3 sessions by the end of the IEP."

During the 2021-2022 school year, Student's second-grade year, and considering Student's March 2021 speech reevaluation, Student's IEP contained one speech goal which addressed articulation. Specifically, Student's goal stated that, while he was participating in group activities (individual or small group), Student would demonstrate improved articulation skills by achieving the following objectives: (1) given multisensory instruction, Student would produce /S/ sound in phrases and sentences with correct tongue placement on 90% of prompts by May 27, 2022; and (2) Student would produce /Z/ sounds in phrases and sentences with correct tongue placement on 90% of prompts by May 27, 2022.

Considering the goals on Student's 2020-2021 and 2021-2022 IEPs, it is the opinion of this Hearing Officer that Student's IEP goals during both school years were appropriate for Student. The goals were consistent with the speech deficits that District was attempting to address based on the independent evaluations provided by Parent, as well as District's speech reevaluation of Student in March 2021. The IEP team modified and added goals

throughout the year to keep up with Student's individual needs. In addition, the goals were sufficiently detailed and measurable. Because speech/language was the only academic area receiving special education services, it is appropriate that Student only had a single goal, particularly considering that the goal contained specific objectives. Therefore, Student was not substantively denied FAPE on account of the stated goals on his IEPs during the 2020-2021 and 2021-2022 school years.

Speech Therapy. Parent alleges that District substantively denied FAPE to Student when it failed to provide all required speech therapy services to Student in accordance with his 2020-2021 and 2021-2022 IEPs. In order for a party challenging the implementation of an IEP to prevail, he or she "must show more than a de minimis failure to implement all elements of that IEP." *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). Instead, a party raising a failure-to-implement claim must "demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Id.* This approach provides some flexibility to districts in implementing IEPs, but at the same time holds districts accountable for "material failures and for providing the disabled child a meaningful educational benefit." *Id.* Essentially, where there are technical violations of a student's IEP, those violations are not compensable where they are not material. *Catalan ex. rel. E.C. v. D.C.*, 478 F.Supp.2d 73, 75-76 (D.D.C. 2007).

Considering Student's first-grade year, specifically the 2020-2021 school year, Student's initial IEP, which was created on August 26, 2020, stated that Student was to receive 180 minutes per month of speech therapy, to be divided into 30-minute sessions (6 total sessions). Student received 4 sessions during September 2020, 6 sessions during

October 2020, 4 sessions in November 2020, and 3 sessions in December 2020. Student missed a total of 7 speech sessions during the fall 2020 semester, for a total of 210 minutes. By the end of the fall 2020 semester, Student had mastered his speech goal, including all five objectives, as stated on the August 26, 2020 IEP.

On January 1, 2021, a Notice of Conference was sent to Parent, scheduling an IEP meeting for January 15, 2021 for the purpose of conducting an existing data review and revising Student's IEP. At the January 15, 2021 meeting, Student's IEP team amended Student's IEP by changing his direct speech services (180 minutes per month) to monthly "indirect services" wherein Student was to receive 30 minutes of speech therapy on a monthly basis for the purpose of monitoring Student's progress. Thereafter, Student received indirect speech monitoring. On January 19, 2021, Student's classroom teacher completed a language skills checklist with Student and indicated that all skills were average. In February and March 2021, Student's speech therapist contacted Student's classroom teacher and dyslexia interventionists for the purpose of checking on academic and Sunday System progress.

Finally, On March 18, 2021, District sent a Notice of Conference to Parent scheduling an IEP meeting for April 9, 2021. Student's IEP team determined that Student continued to qualify for speech therapy pursuant to the eligibility category of speech/language impairment and amended his IEP to provide for 30 minutes of direct speech therapy per week to address articulation deficits. Following the amendment of Student's IEP on April 9, 2021, Student had two speech sessions in April 2021, and three speech sessions in May 2021 before school ended for the year.

Considering Student's second-grade year, specifically the 2021-2022 school year, Student's August 25, 2021 IEP stated that Student was to receive 90 minutes per month of speech therapy, to be divided into 30-minute sessions (3 sessions monthly). Student received 2 sessions during August 2021, 3 sessions during September 2021, 3 sessions during October 2021, 3 sessions during November 2021, 2 sessions during December 2021, and 2 sessions during January 2022. Student missed a total of 3 speech therapy sessions (2 in fall 2021, and 1 in spring 2022) for a total 90 minutes. As of February 1, 2022, Student was mastering his speech goal and accompanying objectives.

In summary, Student missed a total of 7 speech therapy sessions, totaling 210 minutes, during his first-grade year. All of these missed sessions occurred in the fall of 2020. Considering calendars, school breaks, and absences, it appears that Student did not miss any speech therapy sessions during spring of 2021. Regarding Student's second-grade year, Student did not miss any speech therapy minutes. A review of the records indicates that Student was missing one session in August 2021, December 2021, and January 2021, but these months represent the start of school, holiday break, and return from holiday break. As such, these were all disrupted months and sessions were provided to Student on a regular basis when school was in session. Given these facts, it is clear that there was a *per se* violation of Student's IEP with regard to speech therapy services. Therefore, the question that must now be answered is whether the missed speech therapy sessions constituted a de minimus or material failure to implement Student's IEPs.

It is the opinion of this Hearing Officer that District's failure to provide all speech therapy sessions was de minimis. Here, although Student missed some speech therapy

minutes, he continually met all speech goals and objectives as stated on his IEPs. As such, Student was not substantively denied FAPE on account of a few missing speech therapy sessions during the 2020-2021 and 2021-2022 school years.

Dyslexia Services and Goals. Parent alleges that Student's IEPs for the 2020-2021 and 2021-2022 school years were inappropriate because they failed to provide specialized instruction regarding dyslexia intervention services, as well as specific dyslexia intervention goals that could be monitored through the IEP. As stated *supra*, the Arkansas Dyslexia Resource Guide provides that when a student with a disability exhibits the characteristics of dyslexia, the IEP committee can decide whether the student needs special education services in this area, if the student's needs can be met through the district's general education dyslexia intervention program, or if a combination of the two are needed. Ark. Dyslexia Res. Guide, p. 39. Here, District was legally required to address all suspected areas of disability for Student, despite the category of IDEA eligibility. District was not, however, required to do so by providing specialized instruction on Student's IEPs.

In the present case, District addressed Student's dyslexia diagnosis by providing intervention services using the Sonday System. These services were addressed in Student's IEP, and it was noted that Student would receive dyslexia intervention in a general education setting. As such, no specialized instruction was required or noted on the schedule of services for Student's 2020-2021 or 2021-2022 IEPs. Also, for this reason, District was not required

to place specific dyslexia goals on Student's IEPs. Student, therefore, was not substantively denied FAPE as a result of this alleged failure.

Bullying. Parent alleged in her complaint that District failed to address in Student's IEPs the fact that he was bullied by his peers. She did not, however, provide evidence during the hearing of this matter that bullying was actually occurring. As such, Parent failed to meet her burden in this regard, and the fact that Student's IEPs did not address this issue is not a substantive violation of the IDEA.

Behavior Issues. Parent alleged in her complaint that District failed to address in Student's IEPs the fact that Student had some behavioral issues that needed addressed. Parent did not, however, meet her burden in establishing that Student's behavior was such that it needed to be addressed by his IEP team. In fact, the evidence in this case supports the opposite conclusion. Student's teachers in the first and second grade both reported that his behavior was not an issue, and that he interacted well with his peers. As such, the fact that Student's IEPs did not address behavior of Student is not a substantive violation of the IDEA.

Occupational Therapy. Parent asserts that Student was substantively denied FAPE when District failed to provide occupational therapy services to Student on his 2020-2021 and 2021-2022 IEPs. This Hearing Officer disagrees.

In the present case, District considered the occupational therapy evaluation that Parent provided to District in August 2020. This evaluation indicated that Student's only deficit with regard to occupational therapy was in the area of manual dexterity, and Student's teacher at that time had not observed any issues with this impacting Student's education. In addition, District's occupational therapist, Ms. Langley, conducted at that time a form entitled

“Consideration for Educationally Relevant Therapy (hereinafter “CERT”). This form assists districts in determining whether occupational therapy is warranted in the educational environment. Pursuant to this form, Ms. Langley looked at Student’s complete profile and considered personal care, mobility, gross motor skills, fine motor/visual motor skills, sensory processing, and prior therapy. Pursuant to the outcome of the CERT, Ms. Langley did not recommend OT services for Student, and the entire IEP team considered this information and determined that Student did not qualify for school-based OT services.

Here, Student’s IEP team thoroughly considered whether Student should receive OT services on his 2020-2021 IEP and decided that these services were not educationally necessary. It appears from the record that this decision was given due consideration, and all evidence was reviewed by Parent and District as a team. As such, Parent failed to meet her burden in establishing that District substantively denied FAPE to Student on this basis.

ESY Services – Summer 2021. As addressed in the previous section of this decision, District procedurally violated the IDEA when it failed at the end of Student’s first grade year, specifically in May 2021, to consider whether Student needed ESY services during the summer of 2021. The question before this Hearing Officer now is whether this procedural violation was so significant that it resulted in a denial of FAPE to Student.

It is the opinion of this Hearing Officer, based on the evidence in the record, that District’s failure to consider ESY services for Student in May 2021 did not rise to the level of a substantive denial of FAPE. Considering the data that District had at that time, reports from Student’s teacher indicated that Student was average to high average academically throughout his first-grade year. Student’s report card for the 2020-2021 school year

indicated that he met grade-level standards in all areas of literacy with the exception of writing, which was progressing. Regarding math, Student met all grade-level standards with the exception of interpreting data using tally charts, pictures, and graphs, which was also progressing. In the areas of personal development, student met all grade-level standards with the exception of displaying organizational skills and maintaining focus, both of which were progressing.

Additionally, Student's NWEA scores in the academic area of reading indicated that he was in the 88th percentile in the fall of 2020, the 68th percentile in the winter of 2021, and the 95th percentile in the spring of 2021. All measured skills, including foundational skills, literature, vocabulary and language, and writing were all in the "high" or "high average" categories. Student's Lexile range at the end of first grade was 495L-645L, which is the equivalent of a second grade reading level. Student's NWEA scores in the academic area of math indicated that he was in the 75th percentile in the fall of 2020, the 29th percentile in the winter of 2021, and the 40th percentile in the spring of 2021. Student scored "high average" in the area of operations and algebraic thinking, "average" in the area of number and operations, "low average" in the area of measurement and data, and "low" in the geometry.

In light of this data, it is highly unlikely that Student would have qualified for ESY services even if District had timely considered the issue.

ORDER:

The results of the testimony and evidence warrant a finding for District. Specifically, Parent has failed to introduce sufficient evidence in the record to establish by a

preponderance of the evidence that District denied Student a FAPE between February 1, 2020 and February 1, 2022.

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

7/20/2022

DATE