

STATE DEPARTMENT OF EDUCATION
DUE PROCESS PROCEEDING
STATE OF OKLAHOMA

DUE PROCESS HEARING DECISION
CASE NO. 2162

PETITIONERS: [Parents]

RESPONDENT: [School District]Public Schools

REPRESENTATIVE: [School Attorney]

HEARING DATE: July 6 and 8, 2021

HEARING DECISION: August 13, 2021

HEARING OFFICER: Hugh V. Rineer

I. Background

Student was born on [Date of Birth]. He attended [School District Name] Public Schools through the 2019-2020 school year. He attended [Private] School in [name of State] during the 2020-2021 school year. He will return to District for the 2021-2022 school year. The Student has been identified as a student with a disability, and his category of eligibility is Specific Learning Disability.

II. Procedural Safeguards

The School District has complied with all aspects of the required procedural safeguards set forth in 20 U.S.C. §1415. In particular, the parties met the full disclosure requirement by exchanging lists of witnesses and documentary evidence at least five days prior to the hearing. By agreement of all parties, the deadline for the Hearing Officer to enter his findings, conclusions and decisions was extended beyond the 45-day time limit to 14 days following receipt of the proposed findings of fact and conclusions of law, that is, the parties' closing arguments. Petitioners' were given an additional 2 days to submit their closing argument.

III. Issues and Purpose of the Hearing

Petitioners (hereafter petitioners or parents) alleged 5 issues in their Amended Complaint:

1. Did [Name of School District] Public School fail to provide Free and Appropriate Education (FAPE, under the Individuals with Disabilities Act (IDEA), either procedurally or substantive causing education deprivation?
2. The IEP's 11/4/2019 did not provide any annual goals for Speech and Language "NEED" page 15 of 23 in the IEP.
3. The IEP dated 8/21/2019 was changed by the district and did not provide any annual goals for Speech and Language and Basic reading skills on IEP. Concerning the **needs** from the IEP.
4. The child's disability of Speech and Language impairment was removed from eligibility.
5. The child's IEP was not updated during the COVID 19 school closure March 2020- May 2020, and IEP team did not consider an array of placements for student at the beginning of the child's 8th grade school year when parent asked for IEP meeting. Also the IEP was not updated, with the parents for the child's annual IEP meeting 11/2020.

Parents are seeking speech and language therapy costs reimbursement and private school tuition reimbursement.

IV. Findings of Fact

1. In March, 2017 when Student turned 10 years old Student's disability category was changed from developmental delay to specific learning disability with deficit areas in written expression, basic reading skills and reading fluency. (Tr.p.319 - 321)
2. Student's 6th grade year was 2018-2019. (Tr.p.150; D#141)
3. T.S. was Student's special education teacher and Student's special education file teacher during his 6th grade year. (Tr.p.150-151)
4. The special education file teacher (teacher of record) maintains the Student records, collects data, communicates with Student's teachers and parents, ensures that the IEP is followed, that documents are shared and that meetings are scheduled with appropriate attendees. (Tr.p.150-151)
5. E.E. was Student's English Language Arts (ELA) teacher for Student's 6th grade year in the special education resource room and his 7th grade ELA teacher in general education.
6. T.S. was Student's file teacher during his 7th grade year. (Tr.p.151)
7. T.D. was Student's special education teacher during his 7th grade school year. T.D. has a bachelor's degree in speech language disability. (Tr.p.435-437)
8. The Student did not attend school at the District during the 2020-2021 school year. Parent withdrew Student from the District on September 1, 2020. (Tr.p.293,294)
9. The Student's date of birth is [Date of Birth]. He is 14 years old. (D#1,6)
10. Parents filed this Due Process Complaint on April 22, 2021.
11. Parents filed an Amended complaint on May 21, 2021.

12. District filed its response to the amended complaint on May 27,2021.

13. The Due Process hearing was conducted on July 6 and 8,2021 at Cushing Middle School.

14. The parents attended the entirety of the hearing. The Student attended the first day and half of the second day.

15. The Parents were not represented by counsel. Neither the Parents nor the student testified in support of their due process complaint.

16. R.G., a licensed speech pathologist employed by [Name of Cooperative] conducted a speech language evaluation of the Student on behalf of the District in September and October,2018. (Tr.p.33)

17. [Name of Cooperative] provides speech language testing and other services to the District. (Tr.p.387-388, 426-427)

18. R.G. concluded that the majority of the Student's language skills were below average. She summarized as follow:

[Student]presents with below average language skills for most areas of language tested, his scores are similar. He does have relative strengths in the area of sentence expression, sentence comprehension, meaning from context, and pragmatic language. His ability to judge whether a sentence is grammatically correct is a relative weakness for him. [Student] functions well with basic language skills for daily conversation; however, he does struggle with higher-level language skills that require language to be manipulated, interpreted, and used in more complex ways. (Non-literal language, inferencing, multiple meanings, complex grammar, academic vocabulary, etc.). These language deficits could negatively impact his academic performance in the classroom.... (Tr.p51-53; D#27)

19. Following receipt of the SLP report the IEP team met and completed a Multidisciplinary Eligibility and Evaluation Team Summary (MEEGS). The team determined that the student was eligible for special education with a primary disability of specific learning disability with deficit areas in written expression and reading comprehension, and a secondary disability of speech or language impairment. (Tr.p.58; D#42)

20. A new IEP (subsequent 11/09/2018-11/09/2019) was drafted for the Student (the 11/9/18 IEP). The MEEGS summary was included in the objective statements. The objective statements also stated: "The team decided that offering speech/language

monitoring/consultation as a supplementary service for [Student] would be most beneficial to his overall language growth. This would allow the speech/language pathologist to aid in appropriate accommodations, advice, input in situations that are directly language skills related to help [Student] progress academically.' (D#43)

21. On January 11,2019 R.G. prepared an addendum to her speech language evaluation, D#28, to clarify what was discussed at the 11/9/18 IEP meeting with regard to her recommendations. (Tr.p.54-55)

22. At the hearing after defining expressive-receptive language disorder parent asked R.G. why services were nor recommended for Student. R.G. responded: "We recommend services as a supplementary support for personnel, but not direct instruction. The concern was that removing him from the general education classroom would be more harmful than it would be helpful, and that if we could support the personnel, if I could support the personnel in the general education classroom and in the resource room to help grow his language skills, that would be the first step, rather than pulling him out of the general education classroom." (Tr.p.40)

23. The 11/9/18 IEP lists educational needs for the Student; Academics-written expression with goals, math calculation with goals, reading comprehension with goals. (D#43)

24. Basic reading skills were monitored by T.S., the special education teacher. In addition to that written expression was a direct service through co-teaching with E.E. the ELA teacher in the special education setting for 50 minutes per day. (Tr.p.152,156-157)

25. In the special education setting E.E. and T.S. worked together with Student addressing the receptive and expressive components of language which assisted Student in his general education classes. (Tr.p.158-160)

26. The IEP team determined that it was appropriate to list speech language pathology as a supplementary service. The speech language pathologist provided support for the teachers offering accommodation strategies and suggestions on ways to support Student's language needs. (D#43)

27. Mother agreed with the 11/9/18 IEP signing it on 11/19/2018 (D#43)

28. The Student's language needs were being addressed within the IEPs language goals. (Tr.p.42-44)

29. The written notice dated November 15,2018 accurately reflects the decisions made by the IEP team regarding speech language services. (D#44)

30. The written notice dated November 19,2018 reflects the addition of speech or language impairment as a secondary disability. (D#45)

31. Mother agreed to the 11/9/18 IEP, however, she provided a comment form with parent concerns. Her concerns related to dyslexia and the use of the Barton Reading and Spelling System at home. (D#43)

32. The Barton tutor did not testify nor was any evidence presented on how or whether the Barton System benefitted Student.

33. On January 6,2019 Parent requested an independent educational evaluation (IEE) in the area of speech-language. The District did not object. (D#46,47)

34. On February 18,2019 District notified Parent after Parent request that it did not object to obtaining an independent educational evaluation in the disability category of specific learning disability. (D#49)

35. The speech language IEE was the first one completed. [Name of Evaluator] was chosen by Parent to conduct the IEE. (D#81).

36. No one from [Name of Evaluator] testified at the Due process hearing.

37. The [name of Evaluator] evaluation stated the Student "presented with a moderate receptive-expressive language disorder" which was consistent with what SLP R.G. found during her evaluation. (Tr.p.73; D#30)

38. [Name of Evaluator] recommended a daily structured home program, provided and monitored by a speech language pathologist just as SLP R.G. had. (Tr.p.74-75; D#55)

39. [Name of Evaluator] stated the Student problems were receptive language disorder and expressive language disorder. (D#30) The goals listed by [Name of Evaluator] were basically the goals being worked on by the District. (Tr.p.76-77)

40. Because neither Parent nor a representative from [Name of Evaluator] testified it is unknown what if any of [Name of Evaluator] recommendations were implemented by Parents.

41. On April 29,2019 the team determined that Extended school Year services (ESY) were not needed for the summer of 2019. (D#52,53) **This date is the first date that falls within the two year timeline.**

42. Parent concerns regarding ESY were adequately addressed. Parents declined the assistance of R.G. indicating they would retain a private SLP. In addition District provided to Parents additional language materials for Student to work on during the summer. There was no follow-up from Parents. (Tr.p.162-164,67-68;D#55)

43. Parents were provided work assignments, NWEA scores, IEP progress notes, objective and subjective data and grade point averages during Student's 6th grade year. Student showed growth and progressed academically during the 2018-2019 school year. He was not graded on an alternative grading scale. (D#57,59,61-64,129,141)

44. Student's 7th grade school year was 2019-2020. The year began with an IEP team meeting on August 1,2019 to discuss changes to the 9/11/18 IEP. (Tr.p.164-165; D#56)

45. At the August 1,2019 IEP meeting Parent proposed that district use the Barton System in lieu of Student taking his grade level ELA class. The team declined because Barton is not part of the District's approved curriculum and the team did not believe that would be Student's least restrictive environment. Parent then proposed using Barton as an elective or after school. The team declined and proposed a compromise- substitute Language Live for an elective. Language Live is a District program for struggling readers. Parent requested information on Language Live and an opportunity to meet the new special education teacher. The 8/1/19 IEP Addendum was not completed at that time. (Tr.p.177-190; D#73,76,78,89)

46. The 8/1/19 IEP Addendum was ultimately signed on August 14,2019. Parent noted her disagreement and provided her concerns. Parent concerns were that the District was not willing to consider parental input for placement and the District denied related services. (D#72) The District addressed Parent concerns. See D#73,76,78,79.

47. The 8/1/19, 8/21/19-11/9/19 IEP Addendum was not finalized until 9/26/19. The 8/21/19 IEP Addendum resulted from Parent and Student declining the Language Live program. (D#80) The IEP Addendum signed 9/26/19 was the 8/21/19 IEP Addendum recreated by T.S. Unfortunately, EDPLan software used by the State Department of Education creates some problems for users. One of those problems occurred here when T.S. inadvertently added speech/language to educational needs when it had previously been deleted. The documents had to be recreated because of EDPLan requirements.

48. That error did not cause or contribute to a denial of FAPE. Likewise, the vice principal of the school signing the IEP may have been a procedural error but was not a denial of FAPE.

49. T.S. received an email from Parents October 1,2019. The email was not offered as an exhibit. The contention of the email was that the Parents felt that the final IEP draft was a complete re-write of the 8/1/19 draft. The District addressed the parent concerns in a written notice dated 10/22/2019 which included all documents prepared after the 8/1/19 draft.

50. The 10/22/19 written notice thoroughly addressed and refuted Parents contentions and concerns. (D#89)

51. Both the 8/1/19 IEP Addendum draft and the 8/21/19 IEP Addendum (signed by the District 9/26/19) contained goals for written expression and reading comprehension. (D#72,75)

52. The 11/9/18 IEP was due for review in November 2019. On November 4,2019 the team completed Review of Existing data for reevaluation of the 11/9/18 IEP (D#90), a MEEGS (D#91)and reviewed a draft IEP Supplement 11/04/2019 to 11/04/2020 (D#92). The 11/4/19 IEP was finalized and signed on that date. Parents disagreed with it and provided their written concerns. (D#93) The team had reviewed the [Name of Evaluator] speech-language evaluation and included its findings and conclusions in the RED, MEEGS and IEP.

53. Parents in their written concerns stated Student was misclassified and had an inappropriate placement. They further stated that their input was undervalued, that related services provided were based on availability of personnel and resources and that District failed to recognize Student's disability. (D#93 last page)

54. In addition to the Parent concerns document the District in its written notice of 11/13/1019 stated that Parent raised other issues at the IEP meeting of 11/04/2019 including a proposal that

Student's SLD category be removed. The District declined the proposal as it had no data to support removal. (D#94)

55. The 11/4/19 IEP in its objective statements state that although Student is still performing below the level of some of his non-disabled peers, his growth during the 18-19 school year was consistent and significant. T.S. testified confirming the team's objective statement including that there has been growth in the current academic year. The team believed that Student with continued support will be successful in the general education classroom, (D#93; Tr.p.222)

56. The 11/4/19 IEP had two goals; written expression and reading comprehension. (D#93; Tr.p.224)

57. The 11/4/19 IEP also included services and supplemental aids which was direct instruction with the special education teacher. The purpose of the direct instruction was to provide support for Student's general education classes regarding reading comprehension and written expression including reading support. (Tr.p.224-225)

58. Speech services were continuing as provided in the 8/21/19 IEP Addendum. (Tr.p.226-229)

59. Prior to the 11/4/19 IEP the District approved Dr. K., chosen by Parent to conduct an IEE as to specific learning disability. (D#86)

60. Dr.K.'s report is dated November 25,2019 (D#31)

61. On December 2,2019 another IEP meeting was conducted by telephone conference call to have Dr. K. discuss the results of her evaluation. (Tr.p.239,241; D#70,100)

62. Dr. K. did not testify at the Due Process hearing.

63. Dr.K. determined that the following diagnoses were indicated for the Student: borderline intellectual functioning; specific learning disorders with impairment in reading, written expression, mathematics. The doctor further noted that current academic and language difficulties are thought to be the result of borderline intellectual functioning. (D#31)

64. Based upon the results reported by Dr.K. in her IEE, an updated MEEGS was completed on January 9,2020. The IEP team removed the secondary disability of speech-language impairment, noting that the student continues to qualify for a specific learning

disability as his primary disability. The team determined that the Student's language difficulties are a result of his specific learning disability, and the Student's language needs will be met under the category of specific learning disability. Parent disagreed. (Tr.p.245-249; D#104)

65. The District uses a discrepancy model to determine SLD eligibility. Dr. K. found a lower full-scale IQ than previously reported which would have resulted in a determination that Student did not qualify for a SLD. Based on history and other data the team determined that that should not be the case and continued to list the Student's disability category as SLD. (Tr.p.250,252; D#25,104)

66. Parent disagreed with Student qualifying as SLD. Parent requested disability category of speech-language impairment (SLI) and requested that District consider using the Oklahoma Special Education Handbook. (D#104)

67. The OSDE Special Education Services Evaluation and Eligibility handbook, in Appendix B, Frequently Asked Questions clarifies that a primary disability is understood to be a student's major or overriding disability condition. When a student has more than one impairment or condition, the one that is most disabling is identified as primary. It also provides that speech or language impairment would move to a secondary disability if there was evidence of another disability impacting the student. (D#22)

68. The IEP team determined that specific learning disability was the overriding disability category and the Student's needs were best described under only a single primary disability category - specific learning disability. That determination was largely impacted by Dr.K.'s evaluation. (Tr.p.256-258)

69. A facilitated IEP meeting occurred on January 15,2020. The District in its written notice of January 21,2020 addresses the concerns/requests of Parents at that meeting. Parent wanted a certified reading specialist to provide Student with 90 minutes of direct remediation instruction daily. The IEP team explained that the student demonstrated success in the general education classroom with the support of 50 minutes per day in the special education setting. The district offered a compromise solution, that is; the student could receive direct instruction from the SLP with a small group from his general education ELA class. Parent refused that compromise. The team did not finish on January 15 and reconvened on January 31. At that meeting the 1/31/20 IEP Addendum was finalized. The Student would receive direct speech services from the SLP in a small group setting and in the ELA classroom.

The ELA and resource teacher would work with the SLP to anticipate Student needs in the general education classroom. (Tr.p.262-273; D#111,113)

70. The students at [Name] Public schools did not return to school after spring break 2020 because the state of Oklahoma closed all public schools due to the COVID pandemic. The District went to distance and virtual learning for the remainder of the 2019-2020 school year. (Tr.p.274-277; D#122)

71. At the time of the school closure the Student's IEP was the 1/31/20 IEP Addendum. (D#113)

72. During the shutdown Student had access to all his teachers through email and Google Meets, etc. The teachers had access to the Student but were not having a great deal of interaction with him. (Tr.p.277,278; D#123)

73. District maintained constant contact with Parents during the COVID shutdown. (Tr.p.279-280; D#125)

74. R.G. continued her communication with the Student's teacher reviewing lesson plans during the shutdown to address Student weaknesses. (Tr.p.280-281; D#126)

75. The file teacher arranged for frequent meetings with Student, teachers and the SLP during the shutdown. (TR.p.283-284)

76. NWEA test scores inform the District whether students have or have not grown academically throughout the school year. (Tr.p.399-400)

77. Student's NWEA testing results reflect that the Student showed relatively consistent academic growth and progress. (Tr.p.399; D#137,138) His teachers used the NWEA results to design his education for the year based on his strengths and weaknesses and his growth and achievement. (Tr.p.404-406; D#140)

78. The Student's 7th grade grades showed he progressed academically having been graded the same as his nondisabled peers subject to his IEP accommodations. (D#141)

79. T.S. kept calendars to keep track of assignments to help measure the Student's progress toward his IEP goals. (Tr.p.287-288; D#131)

80. Progress reports were provided to Parents showing the Student's progress toward his IEP goals. (Tr.p.288-290; D#132-134)

81. According to a written notice dated 08/18/2020 Parent requested a virtual IEP meeting prior to Student's 8th grade year. The meeting was held on August 14, 2020. Parent wanted to know what proposals or changes were going to be made to the 1/31/20 IEP Addendum. The District informed the Parents that there were none. Parents informed the District that they were rejecting the current IEP placement and were enrolling the Student in the [Name of Private School] in [Name of State]. (Tr.p.291-293; D#144)

82. Parents did not offer any additional evidence at the hearing regarding their decision to enroll Student at [Name of Private School].

83. Placement of the Student at [Name of Private School] by the IEP team had previously been rejected. (D#114,115)

84. Student did not attend [Name of School] Middle School his 8th grade year, 2020-2021. District notified Parents that because Student was not a student at the District the District would not be assuming any responsibility for special education or related services that he might need. (D#146,149)

85. The Student was not enrolled in the District, therefore, the District did not receive any funds for state aid for the Student. (Tr.p.412-413)

86. [Name of the Private School] is an independent private boarding school located in [Name of State]. (Tr.p.341)

87. Greenwood does not admit general education students who do not have a disability. (Tr.p.358-359)

88. The Student was unilaterally placed at [Name of Private School] by parents. (Tr.p.361)

89. [Name of Private School] did not receive the Student's current IEP (or any IEP) and did not request it. (Tr.p.361)

90. [Name of Private School] did not have any conversations or communications with District personnel concerning the Student's education at District. (Tr.p.380)

91. The Parents raised an issue regarding the presence of the attorney for the District being present at many of the team meetings which is confirmed by the many Invitations To Meeting where the District's attorney was invited. The attorney also signed a number of documents showing his attendance at meetings.

I ruled that the attorney is not a team member and I confirm that today, however, the presence of an attorney can easily give the appearance that the attorney is a team member particularly where the attorney is speaking on matters other than law. Based on the evidence presented and a review of the exhibits there was no procedural error by the attorney being present such that Student was denied FAPE. Just as in a resolution Conference where no attorney is permitted for the District unless the Parents have an attorney it is suggested that no attorney attend IEP meetings unless the Parents have an attorney. The District attorney is only a phone call away.

V. The Law

A. Under the IDEA, the District is required to provide a "free appropriate public education" ("FAPE"), which

means special education and related services that -

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State education agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program ["IEP"] required under section 1414(d) of this title.

20 U.S.C. § 1401(8) (2003). 34 C.F.R. §300.17

B. The IDEA defines the term "special education" as

specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including

-

- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (B) instruction in physical education.

20 U.S.C. § 1401(25) (2003). 34 C.F.R. §300.39

C. Section 300.106: The IDEA states with regard to extended school year the following:

- (a) General

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services mean special education and related services that—

- (1) Are provided to a child with a disability—
 - (i) Beyond the normal school year of the public agency;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

20 U.S.C. 1412(a)(1)

D. Under the IDEA the term "individualized education program" (IEP) is defined as a written statement for each child with a disability that is developed, reviewed and revised in a meeting in accordance with sections 300.320 through 300.324, and that must include

- (1) A statement of the child's present levels of academic performance, including
 - (i) How the child's disability affects the child's involvement and progress in the

general education curriculum (i.e., the same curriculum as for nondisabled children

(2) A statement of measurable annual goals , including academic and functional goals designed to

Meet the child's needs that result from the child's disability to enable the child to 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

(3) A Description of

How the child's progress toward meeting the annual goals will be measured; and

When periodic reports on the progress the child is making toward meeting the annual goals will be provided

(4) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child

To advance appropriately toward attaining the annual goals;

To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities

To be educated and participate with other children with disabilities and nondisabled children

34 C.F.R. 300.320(a); 20 U.S.C. 1414(d)(1)(A)

E. In developing an IEP, the IEP team must consider:

The strengths of the child

The concerns of the parent for enhancing the education of their child

The results of the initial or most recent evaluation of the child

The academic, developmental, and functional needs of the child

The communication needs of the child
Whether the child needs assistive technology
devices and services

34 C.F.R. 300.324; 20 U.S.C. 1414(d) (3)

F. The public agency must ensure that the IEP team for
each child with a disability includes

The parents of the child

Not less than one regular education teacher of
the child

Not less than one special education teacher of
the child

A representative of the public agency

An individual who can interpret the
instructional implications of evaluation results

At the discretion of the parent or the agency,
other individuals who have knowledge or
special experience regarding the child

The child

34 C.F.R. 300.321(a)

G. Specific learning disability means a disorder in
one or more of the basic psychological processes
involved in understanding or in using language, spoken
or written, which disorder may manifest itself in the
imperfect ability to listen, think, speak, read, write,
spell, or do mathematical calculations

20 U.S.C. 1401(30); 34 C.R.R. 300.8(c) (10)

H. Speech or language disorder means a communication
disorder, such as stuttering, impaired articulation, a
language impairment, or a voice impairment, that
adversely affects a child's educational performance

34 C.F.R. 300.8(c) (11)

I. The IDEA provides the following regarding
unilateral enrollment in private school;

The public agency is not required to pay for the
cost of private education, including special education
and related services if the public agency made a free
appropriate public education available to the child

Reimbursement is only ordered when the public agency has not made a free appropriate public education available in a timely manner prior to private school enrollment

20 U.S.C. 1412(a)(10)(C); 34 C.F.R. 300.148
Oklahoma Special Education Handbook (2017) pp.154,160

VI. Discussion

The burden of proof is on the party challenging the IEP, in this case the Parents. *Schaffer v. Weast*, 546 U.S.49(2005)

Has the District complied with the procedures required by the IDEA? Was the IEP reasonably calculated to enable the child to receive educational benefit? *Board of Education v. Rowley*, 458 U.S.176(1982) The answer to both questions is yes.

Was the IEP reasonably calculated to enable the Student to make progress in light of his particular circumstances? *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct.998(2017) The answer to this question is yes.

The Student received passing grades in the general education classroom and advanced from 6th to 7th grade and from 7th to 8th grade.

If there were procedural violations committed by District they did not impede the Student's right to a FAPE, they did not impede the Parent's opportunity to participate in the decision-making process, they did not cause a deprivation of educational benefit. 20 U.S.C. 1415(f)(3)(E)(ii); 34 C.F.R. 300.513(a)

The District determines the appropriate methodology and curriculum to implement the Student's IEP. The parent can provide input but cannot compel District to use their chosen method.

Student did not need to be labeled under the category of speech or language impairment when he was being adequately served under his primary category of specific learning disability. Nothing in the IDEA requires a specific label provided the Student is being served as a child with a disability.

Unanimous consent of the IEP would be ideal but there is no such requirement. Parents consistently provided their input. District consistently considered their input. District consistently explained their decisions and rationale for their decisions. That included thoroughly reviewing and discussing the Parents IEEs.

The 4/29/19 IEP Addendum and the 8/21/19 IEP Addendum properly addressed the Student's speech or language needs, his expressive and receptive language needs and his basic reading needs. The 4/29/19 IEP was the first IEP that was within the two year requirement.

The 11/4/19 IEP properly addressed the Student's speech or language needs and the Student's expressive and receptive language needs.

The removal of the speech or language disability by the IEP team on the 1/9/20 MEEGS was appropriate based on the IEE obtained by Parents because the Student's language needs continued to be addressed under his primary disability category.

During the period of time from March, 2020 to the end of the school year the 1/31/20 IEP Addendum was in effect and could not be changed without agreement of both parties. The District schools were closed due to the statewide school closure order.

The 1/31/20 IEP Addendum was a proper IEP for the Student and adequately addressed the Student disabilities, and provided the student a FAPE.

The Parents unilaterally withdrew student from the District on September 1, 2020 thereby relieving the District of providing any services to the Student.

The District is not required to pay for private school if the District made a FAPE available to the Student and the parents made a unilateral decision to enroll in private school. 20 U.S.C. 1412(a)(10)(C)(i) The Parents failed to show that FAPE was denied.

Parents cite four cases in support of their contention that District denied Student a FAPE.

The United States Supreme Court in *Florence County School District Four v Carter*, 510 U.S. 7(1993) held that a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under

IDEA and put the child in a private school that provides an education that is otherwise proper under IDEA.

The Hearing Officer agrees with Parents that a Hearing Officer can award reimbursement for private school tuition, however, the first question that must be answered is: Did the public school provide a free appropriate public education (FAPE)? The Florence County case is not on point because the "FAPE" question had been settled: the school district's proposed IEP was inappropriate under IDEA. The question that must be answered here first is: Did the District provide a FAPE?

The United States Supreme Court in Burlington School Committee v. Massachusetts Board of Education, 471 U.S. 359(1985) also held that private school tuition reimbursement was an appropriate remedy when there was a denial of FAPE and parents unilaterally placed student in a private school. In Burlington the parents had an evaluation and recommendations that student be placed in a school with specialized education. The school declined such placement. In the instant case the parents had no such recommendation.

The Parents also cite Oberti v. Board of Education, 995 F.2d 1204 (3rd Cir 1993) for the proposition that [Name] Public School was not the least restrictive environment. The Parents correctly point out that it must be determined whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. The Parents offered no evidence that the general education class with one special education class was not the Student's least restrictive environment.

The Hearing Officer finds that the District made reasonable efforts to accommodate the child in a regular classroom and that there were clearly educational benefits to that placement.

Unfortunately because of the pandemic the SLP was only able to work with Student 3 times. She did continue to work with the Student's teachers.

The Pocono Mountain School District v. T.D. is not a precedent and is a 504 case and therefore not applicable.

The Hearing Officer has no jurisdiction to decide 504 issues.

The District had no obligation to confer with the [Name of the Private] School.

The Parents reference recommendations made by a [Name of State] evaluator. Again no witness testified at the hearing regarding the [Name of State] testing. The results can be discussed at the next RED and MEEGS.

VII. Decision

1. The Parents did not prove by a preponderance of evidence that Cushing Public School failed to provide a Free and Appropriate Public Education either procedurally or substantively causing education deprivation.

2. The Parents did not prove by a preponderance of the evidence that the 11/4/19 IEP did not provide any annual goals for speech and language need.

3. The Parents did not prove by a preponderance of the evidence that the District changed the 8/21/19 IEP. The Parents did not prove by a preponderance of the evidence that the 8/21/19 IEP did not provide any annual goals for speech and language and basic reading skills.

4. The Student's disability of speech and language impairment was removed as a secondary disability. The removal was not a denial of FAPE because his speech language impairment was addressed under the category of specific learning disability.

5. There was no IDEA requirement to revise the IEP during the pandemic school closure. The most recent IEP remained in effect. Parents did not prove by a preponderance of evidence that the 1/31/20 IEP Addendum was not implemented.

6. The Parent's failed to prove by a preponderance of evidence that District had an obligation to consider "an array of placements for student at the beginning of the child's 8th grade school year..."

7. The District had no duty under the IDEA to conduct an IEP meeting in November, 2020 because the Student was not enrolled in District.

8. The Parent's request for reimbursement of speech and language therapy costs is denied.
9. The Parent's request for private school tuition reimbursement is denied.

VIII. Appeal Statement

Unless appealed, this decision is binding upon all parties. Either party may appeal this decision by filing a written notice with Special Education Section, State Department of Education, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105. The appeal must be made within 30 days of the receipt of this decision.

IT IS SO ORDERED this 13th day of August, 2021.

HEARING OFFICER
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(918) 576-7627
(918) 794-7149 - facsimile
hugh@hvrtulsalaw.com

Att. Appendix I - Witness List
Appendix II - Admitted Exhibit List

CERTIFICATE OF MAILING

This is to certify that on this 16th day of August, 2021, a true and correct copy of the above and foregoing was emailed to the following:

Parents Contact Information

School District Attorney Contact Information

SERC Contact Information

s/ Signature _____
Hugh V. Rineer