

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT**

**XXXXXXXXXX
Parent of XXXXXX**

PETITIONER

VS.

NO. H-22-35

**SEARCY SCHOOL
DISTRICT**

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

Issues Presented:

1. Whether the Searcy School District denied Student a free appropriate public education between April 5, 2020, and April 5, 2022?

Procedural History:

On March 3, 2022, the Arkansas Department of Education (hereinafter referred to as the “Department”) received a request to initiate a due process hearing from xxxxxxxxxxxx (hereinafter referred to as “Parent”, or “Petitioner”), the parent and legal guardian of xxxxxxxx (hereinafter referred to as “Student”) against the Searcy School District (hereinafter referred to as “District” or “Respondent”). Parent requested the hearing because she believed the District failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. 1400-1485, as amended (hereinafter referred to as “IDEA”) and the regulations set forth by the Department by not providing Student with appropriate special education services, as noted supra in the statement of issues. ¹

In response to the Parent’s request for a Due Process hearing, the Department assigned the case to this impartial hearing officer. On March 15, 2022, Respondent filed a notice that Petitioner’s complaint failed to meet sufficiency requirements set forth in 20 U.S.C. 1415(b)(7)(A) and 34 C.F.R. 300.508(d).² On March 20, 2022, this hearing officer issued an order finding that Petitioner’s due process complaint failed to meet the sufficiency requirements set forth in 20 U.S.C. 1415(b)(7)(A). Specifically, Petitioner failed to provide with specificity;

¹ See hearing officer File-Petitioner Complaint.

² See hearing officer File-Respondent Notice of Petitioner’s failure to meet sufficiency requirements.

(1) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and (2) A proposed resolution of the problem to the extent known and available to the parent at the time.³ Petitioner was given until March 25, 2022, to file an amended due process hearing complaint. On March 21, 2022, attorney for petitioner asked if she could have until April 1, 2022, to file her amended complaint because she was awaiting documents from the District. After no objection from the District this hearing officer granted Petitioner's request and gave Petitioner until April 1, 2022 to file her amended complaint.⁴ Additionally this hearing officer explained that under Arkansas Department of Education Special Education and Related Services rule 10.01.11.4, if a party files an amended complaint, the timelines for the resolution meeting in 34 C.F.R. 300.510(a) and ADE rule 10.01.12.1 and the time period to resolve in 34 C.F.R. 300.510(b) and ADE rule 10.01.12.2 begin again with her filing of the amended due process complaint.⁵ On April 1, 2022, attorney for Petitioner requested an additional extension until April 4, 2022. After no objection from the District, this hearing officer gave Petitioner until April 4, 2022 to file her amended due process complaint.⁶ Petitioner filed her Amended due process complaint at 11:59 p.m. on April 4, 2022, and continued filing exhibits into April 5, 2022.⁷

On May 16, 2022, a prehearing conference was held by zoom. Present were Lawrence Walker and Amy Lafont, attorneys for Petitioner and Cody Kees attorney for the District. 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 the same.⁸

³ See Hearing officer file-Order of insufficiency of due process hearing request.

⁴ See hearing officer file-email exchange

⁵ See hearing officer file-email dated March 21, 2022 at 12:40 p.m.

⁶ See hearing officer file-email dated April 1, 2022, 3:57 p.m.

⁷ See hearing officer file-amended complaint and exhibits attached.

⁸ Prehearing conference transcript.

Thereafter, the Due Process hearing in this matter began on May 17, 2022. Testimony was heard on May 17, 2022, May 18, 2022, May 19, 2022, June 7, 2022, August 19, 2022, and August 23, 2022.⁹

Present for the Hearing were Lawrence Walker, attorney for the Parent, Amy LaFont, attorney for the parent, Cody Kees, Attorney for the District, XXXXXXXXXXXXXXXXXXXX, Parent, Rachel Kowalski, Advocate, and Stephanie Lawrence, Special Education Director.¹⁰

The following witnesses testified in this matter: Stephanie Lawrence, Natalie Snelson, Erin Shurtleff, Jaelyn Seiders, Lindsay Wilson, Christine Spearn, Jeff Graham, Rusty Tucker, XXXXXXXXXXXXXXXXXXXX, and Deanna Collins. Petitioner had initially wanted to call Ms. Maybry (vice principal), but during this case her husband was being treated for cancer in Texas. Ms. Maybry's husband passed away and she took time off from the District. This Hearing officer offered to keep the record open and allow Petitioner to call Ms. Maybry upon her return. Petitioner declined to wait, and proceeded to rest her case.¹¹ Additionally, attorneys for Petitioner did not provide exhibits for the record, and instead chose to only use the exhibits introduced by the District.¹²

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, Dana McClain, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing.

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements. Attorney for Respondent submitted his brief timely. Attorney for Petitioner

⁹ Transcripts Vol. I-VI.

¹⁰ Hearing Transcript Vol. I.

¹¹ Hearing Transcript Vol. VI.

¹² District Exhibit books Vol. I and II.

requested a weeklong extension the day the briefs were due and after Respondent had tendered his brief. This hearing officer denied that extension and Petitioner failed to file a post hearing brief in this case. ¹³

Findings of Fact

1. Student is an 8-year-old boy who has been diagnosed with attention deficit hyperactivity disorder, combined presentation, other specified disruptive, impulse-control and conduct disorder, anxiety disorder and enuresis (nocturnal only).¹⁴
2. Student enrolled in the Searcy School District from the Riverview School District on August 24, 2020, his first-grade year. Student attends the Sidney Deener Elementary school in Searcy school District.¹⁵
3. At the beginning of Student's first grade year, he received all the universal dyslexia screeners, including the DIBELS, the PAST, ASPIRE, the Arkansas RAN, and the phonics and coding assessment.¹⁶
4. Student was placed on a 504 plan on September 10, 2020, of his first-grade year.¹⁷ Student's 504 Plan included accommodations for his behavior, including positive reinforcement for good behavior, nonverbal signals to stay on tasks, and a cool down spot as needed.¹⁸

¹³ See Hearing Officer File-Post hearing briefs.

¹⁴ District Exhibits, pg. 54, 81.

¹⁵ Id., 470.

¹⁶ Hearing Transcript, Vol. I, p. 140.

¹⁷ Id., 92.

¹⁸ Id., 94.

5. On October 20, 2020, student was given a level one screener for dyslexia.¹⁹ Jaclyn Seiders testified that based on Student's level one dyslexia screener in the first grade, he did not need an additional screener or otherwise qualify for dyslexia services.²⁰
6. A referral for special education services was made on November 30, 2020, by xxxxxxxxxxxxxxxx, Student's mom.²¹ Xxxxxxxxxxxx noted that Student was struggling academically in his general education classroom, and she wanted additional academic testing to determine eligibility for extra help.²²
7. On November 30, 2020, a referral conference was held. The referral conference was attended by the Parent, a regular education teacher- Mrs. Snelson, the Principal- Mr. Graham, and a special education teacher- Ms. Collins. At this referral conference, Parent consented to testing, including academic achievement testing, occupational therapy testing, and communicative testing.²³
8. On November 13, 2020, at the Parents request, Student was screened for characteristics of dyslexia by Interventionists Julie Brown and Jaclyn Seiders. Student's scores indicated his phonological processing was average or above average. However, Student showed some deficits in reading fluency, and interventions were recommended to address these deficits.²⁴
9. On January 14, 2021, a Psycho-educational evaluation was completed on Student. The following test were completed:
 - Behavior Assessment System for Children, 3rd edition (BASC 3)

¹⁹ Id. 179.

²⁰ Hearing Transcript II, pgs. 140-144.

²¹ Id., 54.

²² Id., 54.

²³ District's Exhibits, pg. 55, 112

²⁴ Id., 188.

- Woodcock Johnson Test of Achievement, 4th edition (WJ IV)
- Clinical Evaluation of Language Fundamentals, 5th Ed, Screener (CELF 5 Scr)

The BASC 3, Parent rating scale, showed Student-at-risk for Hyperactivity, conduct problems, anxiety, attention, atypicality, activities of daily living, functional communication, developmental social disorders, emotional self-control, executive functions. Teacher rating scale showed Student at risk for aggression, conduct, withdrawal, social skills, leadership, study skills, functional communication, executive functioning; clinically significant for anxiety, atypicality, developmental social disorder, and emotional self-control.²⁵

10. On January 20, 2021, an occupational therapy evaluation was completed on Student. Bruninks-Oseretsky Test of Motor Proficiency-2(BOT-2), Developmental Test of Visual Motor Integration (VMI), Sensory Profile School Companion, and Clinical Observation were completed.²⁶ The evaluator noted:

Manual Coordination: Average skills (-.9 SD on BOT-2)

Fine Manual Control: Below Average (-1.5 SD on BOT-2)

Visual Motor Integration: Below Average (-1.5 SD on VMI and -2.0 SD on BOT-2)

Visual Perception: Average (-0.7 SD on VMI)

Sensory Processing: Probably difference in 2 areas, no definite differences.

Evaluator stated that clinical observations and standardized tests indicate that Student showed deficits in fine motor control and visual motor integration. The

²⁵ Id. pg. 136.

²⁶ Id. pg. 144.

- recommendation was that Student receive direct occupational therapy for up to sixty (60) minutes weekly.²⁷
11. On February 4, 2021, team met to discuss the tests that were administered on Student. In addition to the tests administered by the District, the team also considered an evaluation completed by CPAC, which the Parent had obtained. The CPAC evaluation showed Student had attention deficit hyperactivity disorder, combined presentation, other specified Disruptive, Impulse control and conduct disorder, other specified anxiety disorder, and Enuresis (nocturnal only). The CPAC evaluation further stated that Student did not meet the criteria for autism.²⁸ It was decided at this meeting to develop an IEP for Student.²⁹
 12. February 4, 2021, an IEP was developed for Student. The IEP contained a statement of Student's levels of academic achievement³⁰, four (4) measurable annual goals in math and executive functioning.³¹, and a statement of special education and related services to be provided Student.³² Student was further provided accommodations in the classroom.³³ The team determined that special education services in reading or literacy, were not necessary based on previous testing.
 13. Ms. Seiders testified that in Student's first grade year, his overall reading was increasing.³⁴

²⁷ District Exhibits, pgs. 145-149.

²⁸ Id., pgs. 69-84.

²⁹ Id., pg. 128.

³⁰ Id., pg. 115.

³¹ Id., pgs. 119-122.

³² Id., pg. 123.

³³ Id., pg. 117-118.

³⁴ Hearing Transcript Vol. I, pg. 156.

14. Student's first grade iStation showed that his overall reading improved from a score of 190 in August of first grade year to a score of 207 in May of his first-grade year: an increase of seventeen points.³⁵ Student was consistently scoring on the trend line, which is in line with his peers, and scored higher than his peers in the April exam, which was reported to the state for assessment purposes.³⁶
15. Ms. Seiders testified that reviewing the iStation scores for first grade, Student was not in need of any literacy supports outside the classroom, as "he is performing at the level of our average first grader".³⁷
16. Student's special education math was provided by Deanna Collins, a special education teacher.³⁸
17. Ms. Collins testified that Student has some initial anxiety, but that he did well in the small groups and he went up fifty four points in the math program she was administering to him, which exceeded her expectations. She stated that student did very well and worked very hard for her during his first-grade special education math.³⁹
18. Natalie Snelson was Student's first grade general education teacher.⁴⁰ Mrs. Snelson testified that all her first graders were a bit behind at the start of the 2020-2021 school year due to the prior year being the COVID dismissal, but by mid-year, Student was showing improvement in reading.⁴¹ Mrs. Snelson did notice Student struggling in

³⁵ District's Exhibits pg. 438-442.

³⁶ Hearing Transcript Vol. I., Pgs. 158-160.

³⁷ Id., pgs. 159-160.

³⁸ Id., pgs. 10-11.

³⁹ Id.

⁴⁰ Id., pg. 128.

⁴¹ Id.

- math and so she began classroom based interventions with Student, that included focusing on simple addition and subtraction, including the use of flash cards and manipulatives.⁴²
19. By the end of Student's first grade year he was receiving special education math by Ms. Collins and he started to improve his math skills.⁴³
 20. Mrs. Snelson testified that she did notice some behavior issues with Student, but they were all manageable, as she had a very good relationship with him and they both had mutual respect.⁴⁴ Behaviors she noticed included disregard for wearing masks and distracting other students.⁴⁵ However, Ms. Snelson noted that Student's behavior improved during his first-grade year.⁴⁶
 21. On May 11, 2021, Student's annual review was held, and his second grade IEP created.⁴⁷
 22. Student's second grade IEP included a statement of present level of academic achievement and functional performance. The IEP included measurable goals and a list of special education and related services. Additionally, the IEP included least restrictive environment considerations. Student was to receive occupational therapy services thirty minutes two times a week.⁴⁸
 23. On December 15, 2021, an IEP meeting was held, and behavior goals and objectives were added to Student's IEP.⁴⁹ At this meeting, testimony indicated that a case

⁴² Id., pgs. 128-30

⁴³ Id., pg. 130.

⁴⁴ Id, pg. 134.

⁴⁵ Id.

⁴⁶ Id., pg. 137.

⁴⁷ District's Exhibits, pgs. 1-20.

⁴⁸ Id., pg. 16.

⁴⁹ Id., Pgs. 12-13.

- worker from The Pointe, a mental health provider, attended and discussed Student's behavior and ways to help Student.⁵⁰
24. On February 10, 2022, an IEP meeting was held and indirect literacy, thirty minutes a day, five days a week was added to Student's IEP.⁵¹ At this meeting, Student's behavior was the focal point, but academically student was making progress.⁵²
25. It was the testimony of Ms. Seiders, District dyslexia specialist, that in all dyslexia screeners performed on Student, he was meeting the benchmark on those assessments, and only needed to continue grade level core instruction; no specialized literacy instruction.⁵³
26. By the spring of Student's second grade year, Student had had two separate level two dyslexia screeners, and neither showed that he was "flagged" for characteristics of dyslexia, but was meeting literacy expectations.⁵⁴
27. The District dyslexia specialist, testified that in all dyslexia screeners performed on Student, he was meeting the benchmark on those assessments, and only needed to continue grade level core instruction; no specialized literacy instruction.⁵⁵
28. The beginning year assessment for second grade, showed Student was performing above his peers, and is meeting the expected benchmark.⁵⁶
29. Student's iStation reports showed that Student was making overall growth. Ms. Seiders' testified that Student's second grade iStation showed that he was performing

⁵⁰ Hearing Transcript, Vol. IV, pg. 46.

⁵¹ District Exhibits, pg. 16.

⁵² Hearing Transcript, Vol. IV, pgs. 48-50.

⁵³ Hearing Transcript, Vol I, pg. 151.

⁵⁴ District's Exhibits, pg. 148.

⁵⁵ Hearing Transcript, Vol. 1, pg. 151.

⁵⁶ District's Exhibits, pg. 152.

- at the grade level average for all students and was making growth typical for a student in his grade.⁵⁷
30. At the February 10, 2022, IEP meeting, a consent for a Functional Behavior Assessment (“FBA”) along with an update OT evaluation was obtained.⁵⁸ Additionally, a sensory diet for Student, was developed with the assistance of the OT, to help manage behavior.⁵⁹
31. On March 2, 2022, Parent filed her initial due process hearing request.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. Before consideration of the Parent’s claims, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Accordingly, the burden of persuasion, in this case, must rest with the Parent.

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of

⁵⁷ Hearing Transcript, Vol. I, pg. 163.

⁵⁸ Hearing Transcript, Vol. IV, pgs. 48-50.

⁵⁹ *Id.*

their recollection; minor discrepancies in the testimony were not material to the issues to be determined and, in any event, were not deemed to be intentionally deceptive.

The weight accorded the testimony, however, is not the same as its credibility. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided.

In reviewing the record, the testimony of all witnesses and each admitted exhibit's content were thoroughly considered in issuing this decision, as was the District's post hearing brief. As mentioned supra, this hearing officer did not receive a post hearing brief from the Parent.

Applicable Legal Principles

The IDEA requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Hendrick Hudson Central School District Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase "free appropriate public education" to require "significant learning" and "meaningful benefit" under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

Districts meet the obligation of providing FAPE to eligible students through development implementation of an IEP that is "reasonably calculated" to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *Mary*

Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Recently, the U.S. Supreme Court considered the application of the *Rowley* standard, and it observed that an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The IEP must aim to enable the child to make progress. The essential function of an IEP is to set out a detailed individualized program for pursuing academic and functional advancement in all areas of unique need. *Andrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09) (other citations omitted). The *Andrew* court thus concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 1001, 197 L.Ed.2d at 352.

Andrew, *Rowley*, and the IDEA make abundantly clear, the IEP must be responsive to the child’s identified educational needs. See 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, a school district is not required to provide the “best” program, but rather one that is appropriate in light of a child’s unique circumstances. *Andrew F.* In addition, an IEP must be judged “as of the time it is offered to the student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child's "IEP Team," which includes teachers, school officials, the local education agency (LEA) representative and the child's parents. An IEP must be drafted in compliance with a detailed set of procedures. 20

U.S.C. § 1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement of the special education and related services to be provided to the child." Id. § 1414(d)(1)(A)(i). A FAPE, 24 as the IDEA defines it, includes individualized goals, "specially-designed instruction" and "related services." Id. § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. Id. §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services "in conformity with the [child's] individualized education program," or "IEP." 20 U.S.C. § 1401(9)(D).

When formulating an IEP, a school district "must comply both procedurally and substantively with the IDEA." *Rowley*, at 206-07 A procedural violation occurs when a district fails to abide by the IDEA's safeguard requirements. A procedural violation constitutes a denial of a FAPE where it "results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010). A substantive violation occurs when an IEP is not "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," *Andrew F.*

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.

Further the 8th Circuit held in K.E. Independent School District No. 15, that ““An IEP is a snapshot, not a retrospective,” and we must “take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.” Roland M., 910 F.2d at 992.” 647 F.3d 795, 808 (8th Cir. 2011).

PROCEDURAL VIOLATIONS

Regarding the first inquiry, that of whether the District complied with the procedures set forth in the IDEA, this Hearing Officer notes that Petitioner does not allege any procedural violations in her Due Process Request and therefore, this Hearing officer finds that the District complied with the procedures set forth in IDEA, and will move to Petitioner’s alleged substantive IDEA violations.

SUBSTANTIVE VIOLATIONS OF IDEA

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District did not procedurally violate IDEA in the present case, it is now necessary to look at the substantive violations alleged by Petitioner. Specifically, Whether the District denied Student a free appropriate public education between April 5, 2020, and April 5, 2022?

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.*

Under the IDEA, an IEP must include “a statement of measurable annual goals, including academic and functional goals” that is “designed to” meet the needs resulting from the child's disability so that the child can “be involved in and make progress in the general education curriculum” and “meet each of the child's other educational needs that result from the child's disability.” 20 U.S.C. § 1414(d)(1)(A)(i)(II). A school district also must revise an IEP as is “appropriate to address ... any lack of expected progress toward the annual goals and in the general education curriculum,” “the results of any reevaluation,” or information about the child provided by the parents. *Id.* at § 1414(d)(4)(A)(ii). *K.E. v. Independent School Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011).

Parent alleges that the District denied Student a free appropriate public education between April 5, 2020 and April 5, 2022.

Whether the District denied Student a free appropriate public education between April 5, 2020 and April 5, 2022?

2020-2021 IEP (First Grade)

Parent asserts that the District failed to develop an appropriate IEP for Student's 2020-2021 school year. IDEA requires that IEPs 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, the record shows that Student's 2020-2021 IEP was necessary, appropriate, and reasonably calculated to enable Student to make progress appropriate in light of the child's circumstances.⁶⁰ As stated above in the findings of fact, Student's 2020-2021 IEP contains Student's present levels of academic achievement and functional performance, how his disability affects his involvement and progress in the general education curriculum, annual goals that are measurable and a description of special education and related services provided to Student.⁶¹ Parent consistently alludes throughout the hearing that Student has dyslexia, and the District failed to do proper screening for dyslexia. The record does not support these assertions. In the beginning of Student's first grade year, he received all the universal dyslexia screeners,

⁶⁰ Endrew F., 2017 WL 1066260, at *1000

⁶¹ District's Exhibits, pgs. 114-126.

including the DIBELS, the PAST, ASPIRE, the Arkansas RAN, and the Phonics and Coding Assessment.⁶² Ms. Seiders testified that in the student's first grade year, his overall reading was increasing.⁶³ Additionally, Student's iStation showed that his overall reading improved from a score of 190 in August of his first grade year to a score of 207 in May of his first grade year: an increase of seventeen points.⁶⁴ Further, Student was consistently scoring on the trend line, and in fact scored higher than his peers in the April exam.⁶⁵ Ms. Seiders testified when asked about Student's iStation scores that "he is performing at the level of our average first grader at that time."⁶⁶ Additionally, during the second semester of his first grade year, the District began providing special education in math, and both his classroom teacher and his special education teacher testified that they saw significant improvements in his math ability.⁶⁷ Mrs. Snelson, Student's first grade teacher testified that she did notice some behavior issues but they were all manageable and that Student's behavior improved during his first grade year.⁶⁸

On May 11, 2021, Student's annual review was held. Student made progress on his math goals and 4/5 math objectives. Further, Student made progress on his Functional goal and 2/2 functional objectives.⁶⁹ There was nothing in the testimony or exhibits to indicate that Student's 2020-2021 IEP was not appropriate.

2021-2022 IEP (Second Grade)

Student's 2021-2022 IEP was developed at Student's annual review conference held on May 11, 2021. Student's goals remained the same as his 2020-2021 IEP. The 2021-2022 IEP

⁶² Transcript, Vol. I., pg. 140.

⁶³ Id., pg. 156.

⁶⁴ District's Exhibits pg. 438.

⁶⁵ Id.

⁶⁶ Transcript, Vol. I, pgs. 159-160

⁶⁷ Transcript, Vol. I, pgs. 128, 130.

⁶⁸ Transcript, Vol. I, pgs. 134, 137.

⁶⁹ District's Exhibits, pg. 3.

also included Student's present levels of academic achievement and functional performance, how his disability affects his involvement and progress in the general education curriculum, annual goals that are measurable and a description of special education and related services provided to Student.⁷⁰ As the school year progressed, Student's behavior difficulties increased in both frequency and intensity. The IEP team met on December 15, 2021, to add behavior goals to Student's 2021-2022 IEP. From the testimony, Student's behaviors did not decrease and therefore, Parent reached out to schedule a meeting to discuss Student's progress in the classroom behaviorally and academically. The IEP meeting was held on February 10, 2022. The committee discussed a sensory diet for student. They got consent from Parent for a Functional behavior assessment (FBA) to be completed on Student. Parent notified the committee that she had made a CIRCUIT⁷¹ referral for Student on February 2, 2022.⁷² From the testimony and documents presented, as Student's behaviors increased in frequency and intensity, the District has put new strategies in place, the most recent being the development of a Functional Behavior Assessment, and a purposed Behavior intervention plan (BIP). Neither the FBA nor the BIP were developed prior to the filing of Parent's Due Process Hearing request, so this hearing officer cannot determine if they are appropriate. However, the FBA was initiated at the February 10, 2022, IEP meeting, and shows the District's willingness to increase appropriate behavioral interventions and seek assistance from State behavior experts from the CIRCUIT program.

Based on the testimony and exhibits introduced, Student's 2020-2021 and 2021-2022 IEPs were appropriate and did not deny Student a FAPE.

⁷⁰ District's Exhibits, pgs. 1-20.

⁷¹ CIRCUIT is State Special Education Consultants that are available to assist with the identification and interventions needed for students with sensory, intellectual and multiple disabilities, disruptive and/or self-injurious behavior, autism spectrum disorders, or brain injuries.

⁷² District's Exhibits, pg. 27.

Private School Placement

Parents seeking reimbursement for the cost of private education can succeed “only if a federal court concludes both that the public placement violated [the] IDEA and that the private school placement was proper under the [IDEA].” *Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993); see also *C.B.*, 636 F.3d at 988 (stating “parents of a child with a disability who previously received special education and related services must meet the twin requirements of *Burlington* to obtain “reimbursement for expenditures on private special education”).” *T.B. v. St. Joseph Sch. Dist.*, 677 F.3d 844, 847 (8th Cir. 2012) On the first issue of whether the public placement violated IDEA, as stated above, Petitioner has failed to introduce sufficient evidence in the record to establish by preponderance of the evidence that the District failed to provide Student a FAPE between April 5, 2020 and April 5, 2022.

However, even if Petitioner had established that the District failed to provide Student a FAPE between April 5, 2020 and April 5, 2022, the District was correct in its post hearing brief when it stated:

“Here, the Parent presented no evidence of services provided by Compass besides her testimony from her tour of the facility. No witnesses from Compass were called to testify by Parent to speak to whether Compass is an appropriate placement. Parent is only entitled to reimbursement for private placement if the public placement violated the IDEA and the private school placement was proper under the IDEA. *T.B. v. St. Joseph Sch. Dist.*, 677 F.3d 844, 845 (8th Cir. 2012). To qualify for reimbursement under the IDEA, Parent must demonstrate the private placement provides “educational instruction specially designed to meet the unique needs

of a handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” Id. (citing Rowley, 458 U.S. at 188-89).⁷³ The evidence presented failed to establish that Compass was an appropriate placement for Student.

Conclusion and Order

The results of the testimony and evidence warrant a finding for the District. Specifically, Parents failed to introduce sufficient evidence in the record to establish by preponderance of the evidence that the District denied Student a FAPE between April 5, 2020, and April 5, 2022.

If Petitioner also alleges that the District’s conduct constitutes disability discrimination in Violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a), and Title II of the Americans with Disabilities Act, 42 U.S.C. §12131-12165. This Hearing Officer has no jurisdiction over disability discrimination claims. See ADE Spec. Ed. Rules §10.01.22.1. Accordingly, to the extent Parent’s due process complaint raises disability discrimination claims, those claims are dismissed.

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.

⁷³ District’s post hearing brief, pg. 22.

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.

Dana McClain

HEARING OFFICER

9/24/2022

DATE