# HEARING DECISION

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| **CHILD:** | **P.E.R.** |
| **CASE:** | **24-127** |
| **PARENTS:** | |
| | **v.** |
| **REPRESENTATIVE:** | **Honorable James D. Sears**<br>**Attorney at Law**<br>**5809 Feldspar Way, Suite 200**<br>**Hoover, Alabama 35244** |
| **LOCAL EDUCATION AGENCY:** | **J.C.B.O.E.** |
| **REPRESENTATIVE:** | **Honorable Carl E. Johnson**<br>**Bishop Brooks, LLC**<br>**1910 First Avenue North**<br>**Birmingham, Alabama 35203**<br><br>**Honorable Andrew Rudloff**<br>**Bishop Brooks, LLC**<br>**1910 First Avenue North**<br>**Birmingham, Alabama 35203** |
| **DATE OF DECISION:** | **August 22, 2025** |
| **HEARING OFFICER:** | **P. Michael Cole, Esq.**<br>**P. MICHAEL COLE, LLC**<br>**P.O. Box 1800**<br>**Athens, AL 35612** |

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# HEARING DECISION

## I. STATEMENT OF THE CASE.

The Parents acting individually and on behalf of their minor [child] [student], filed a Complaint for Due Process. This Hearing Officer was appointed as the Hearing Officer by Alabama State Superintendent Eric G. Mackey, EdD. The Parents and the Student (collectively, "the Petitioner") were represented in the due process hearing by the Honorable James D. Sears (Law Offices of Sears & Sears, PC). The LEA was represented in the Due Process Hearing by the Honorable Carl E. Johnson and in the post-hearing activity, by the Honorable Andrew Rudloff (Bishop Brooks, LLC).

This Due Process Hearing was conducted under the authorization of the Individuals with Disabilities Education Act (IDEA) at 20 U.S.C. Section § 1400 et seq. and implementing Federal regulations, at 34 C.F.R Part 300.1, et seq., and implementing State regulations, Alabama Administrative Code § 290-080-090, et seq.

### Background

The Mother is a [Specialist] who has 15 years of experience consulting in schools across Alabama.

[Student], at the time of the filing of the Complaint, was [age] years old. [Student] was and has been during all times material to the Complaint, a student of the LEA. [Student] ("Student") attended the [grade, -1] at [School] during the 2024-2025 school year. The Student is currently registered to be enrolled at [School] in the [grade]. The Student received early intervention speech services to address a speech delay through the

state EI program until [student's] [age] birthday, private speech services to address stuttering and letter sound production at the age of [age], and qualified under in the disability category of [disability] in the [grade, -2] and continued to receive speech services through an individual education plan (IEP) through the time of the filing of the Complaint.

The Student's Parents began to realize as early as when the Student was in the [grade, -3] that [student] was having difficulty recognizing letters and with other basic skills associated with reading. When the Parents suggested to LEA personnel that [Student] should be evaluated due to difficulty with foundational skills, the Parents were told "give [student] time, [student] will catch up." When the Parents suggested that the Petitioner had dyslexia, the Parents were told that school personnel were not qualified to administer a dyslexia evaluation because dyslexia has a "medical" origin. The Parents were told by LEA personnel that if they wanted the Student evaluated for the possibility of dyslexia, they would have to pursue it "on their own".

The Parents had the Student evaluated by a qualified private examiner. The Parents received the results of the evaluation that recommended that the Petitioner receive intervention services for 50-60 minutes per day 4-5 times per week. The Petitioner's Parents attempted to have school personnel implement the recommendation.

The Parents allege that the LEA has failed to provide the services to which the Student is entitled pursuant to federal law (20 U.S.C. 1400, *et seq*.) and state law (*Alabama Administrative Code §* 290-8-9. The Parents are seeking compensation.

## II. PROCEDURAL HISTORY.

At the Hearing, the Parents were advised of their right to have an open or closed hearing. The Parents elected to have an open hearing. The Parents' attorney informed this Hearing Officer that they were "invoking the rule." Present at this time were the following individuals for the Petitioner: the Student's parents; the Honorable James D. Sears, representing the parents; and the mothers of [Father] and [Mother]. The Parents' attorney waived the Student's presence at the Hearing. Present at this time were the following individuals for the Respondent: The Honorable Carl E. Johnson, Attorney for the LEA, and [Special Education Coordinator, SEC], as the professional representative for the LEA.

The attorney for the Parents provided an opening statement. The attorney for the LEA waived an opening statement. After the taking of testimony and presentation of evidence by both parties, the attorneys for their respective parties requested an opportunity to submit a post hearing proposed decision. The parties and this Hearing Officer agreed on deadline dates for the submission of the proposed decisions. The parties made timely filings of proposed decisions.

Neither party has brought any procedural defect in any pre-hearing proceedings to the attention of this Hearing Officer. It has been determined that all parties timely complied with this Hearing Officer's Order to exchange witness, and exhibit lists within the time required by applicable law.

**Parents' Claim and Remedy**

The Parents claimed in their Complaint that the LEA failed to provide the Student a free, appropriate public education as required by federal and state laws. More specifically, the LEA (a) failed to identify and evaluate the Student in all areas of suspected disability promptly; (b) failed to hold an IEP meeting to develop and implement an IEP that complies with state and federal laws, including *inter alia* developing appropriate measurable annual goals, and failing to have all required personnel present at the Student's IEP meeting; (c) failed to consider the Parents equal participants in the development of the Student's educational plan; and (d) failed to include appropriate accommodations or modifications.

In the Petitioners proposed Hearing Decision the Parents set out their request for compensation to redress the LEA's failure to provide the Student with a free, appropriate public education by:

1. Affirming that the LEA failed to provide the Student with a free, appropriate public education, and that, further, the Petitioner is the prevailing party to this action and is entitled to compensation.

2. Immediately schedule an IEP meeting to develop and implement an IEP that complies with all state and federal laws and regulations that addresses all of Petitioner's disabilities and that meets the Petitioner's unique needs and characteristics as a Student who has dyslexia.

3. Provide the Student 135 additional hours of specialized dyslexia instruction to compensate the Student for specialized instruction that [student] missed during the

2024-2025 school year. The instruction shall be provided by a qualified teacher during the 2025-2026 school year, at a time that does not interfere with other academic and reading instruction.

4. Reimburse the parents $400.00 for the dyslexia evaluation.

5. Pay to the Petitioner's attorney a reasonable attorney fee at the rate of $450.00 per hour.

## III. EXHIBITS AND WITNESSES:

There were numerous exhibits submitted by the Parties and admitted into evidence by this Hearing Officer. These exhibits were examined by this Hearing Officer subsequent to the Due Process Hearing in light of the testimony presented at the hearing. These documents and materials have been in the constant possession of this Hearing Officer until the rendering of this Decision. Hereafter, they will be delivered to the Alabama State Department of Education.

This Hearing Officer placed no weight on the fact that any particular document was offered by any party since the purpose was to get all of the appropriate documents produced for consideration by this Hearing officer so long as they were not prejudicial to the other party participating in the Due Process Hearing based upon objection. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document. This Hearing Officer has examined the exhibits based on the substantive nature contained therein for the purpose of making a decision in this matter.

Attached hereto as EXHIBIT "A" is a list of all exhibits admitted into evidence in

this matter.

Prior to the Hearing, this Hearing Officer ordered the Petitioner to list all of the issues [petitioner] was raising in this case. The Petitioner's attorney sent two separate documents identifying the issues at different times in this process. These documents are attached as EXHIBIT "B" and EXHIBIT "C".

Thirteen witnesses testified at the Hearing: [Mother]; [Speech Language Pathologist, SLP]; [General Education Teacher 1, GET1]; [Father]; [Resource Teacher 1, RT1]; [Lead Special Education Teacher, LSET]; [General Education Teacher, GET2]; [Resource Teacher 2, RT2]; [Assistant Principal 1, AP1]; [Assistant Principal 2, AP2]; [Principal, P]; [Reading Specialist, RS]; and [Exceptional Education Supervisor, EES].

**Background**

**A. The IDEA requires an LEA to comply with principles.**

The IDEA's obligations are complex, so some background is helpful. In general, the IDEA requires the provision of special programming. But that programming is limited to an eligible student—a "child with a disability." 20 U.S.C. § 1414(d)(1)(A)(i)(I).

**B. The IDEA's procedures guide eligibility and IEP development.**

The law provides a three-step process to decide who can receive IDEA programming and what it must include. Under the first step, a student must be referred for full and individual initial evaluation "in all areas of suspected disability," and the parent must consent to the initial evaluation. 20

U.S.C. § 1414(a)(1)(D)(i)(I), (b)(3)(B). In practice, this means that the student's

parents and LEA staff must meet to discuss the reason for the referral and plan. During the meeting, the parties discuss the student, possible areas of need, and the assessments that the LEA will use. Once all are aligned on suspected areas of need and the parent offers consent, the school must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information …." §§ 1414(b)(2)(A)(i), (ii). This information may assist in deciding not only if the student meets all three requirements for IDEA eligibility, but also in developing any IEP that may be due. *Id*.

The IDEA's procedures impose a related duty. They require that "[a]ll children with disabilities residing in the State" are "identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A). This is the child-find duty. *J.N. v. Jefferson Cnty Bd. of Edu.,* 12 F.4th 1355, 1366 (11th Cir. 2021). The duty requires an LEA to refer a student if the student is "suspected of being a child with a disability." 34 C.F.R. § 300.111(c)(1). The duty does not require an LEA to act instantaneously; it only requires reasonable action. *Jefferson Cnty Bd. of Edu. v. Rajeeni M.,* 2019 WL 6311436, *1 (N.D. Ala. Nov. 25, 2019), citing *N.G. v. D.C.,* 55 F. Supp. 2d 11, 16 (D.D.C. 2008); *D.J.D.* at *3. Accordingly, an LEA violates the duty if it "overlooks clear signs of disability or negligently fails to order testing." *J.N.,* 12 F.4th at 1363, citing *Durbrow v. Cobb Cnty Sch. Dist.,* 887 F.3d 1182, 1196 (11th Cir. 2018).

Once a referral is made and an evaluation is completed, an eligibility team, in the second step of the three-step process, considers the results and decides if the student meets all three eligibility requirements. §§ 1414(b)(2)(A)(i), (c)(B)(i). One of the requirements is that a student meets criteria for one of the IDEA's 13 disability

categories. As relevant here, dyslexia is "a disorder in one or more of the basic psychological processes involved in understanding or using [written] language …, that may manifest itself in the imperfect ability to … read, write, [or] spell …." § 300.8(c)(10). Dyslexia, however, is a medical diagnosis. (Tr. 116.) It is not an IDEA disability category. § 1401. It is, however, a condition that fits within the disability category of "specific learning disability" ("SLD"). § 1401(20)(B). Thus, a diagnosis of dyslexia does not render a student IDEA eligible; the student must still meet SLD criteria. Ala. Admin. Code r. §§ 290-8-9-03(10)(c), (d). Put differently, LEAs do not provide medical diagnoses of dyslexia. (Tr. 1506-1507, 1531.) But they do participate in determining if SLD criteria are met. (*Id*.) It is, therefore, the manifestations of dyslexia and dyslexic tendencies that truly matter in the educational arena—not a diagnosis per se. (Tr. 1506-1507, 1531, 1553-54.)

If the student meets all eligibility requirements, the final step is for the LEA to develop and offer an IEP. § 1401(14). The IEP must include "a statement of measurable annual goals …." § 1414(d)(1)(A)(i)(II). And it must include a "statement" of the "special education" that the school will provide. § 1414(d)(1)(A)(i)(IV). That "special education" must be "based on peer-reviewed research," but only "to the extent practicable." § 1414(d)(1)(A)(i)(IV). "[P]eer reviewed research means there is reliable evidence that the program and services are effective …." *Hilyer v. Elmore Cnty Bd. of Edu.,* 2024 WL 665665, *9 (M.D. Ala. Feb. 16, 2024), citing ALA. STATE DEP'T OF EDU., MASTERING THE MAZE: THE SPECIAL EDUCATION PROCESS 172 (2019). So, to meet the peer-reviewed-research requirement, the LEA need only "select and use methods that

research has shown to be effective, to the extent that methods based on peer-reviewed research are available." *Id*. Indeed, "there is nothing in the [IDEA] to suggest that the failure … to provide services based on peer-reviewed research would automatically result in a denial of FAPE." 71 Fed. Reg. 46,665 (Aug. 14, 2006).

The LEA's evaluation obligation does not end when the LEA offers an IEP. The LEA must reevaluate if it decides the student's needs warrant a reevaluation or if a parent requests a reevaluation. § 1414(a)(2)(A).

## I. The IDEA promises a FAPE.

In terms of the IEP, the IDEA envisions that it will deliver what the IDEA promises—the substantive guarantee of a FAPE. *J.N.,* 12 F.4th at 1362. The U.S. Supreme Court addressed this in *Endrew F. ex rel. Joseph F. v. Douglas Cnty Sch. Dist.,* 580 U.S. 386 (2017). The Court said that to deliver a FAPE, an LEA must use data and prospective judgment to build an IEP that maps a path forward. *Id*. at 398-400. The IEP that the LEA offers must be "reasonably calculated" to enable a student to make progress that is "appropriate in light of the child's circumstances." *Id*. Because the degree of projected progress that is envisioned when the LEA offers an IEP turns on a student's "unique circumstances," the progress that the IEP must envision for the IEP to be appropriate, as it is written, differs from case to case. *Id*. at 401-402. At a minimum, the LEA must offer an IEP that challenges the student and aims for the student to make more than *de minimis* progress. *Id*. However, the IEP need not be the best plan or try to maximize the student's potential. *Id.; see also Bd. of Edu. of Hendrick Hudson Central Sch. Dist., Westchester Cty v. Rowley,* 458 U.S. 176, 198 (1982).

## II. A parent may raise three types of IDEA claims.

Parties can disagree on whether an LEA has met the IDEA's requirements. So, the law affords safeguards. When a parent files a due process complaint, it triggers an automatic injunction in the form of the stay-put guarantee. § 1415(j). The guarantee provides that while the proceedings play out, the student must remain in the student's current "educational placement," unless the school and the parent "otherwise agree." *Id*. A "longstanding position is that placement refers to the provision of special education and related services rather than a specific place …." 71 Fed. Reg. 46,687 (Aug. 14, 2006). If parties do not agree to change the student's "educational placement," the stay-put obligation applies. The LEA must continue to implement items in the stay-put IEP. *L.J. by N.N.J. v. Sch. Bd. of Broward Cnty,* 927 F.3d 1203, 1216-20 (11th Cir. 2019); *C.P. v. Leon Cnty Sch. Bd. of Florida,* 483 F.3d 1151, 1157 (11th Cir. 2007). The LEA cannot "unilaterally reject or revise a child's stay-put IEP—that would defang the stay-put requirement entirely." *L.J.,* 927 F.3d at 1215. At the same time, the LEA must continue to comply with the procedural requirement to conduct an annual IEP review, even if the stay-put IEP will ultimately control. *C.P.,* 483 F.3d at 1157.

In a complaint, a parent may allege a "content" claim, an "implementation" claim, or a "procedural" claim. *L.J.,* 927 F.3d at 1207; *J.N.,* 12 F.4th at 1362. The law places the burden of proof on the party asserting the claim and seeking relief. *J.N.,* 12 F.4th at 1365.

A "content" claim alleges that an IEP, as it is written, falls below the *Endrew F.* standard. *L.J.,* 927 F.3d at 1207. However, a hearing officer cannot review the IEP in

hindsight. *See Jefferson Cnty Bd. of Edu. v. Amanda S.,* 418 F.Supp.3d 911, 918 (2019); *D.J.D. v. Madison City Bd. of Edu.,* 2018 WL 4283058, *5 (N.D. Ala. Sept. 7, 2018); *see also K.D. v. Downingtown Area Sch. Dist.,* 904 F.3d 248, 255 (3rd Cir. 2018). Rather, the snapshot rule applies. *Id*. Under that rule, the Hearing Officer must decide if the IEP was appropriate when the LEA offered it, based on the information the LEA had at the time. *Id*.

An "implementation" claim alleges that the LEA did not do somethings that was written in the IEP. *L.J.,* 997 F.3d at 1207. In this scenario, the Hearing Officer focuses on the steps that were taken to put the IEP into action. *Id*. The 11th Circuit Court of Appeals has explained that "an IEP is a plan, not a contract." *Id*. at 1212. So, the LEA need only act "in conformity with" the IEP; it need not implement the IEP to perfection. § 1401(9)(D). As a result, "a properly designed IEP will be capable of providing a [FAPE] even in the face of a non-material implementation failure." *L.J.,* 997 F.3d at 1213. Thus, a parent must prove a misstep *and* "materiality" to prevail on this type of claim. *Id*. at 1211. In order to prove "materiality," the parent must show "more than a minor or technical gap between the plan and reality; *de minimis* shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP" that individually or cumulatively rise to the level of a FAPE denial. *Id*. In gauging "materiality," a hearing officer must remember that "the question is not whether the school has materially failed to implement an individual provision in isolation …." *Id*. at 1215. It is, instead, "whether the school has materially failed to implement the IEP as a whole." *Id*.

Finally, a "procedural" claim alleges that the LEA violated one of the IDEA's procedures. *J.N.,* 12 F.4th at 1363. A procedural violation and substantive harm are not equivalents. *Id*. at 1366; *see also Sch. Bd. of Collier Cnty, Fla. v. K.C.,* 285 F.3d 977 (11th Cir. 2002) ("A procedurally defective IEP does not automatically entitle a party to relief. In evaluating whether a procedural defect has deprived a student of a FAPE, the court must consider the impact …, and not merely the defect per se."). *Weiss v. Sch. Bd.,* 141 F.3d 990, 994 (11th Cir. 1998); *Doe v. Ala. State Dep't of Edu.,* 915 F.2d 651, 661-63 (11th Cir. 1990). So, some procedural violations may result in substantive harm, while others may not. A procedural violation results in substantive harm only if "[1] the procedural problem impeded the child's right to a [FAPE], [2] significantly impeded the parents' opportunity to participate in the [decision-making] process regarding the provision of a [FAPE] to their child, or [3] caused a deprivation of educational benefits." *J.N.,* 12 F.4th at 1363, citing § 1415(f)(3)(E)(ii). Thus, to succeed on a procedural claim, a parent must prove that the LEA violated a procedure, and that the student's "education would have been different but for the procedural violation." *Id*. at 1366, citing *Leggett v. District of Columbia,* 793 F.3d 59, 68 (D.C. Cir. 2015).

The remedy for the procedural violation depends on the impact of the violation. *K.C.,* 285 F.3d at 983. If the violation *does not* cause substantive harm, "the remedy … is generally to require that the procedure be followed." *J.N.,* 12 F.4th at 1366; § 1415(f)(3)(E)(iii). If the violation *does* cause substantive harm and the parent seeks compensatory education, "a parent must show that the child's educational program was substantively deficient, and that compensatory educational services are necessary to place

the child in the same place she would have been absent [the] violation of the Act." *J.N.,* 12 F.4th at 1365. Practically, the parent must present evidence on the specific form of compensatory relief sought, as well as why that relief is due and appropriate. *Id*. at 1368. If that burden is not met, relief may be denied. *Id*.

Envisioned progress differs from actual progress. *Endrew F.* requires the LEA to use prospective judgment and *envision* progress when it develops and offers an IEP. But *actual* progress after the LEA offers and implements an IEP may turn out to be different from what everyone wanted. Proof of whether a student has or has not progressed under an IEP can be evidence of a "content" or "implementation" claim. *L.J.,* 927 F.3d at 1214. But the 11th Circuit has indicated that sort of evidence is of limited value. Actual progress "is not dispositive" of a FAPE denial, is not necessarily "outcome-determinative," and should not be relied on "too heavily." *Id.* Other federal courts agree. *See, e.g., G.D. v. Swampscott Pub. Sch.,* 27 F.4th 1, 10-11 (1st Cir. 2022) ("slow gains" did not prove IEP denied a FAPE); *S.C. v. Oxford Area Sch. Dist.,* 751 Fed. App'x. 220, 221 (3rd Cir. 2018) ("It is unfortunate that [the student] did not progress as far as his mother hoped he would. But [the LEA] met its legal obligation."); *O.P. v. Jefferson Cnty Bd. of Edu.,* 2023 WL 1805832, *7 (N.D. Ala. Feb. 7, 2023) ("[G]iven the evidence in this case and the prospective nature of drafting IEPs, O.P.'s progress (or lack of progress) is insufficient to show that the IEPs were not reasonably calculated to enable O.P. to advance.") In terms of progress, all of these points align with the U.S. Supreme Court's explanation of one of the IDEA's fundamental tenants, namely, that the law "cannot and does not promise any particular [educational] outcome" for a student. *Endrew F.,* 580

U.S. at 398.

### III. LEAs collect data in different ways.

Another of the IDEA's fundamental tenants is that one cannot "use any single measure or assessment as the sole criterion in determining whether a child is a child with a disability or determining an appropriate educational program for the child …." § 1414(b)(2)(B). So, LEAs use many strategies to collect data. LEAs also use that data in different ways. An LEA may, for example, collect and use data: to identify and provide appropriate regular education interventions to a student *before* referring the student for a full and individual initial evaluation (*see* Tier I, II, or III below); as a part of an initial evaluation to help decide if a student meets all IDEA eligibility requirements; or to help monitor student progress regardless of whether a student is IDEA eligible. So, it is helpful to discuss six broad categories of data that are relevant here.

First the LEA uses mCLASS—a state-approved and standardized reading assessment. The LEA's regular education teachers administer it to all elementary-aged students one-to-one, usually in late August, early January, and early April. (Tr. 223, 1447-49, 1708-1709.) It can also be used for progress monitoring, for example, in summer programming. (*See* Resp. Ex. 12.) Importantly, mCLASS is timed, which is an aspect of the test that can be difficult for those who process slowly or who rush. (*See* Tr. 223, 816, 819, 821-22, 848, 1447-49, 1708-1709.)

mCLASS does several things. For one, it gauges different reading domains, including areas that are common among students with dyslexic tendencies—it, thus, acts as a screener. (*Id*.) mCLASS also sets a *general* benchmark composite score and

*general* benchmark scores for the different domains. (*See* Tr. 1749, 1752-54.) The benchmarks are based on a sampling of students and how they performed. (*Id*.) The benchmarks account for anticipated progress, so they increase with each administration. (*Id*.) The student's performance on the assessment relative to each benchmark indicates only if the student may need support. (*Id*.) But beyond that, whether the student performed above or below a benchmark on a given administration does not indicate if the student can demonstrate mastery of a grade-level reading skill. (*Id*.)

In addition to the *general* benchmarks, mCLASS can calculate a *customizable* benchmark that is individual for each student; it projects where an educator may reasonably expect the student to grow over the three administrations. (*See* Tr. 1488-89, 1496, 1523-24; *see also* Resp. Ex. 28.) Because the *general* benchmarks move with each new administration of mCLASS, a student may grow on a *general* benchmark and a *customizable* benchmark but still not grow enough to meet or exceed the new *general* benchmark. (*Id*.) Still, there is value in a customizable benchmark; a teacher may, for instance, use it to monitor progress. (*Id*.)

Second, the LEA uses iReady. It is another state-approved reading assessment. The main diagnostic part of iReady is administered in late August, early January, and early April. (*See* Pet. 3, 27, 28, 39.) iReady measures reading levels over time; it provides an overall score, a performance band, and subtest scores targeting different domains. (*Id*.)

iReady differs from mCLASS. Unlike mCLASS, which a regular education teacher administers one-to-one, a student takes iReady on a computer over a longer

period with the teacher monitoring. (Tr. 226-27, 1447-49, 1708.) Since iReady is computer-based, it functions differently. While it gauges reading domains like mCLASS, it adjusts in real-time based on the student's responses to the passages that are presented. (Tr. 1702-1705.) This means the results of the student's performance show a student may or may not have been able to read a particular level of material or perform a particular reading skill on *that* administration. (*Id*.) But the results do not show if the student *could have* performed higher-level work. (*Id*.)

Third, the LEA administers a year-end assessment for third grade students called ACAP—the Alabama Comprehensive Assessment Program. The ACAP, importantly, assesses in different domains and aligns with Alabama's grade-level reading standards. (Tr. 256-57, 1578-80.) So, the ACAP provides a direct measure of whether a student is reading at grade level, per Alabama's requirements. A report details the student's performance across domains and says if the student is reading at grade level. (*See* Resp. Ex. 9.)

Fourth, the LEA generates and collects data that relates to obligations under the Alabama Literacy Act. Ala. Code §§ 16-6-1 *et seq.* The Alabama Legislature passed the law in May 2019. The law requires that beginning in the 2022-23 school year, each LEA must provide "an approved comprehensive core reading program to all students based on the science of reading which develops foundational skills." § 16-6G-5. The purpose of this is to ensure "students are able to read at or above grade level by the end of third grade …." *Id*. In Alabama, starting in the beginning of the 2023-24 school year, all third-grade students must "demonstrate sufficient reading skills for promotion to fourth

grade." § 16-6G-5(h). A student can do this in a few different ways, including completing certain "artifacts" in a "student reading portfolio" that show "mastery of third grade minimum essential state reading standards …." § 16-6G-5(h). (*See* Tr. 1656-68, 1628.) Thus, the "student reading portfolio" is a data point. (Tr. 1561.)

The LEA provides tiered reading interventions of graduating intensity that interplay with the Literacy Act's construct. Tier II intervention, for instance, may be added to Tier I—i.e., the reading instruction that a regular education teacher provides to all students. An LEA uses mCLASS data to decide if Tier II is needed. (Tr. 237-38.) Tier II consists of the teacher providing more targeted reading instruction to a student in need. In the LEA, the instruction generally consists of an Orton-Gillingham-based curriculum, Phonics First, which is multisensory in nature and provided for 15-20 minutes per day for four days per week in a small setting in the regular class. (Tr. 237-38, 1157.) Tier II generates data, including goal data embedded in mCLASS. (Tr. 1488-89, 1496, 1523-24; *see also, e.g.,* Resp. Ex. 28.)

If the student exhibits a "consistent deficiency" in reading, the Literacy Act requires the LEA to add a Student Reading Improvement Plan ("SRIP"). §§ 16-6G-5(b), (c). (*See also* Tr. 1444, 1450, 1452.) mCLASS data is also used to decide if a student needs a SRIP. (Tr. 237-38.) If a SRIP is needed, the LEA in the SRIP provides interventions targeting the lowest domain deficit that mCLASS identifies—in other words, the area where the student fell the furthest below a *general* benchmark. (*See* Tr. 1444, 1450, 1452.) A SRIP consists of adding Tier III to Tier I and II, or it consists of adding both Tier II and Tier III to Tier I. (*See* Tr. 275, 277, 280, 289-90, 350.) In Tier

III, a reading specialist pulls the student out of the regular class for a set amount of time each week to provide more direct and intensive multisensory reading instruction in a small setting. (*See* Tr. 1151, 1159.) The LEA performs assessments here too. Data is also generated, both via the SRIP and as a part of any "student reading portfolio" that may be running parallel to Tier III instruction. (*See* Pet. Ex. 42; Rep. Ex. 7.)

Fifth, the LEA collects data through traditional means. This includes items like the student's completion of day-to-day work assignments, as well as a teacher's observations from working with the student in class—be it whole group, small group, or individual instruction. (*See* Tr. 1562.) This category of data also includes standards reports (K-2nd), quarterly progress reports, and report cards (3rd+). (Tr. 1570.) Like the ACAP, these items grade the student against Alabama's state-approved academic standards. (Tr. 850, 1570.) Progress toward, or mastery of, an approved standard is important. And because all academic subjects involve some reading, progress toward, or mastery of, an approved standard *other than reading* is critical; it indicates if reading difficulties are impacting a student *across* academics. (Tr. 1570.)

Sixth, some sources and methods of data collection are IDEA-specific. Again, as part of an initial evaluation, the LEA must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information …." §§ 1414(b)(2)(A)(i), (ii). Data collection during an initial evaluation or reevaluation will depend on the suspected areas of need. That data can include items such as intelligence and achievement testing. But the results must be reported the right way. Many authors of traditional assessments find the act of reporting results as a grade equivalent to be

misleading; the results should be reported as standard scores and percentile ranks. (*See* Resp. Ex. 15.) For IDEA-eligible students annual goal progress reports, and in the case of students with comprehension needs, measures like CORE Learning's "Multiple Measures," yield more data. (Tr. 1561.)

## IV. STATEMENT OF FACTS.

This Hearing Officer has heard testimony from 13 witnesses. This section is a summary of some of the pertinent facts presented to this Hearing Officer. This Hearing Officer has heard all the testimony and has reviewed the transcript of said testimony. This decision is based on all evidence presented at the Hearing as well as exhibits admitted into evidence at the Hearing.

### a. The time period before the 2023-24 school year.

The Student turned [age] years old in [Date]. The next month, the Student entered the LEA for the first time and started [grade, -4] at one of the LEA's elementary schools.[1] Before this, the Parent observed the Student exhibit some difficulty at home, relative to a [sibling], in the area of reading. (Tr. 50.) Although the Parent claimed that the Student had more difficulties than the [sibling] during the 2021-22 school year, the two ended up in the same spot academically at the end of the year. (Tr. 71-72.) Indeed, on the middle and year-end mCLASS administrations in [grade, -4], the Student's composite score exceeded the general composite benchmark. (*See* Res. Ex. 5, p. 1.)

[Composite Score Chart]

[1] The Student has remained at the same elementary school during all relevant times.

(Resp. Ex. 33, p. 1.) The Student's standards report for the 2021-22 school year was also positive. It indicated, for example, that [student] had mastered or was progressing toward mastering all grade-level standards in all academic areas as of May 2022. (*See* Tr. 1572-73; Resp. Ex. 8, p. 1-3.) This included the grade-level standards in the area of reading. (*Id.,* p. 1.)

The Student moved to the [grade, -3] at the elementary school in August 2022. The Parent perceived [student] was having difficulty reading at home. (Tr. 78.) But the Student's [grade, -3] teacher did not report reading concerns at school that were not age appropriate. (*See* Tr. 69-62, 704.) To this point, the Student's composite mCLASS score on the year also trended in line with the general composite benchmark. (*See* Res. Ex. 5, p. 1.)

[Composite Score Chart]

(Resp. Ex. 33, p. 1.) The Student's quarterly standards report also tend to corroborate the teacher's view; the reports showed that yet again, the Student progressed toward mastering grade-level standards in all areas during the year. (*See* Resp. Ex. 24, pp. 1-3.) By year-end, the Student either mastered or progressed toward mastering all standards. (*Id.,* p. 1.) In all, the marks indicate that the 2022-23 school year ended well.

**b. The 2023-24 school year.**

**i. The first semester.**

The Student started the [grade, -2] grade in August 2023. [GET1] was the regular education teacher. At that point, she had over a decade of teaching experience and was

trained in multisensory instruction, including Phonics First. (Tr. 199-200, 221, 368.)

Almost immediately, the Parent asked the LEA to conduct an initial IDEA evaluation and develop an IEP. (Resp. Ex. 25, p. 1; Tr. 390, 465.) The referral team met on August 28, 2023. (Resp. Ex. 25, p. 5.) There, the Parent and the LEA representatives identified articulation—in other words, "[d]ifficulty producing speech sounds"—as the area of concern and suspected disability for assessment. (*Id.,* p. 1.) Thus, when the LEA evaluated in the fall of 2023, it did not administer intelligence or achievement measures. (Resp. Ex. 26, pp. 1-2; Tr. 290, 465.) On September 21, 2023, the team decided the Student had met all eligibility requirements, including criteria for "speech language impairment" ("SLI"). (Resp. Ex. 26.) On September 25, 2025, the LEA developed and offered an IEP. (Resp. Ex. 27.)

The LEA administered standardized reading measures in the first semester. In September 2023, the LEA administered mCLASS. (Pet. Ex. 4.) The Student met the general benchmark in decoding. (*Id.,* p. 1.) But in that administration of mCLASS, [student] fell below the general benchmarks in other reading domains, including fluency and comprehension. (*Id*.) The LEA also conducted a second administration of iReady in December 2023. (Pet. Ex. 3., p. 1.) On that administration, the Student performed as expected or better in the areas of phonological awareness, phonics, and high-frequency words. (*Id*.) [Student's] overall score grew from an administration earlier in the year. (*Id.;* Tr. 1195.) In some domains, including vocabulary and comprehension, [student's] results were below desired scores. (Pet.'s Ex. 3, p. 1.)

[GET1] learned in the fall of 2023 that the Student had received Tier II reading

intervention at some point in [grade, -4] or the [grade, -3], but those interventions ended before [student] moved to her. (*See* Tr. 350-55.) She proceeded with Tier I and other differentiated instruction. (*See* Tr. 271-74, 350-55.) Before January 9, 2024, she shared a mid-year progress report with the Parent. (Pet. Ex. 9.) The report included the overall score from the December 2023 administration of iReady, and flagged areas of reading that the Student could continue to work on. (*Id*.) Those areas included pacing, reading smoothly, and expressive reading. (*Id*.) But [GET1] knew the Student well, and she thought [student] was "thriving" in her class at the midpoint. (Tr. 356-57, 395-96). The Student, she said, was excellent in math, was "very smart," had a "verbal vocabulary that surpasse[d] several students that [were] [student's] age," and "could hold a conversation and use big words." (Tr. 357-58.) [Student's] mid-year standards report corroborated this. In general, the report showed continued progress toward mastery in all areas of reading but one. (*See* Pet. Ex. 35, p. 1.) The report also showed mastery, progression toward mastery, or proficiency on all other grade-level academic standards. (*Id.,* pp. 2-3.)

**ii. The second semester.**

Several things happened in January 2024 after the mid-year break. On January 11, the LEA administered mCLASS. On that administration, the Student performed better in decoding but still fell below the general benchmark for the domain; the benchmark had, increased with the second administration. (*See* Tr. 1749, 1752-54; Pet. Ex. 5.) [Student] also fell below general benchmarks in other reading domains. (*Id*.) In response, an Alabama Reading Initiative specialist, [RS], reviewed mCLASS results and compiled them on a screener aimed at identifying dyslexic tendencies. (Tr. 343, 432-35, 1462; Pet.

Ex. 7.) In late January, [GET1] invited the Parent to have the Student join after-school tutoring. (Tr. 404-406.) [RS] did eventually instruct the Student in after-school tutoring, where she observed the Student progress. (Tr. 1454, 1457-59, 1461.)

In response to [GET1's] mid-year report and the tutoring invitation, the Parent, on February 9, 2024, wrote [GET1] and "request[ed] a dyslexia evaluation and meeting with [the] IEP team to consider additional resources to help with reading and handwriting." (Pet. Ex. 23; Tr. 322.) [GET1] responded that day. (Pet. Ex. 23.) She said that she "share[d]" the Parent's concerns and "also noticed some of the items [that the Parent] mentioned." (*Id*.) But, she said, she had also observed the Student "rushing and not taking [student's] time to complete items [student] really does know." (*Id*.)

[GET1] took the Parent's concerns seriously. She consulted [RT1], who was a resource teacher at the elementary school. (Tr. 777, 825, 845.) [RT1] is an experienced masters-level teacher. (Tr. 769-70, 830.) The two educators connected between February 9, 2024, and February 15, 2024. When the two spoke, [GET1] reported, as she did to the Parent, that the Student rushed things. (*Id*.) Still, [GET1] shared that the Student performed well in class. (*Id*.) [RT1] also reviewed the Student's iReady data in conjunction with her discussion with [GET1]. (*Id*.) From that, [RT1] gleaned the Student could answer grade-level reading passages relative to phonological awareness, phonics, and high-frequency words. (Tr. 784-85, 791.) But on the assessments, [student] did have more trouble in vocabulary and comprehension. (*Id*.) Armed with this background, [RT1], on February 15, 2024, responded to the Parent's earlier message. She said that "it looks like [the Student] has the ability to perform on grade level," but

she still agreed to help coordinate an IEP team meeting. (*See* Pet. Ex. 10.) She also recommended Tier II. (*Id*.)

The IEP team met on February 23, 2024. (Pet. Ex. 11, p. 1.) In addition to the Parent, the LEA included in the meeting a regular education teacher, a special education teacher, an LEA representative, and an individual capable of interpreting the implications of evaluation results. (*See* Pet. Ex. 11, p. 2.) [GET1], the regular education teacher, shared the dyslexia screener with the Parent before or at the meeting. (Tr. 343, 432-35.) At the meeting, the Parent shared for the first time a February 21, 2024, pediatrician report, which noted a "concern for dyslexia" and requested "academic and IQ testing." (Pet. Ex. 13.) The Parent and LEA representatives discussed some of the mCLASS and iReady data at the meeting but apparently did not agree on what it meant. (*Cf*. Tr. 337-38, 341 *with* Tr. 443-46, 451, 729.) Otherwise, accounts on what happened at the meeting and in response to the Parent's request for a "dyslexia evaluation" are conflicting. On one hand, the Parent said that the LEA rejected the request. (Tr. 420, 459.) On the other hand, some wanted input from [RS] or [EES]. (Tr. 455-56.) Like [RS], [EES] is a reading specialist. She is an area-level special education supervisor, a reading supervisor for all of the LEA's elementary schools, and a Certified Academic Language Therapist ("CALT"). (Tr. 1546-47.) A CALT is an expert in structured literacy intervention for those with reading deficits, including dyslexia. (Tr. 169-70, 1549-51.) Regardless of whether the Parent's request was rejected or tabled, the LEA recommended Tier II. (Pet. Ex. 10; Tr. 428, 452-53, 468, 473, 1183.)

On February 29, 2024, the LEA held a SRIP meeting. (Tr. 545.) The Parent,

[GET1], [RS], and others attended. There, [RS] also recommended adding Tier III in addition to Tier I and II, to target the Student's deficits vis-à-vis a SRIP. (*See* Pet. Ex. 39; Tr. 1444, 1450, 1452.) After this meeting, [GET1] continued with Tier I and II. [Reading Interventionist, RI]—a reading interventionist with 30 years of teaching experience and National Board Certification—also added vocabulary-related Tier III in the amount of 80 minutes per week, beginning the week after the SRIP meeting. (*See* Pet. Ex. 42; Tr. 1150-51, 1159, 1163.)

The LEA hosted another meeting on March 5, 2024. This was the same week [RI] started Tier III, and just seven days after the pediatrician's report was shared. The LEA obtained the Parent's consent to reevaluate. (Pet. Ex. 21, p. 1; Tr. 506-507.) The reevaluation included assessments in intelligence, achievement, and behavior.

The LEA continued with standardized assessments while the reevaluation went forward. The Student's composite score on the April 2024 mCLASS trended up but still remained below the general composite benchmark.

[Composite Score Chart]

(Rep. Ex. 33, p. 1.) That same month, on April 29, 2024, iReady was readministered. On that administration, the Student performed as expected or better in the domains of phonological awareness and high-frequency words. (Pet. Ex. 28.) [Student's] overall score on the measure increased from a 460 in December 2023 to 480 in April 2024. (*Id*.) This showed that on the latter administration, [student] grew overall from the beginning of the year and was just shy of what iReady said was reading on grade level. (*Id*.)

However, scores in other subtest domains were still below desired marks. (*Id*.)

While efforts were made to meet earlier, team members could not reconvene to review the LEA's reevaluation results until May 17, 2024. That day, the first thing the team did was review the results. (*See* Pet. Ex. 21.) The results showed a discrepancy between the Student's predicted achievement (114), which was based on [student's] full-scale IQ (121), and [student's] total achievement (92). (*Id.,* pp. 1, 5.) All agreed SLD criteria were met. (*Id.,* p. 5.) Notably, the intelligence measure indicated that the Student's working memory was a relative weakness (100). (*Id.,* p. 1.) As relevant here, [student's] performance on the administration of the achievement measure that was used also evidenced relative weaknesses in word reading, reading comprehension, total reading, and spelling. (*Id.,* p. 1.) In light of all of this, the IDEA eligibility category was changed from SLI to SLD. (*Id.,* p. 5.)

After the discussion of the reevaluation results, a team of mostly the same individuals immediately shifted to decide if the results merited IEP changes. The Parent's own personal written notes, which were usually transcriptions of her audio recordings of LEA staff, indicated that during this meeting she acknowledged that "since [the Student] ha[d] made so much progress," she had "doubts that maybe [she was] making a big deal over nothing." (Pet. Ex. 20, pp. 2-3; Tr. 640-42.) Nevertheless, the LEA, in addition to Tier I and II and in place of [RI's] Tier III, added to the IEP an annual reading goal and specially designed reading instruction. (Pet. Ex. 22, pp. 5-6; *see* Tr. 959, 963.) The reading goal targeted comprehension; it envisioned that by April 2025, the Student would be able to comprehend [grade, -1] grade reading passages at certain level over multiple

trials. (*Id.,* p. 5; Tr. 993, 995.) The goal focused on comprehension because it is one of the cores of becoming a proficient reader. (Tr. 849.) The instruction that was added worked in tandem with the goal; and targeted comprehension. (Pet. Ex. 22, p. 6.) The description of the instruction offered insight into what would be provided. (Tr. 1000-1001.) The description indicates that the LEA offered for the special education teacher to provide specially designed reading instruction, in a small group setting and targeting comprehension, in the total amount of 30 minutes per week in the regular and special education classrooms. (*Id*.) The description did not cite a specific reading program or methodology. (*Id*.)

The 2023-24 school year ended a few days after the IEP meeting, but a number of year-end points are notable. The Student, for example, met [student's] SRIP goal. (Tr. 1469.) The end-of-year standards report also showed that [student] had mastered one of Alabama's grade-level reading standards, that [student] was progressing toward mastery on 15 of the other reading standards, and that [student] had made some progress, albeit limited, on the two other standards. (Pet. Ex. 35, p. 1.) Yet the report also showed that [student] had mastered, or was proficient in, nearly all of [student's] other academic subjects. (*Id.,* pp. 2-3.) The culmination of all of this was the Spring 2024 ACAP; [student] was reading on or above grade level based on Alabama's requirements. (Resp. Ex. 9, p. 1.)

**c. The summer of 2024.**

A few things also happened in the summer of 2024. The first was that the Student participated in the LEA's one-month instructional program, "Strengthening Our

Academic Rigor" ("SOAR"). There, the LEA continued to provide specially designed reading instruction. (Tr. 1081, 1084.) The LEA used mCLASS to progress monitor. (Resp. Ex. 12, pp. 1-3; Tr. 1593.) It showed that at the beginning, the Student met end-of-summer goals in two of five areas. (*Id*.) [Student] had met two more goals by the end of the summer. (*Id*.)

The second thing that happened during the summer was something the Parent scheduled *before* the team met in May 2024. (Pet. Ex. 22, p. 2.) On June 11, 2024, the Parent had [SLP], a retired educator and a licensed speech-language pathologist, perform a private reading evaluation. [SLP] is not a CALT. (Tr. 97, 104.) She did, however, administer measures that generally aimed to rule out language issues and gauge the Student's phonological processing abilities, as well as the impact of those abilities on the Student's reading and spelling. (Tr. 100.) In total, she spent an hour-and-a-half with the Student. (Tr. 177.)

After her evaluation, [SLP] shared a written report that summarized her results. (*See* Pet. Ex. 2.) The Parent provided the report to the LEA in minutes of receiving it. (Tr. 556.) The report, however, had errors. [SLP], for example, did not report the results of the LEA's January 2024 screener correctly. (*Cf*. Pet. Ex. 2, p. 2 *with* Pet. Ex. 7; *see also* Tr. 1634.) She reported assessment scores as *standard* scores when they were *scaled* scores. (Tr. 1640-41.) In addition, she reported assessment results in the form of grade equivalents—something the authors of the assessments that she used disavowed. (*Cf*. Resp. Ex. 15 *with* Pet. Ex. 2; *see also* Tr. 1609-18, 1642, 1645, 1650.) In short, and while she is not a physician, she used a diagnostic manual to offer a medical diagnosis of

dyslexia. (Tr. 116-17.) She usually reaches that result in about three out of four evaluations. (Tr. 168.)

The written report also contained recommendations. (Pet. Ex. 2, pp. 9-11.) In terms of a reading program, [SLP] said that the Student should "receive direct dyslexia intervention in the school setting utilizing a multisensory, sequential and systematic approach." (*Id.,* p. 9.) She only offered that "a teacher who has experience teaching students with reading disabilities" and who is trained to teach the program, as it is designed, needed to implement it. (*Id*.) At the Hearing, she did not testify that the teacher providing the instruction must be a CALT. She conceded, instead, that a CALT would only be needed to offer something aiming to yield "optimal benefit." (Tr. 169.) Finally, she indicated that a student should be in a group of no more than four students, and should receive this specialized reading intervention 4-5 times weekly for a minimum of 50-60 minutes per session. (*Id*.)

[SLP's] report and testimony are notable for what they indicate, as well as what they do not indicate. [SLP] did not expressly opine on whether the LEA's offer in the May 2024 IEP was not substantively appropriate or fell short of any IDEA requirement. Nor did [SLP] expressly opine that the LEA had to offer the level of programming that she recommended for the LEA to provide appropriate and legally compliant programming. She said, instead, that what she recommended was "the gold standard." (Tr. 139-43, 173.) It was, she explained, "what we would want for any student that would give them the most – the highest chance of success … in closing those reading gaps." (Tr. 173-174.)

**d. The 2024-25 school year.**

The 2024-25 school year marked the Student's [grade, -1] year. The May 2024 IEP was carried forward, and [RT2] was the special education resource teacher tasked with implementing the plan. [RT2] is trained in reading programs that target deficits for students with dyslexic tendencies. (Tr. 1129.) In her time, she has taught many IDEA students who have a dyslexia diagnosis and they are all eligible under the SLD label. (Tr. 1009).

In terms of implementing the May 2024 IEP, [RT2] pulled the Student out of the regular education class, and into the resource room in a small group, to provide weekly instruction. (Tr. 1000-1001.) The small group had only three students. (*Id*.) It was a "comprehension group"—all of the students had comprehension deficits so the interventions that she used were appropriate for everyone. (*Id*.) In addition to the reading instruction in the regular education class, [RT2], in her pullout instruction, used the Heggerty reading platform. (Tr. 1031-32, 1037, 1138.) Heggerty, [RT2] explained, is multisensory in nature, is phonemic-based, and addresses comprehension. (*Id*.) It was selected over other programs, such as the SPIRE Literacy suite of programs, because substantive passages in other programs were too far below the Student's ability level. (*See* Tr. 1060-61 1071, 1112.) To complement Heggerty, [RT2] also used differentiated multisensory instructions that included items like graphic tiles and organizers. (*Id*.) This approach addressed fluency, decoding, sentence structure, and other areas, all of which build to the overarching goal of increasing comprehension to enable the Student to understand what [student] reads. (*Id*.) As an example, when [RT2] provides the

instruction, she typically introduces a skill to the group, talks through the skill, reviews a grade-level reading passage, talks through the instructional tiles, talks through vocabulary words, has the Student or one of [student's] peers read aloud, and engages with the Student or has the Student engage with peers on the passage that was read. (Tr. 1060-1063.) It is, as she said, "a lot of I'm doing, they're doing, or their working with their partner." (Tr. 1062.) All of this culminates in a review of the organizer that relates to the targeted skill that was introduced at the start of the lesson. (Tr. 1062-63.) She says that all of this helps with the Student's deficits. (Tr. 1063.)

[RT2] did not use her special education instruction block to formally assess the Student's progress. (Tr. 997, 1051, 1068-69.) She would pull the Student during extra time on Fridays to assess. (*Id*.) When she did that, she would use another tool, ReadWorks, to gather comprehension data for use in annual goal monitoring and reporting. (*Id*.) She would also pull the Student at three other times of the year to administer "Multiple Measures"—another comprehension assessment tool. (*Id*.) The Student, thus, actually received more time devoted to reading than what was offered in the May 17, 2024, IEP.

The Parent shared [SLP's] written report in June 2024, so the IEP team reconvened on August 22, 2024. (Pet. Ex. 23.) In addition to the Parent, the LEA included in the meeting a regular education teacher, a special education teacher, an LEA representative, and an individual capable of interpreting the implications of evaluation results. (*Id.,* p. 7.) An assistant principal, [AP1], and the building principal, [P], respectively served in the LEA role at points. While [SLP] did not attend the meeting,

the Parent still asked the LEA to adopt and implement what [SLP] recommended wholesale. (Tr. 569.) [RT2], by contrast, did attend the meeting. (*See* Tr. 1042-44, 1089.) She said that [SLP's] recommendations were considered but the LEA representatives on the team had reservations about jumping from what the LEA had offered at the end of May 2024 to the degree of pullout reading instruction that [SLP] proposed, especially so early in the year and with so little implementation time at that point. (*Id*.) The representatives were also concerned about the implications for the Student's least restrictive environment and, thus, the balance of the Student's day. [RT2], in short, perceived that the Parent would not agree to anything but what [SLP] recommended. (Tr. 1073, 1695.) At the end of the meeting, the IEP was annotated to reflect that, "[a]s of 05/17/24, [the Student] qualified under SLD based on the most recent MEDC results. The team to discuss the Dyslexia Diagnosis, parents are requesting 50-60 minutes 4-5 times a week. The team tabled the outcome and will converse with our Exceptional Education Specialist and reconvene." (Pet. Ex. 23, p. 1.) The IEP was finalized and signed. (*Id.,* p. 8; Tr. 1690-94.)

The LEA administered the first standardized assessments of the 2024-25 school year in August. In fact, the same day that the team met on August 22, 2024, mCLASS was given. (Pet. Ex. 29.) On that administration, the Student, again, met the general benchmark in some domain areas but fell below the general benchmark in other domain areas. (*Id.,* p. 1.) [Student] did meet the general composite score benchmark. (*Id.;* Resp. Ex. 5, p. 1.) A few days later, iReady was administered. (Pet. Ex. 27, p. 1.) On that administration, the Student's overall score (479) was roughly the same as the overall

score that [student] had obtained on the April 2024 administration of the assessment (480). (*Cf.* Pet. Ex. 28 *with* Pet. Ex. 27, p. 1.)

Several things have happened since the complaint was filed. The LEA has continued to implement the May 2024 IEP.[2] The LEA has also continued with its data collection. For example, data indicated that as of October 10, 2024, the Student was "able to answer open ended comprehension questions with a score of 75% from a grade level passage." (Pet. Ex. 40, p. 2.) [RT2] testified at the Hearing, the Student had made actual progress toward completing the goal and the goal had, in fact, benefited [student]. (*Id.;* Tr. 1020-21, 1025-27, 1069.) In terms of satisfaction of Alabama's grade-level standards, the first-quarter report card and second-quarter progress report were positive. For example:

[Report Card Image]

[Progress Report Image]

(*See* Resp. Ex. 31, 32.) The Student's composite score (377) on the January 2025 administration of mCLASS dipped back a bit below the general composite score benchmark (393). (*See* Resp. Ex. 33, p. 1.) But the Student's overall score on the January 2025 administration of iReady picked up again (485). (*Cf.* Pet. Ex. 28, p. 1 and Ex. 27, p. 1 *with* Pet. Ex. 39, p. 1.) Positive class grades, noted in the first and second

[2] The LEA conducted a review of that IEP on April 17, 2025, to comply with the IDEA's annual review requirement. (Tr. 1688-89.) But no substantive changes were made. (*Id.*) So, the May 17, 2024, IEP is regularly referenced.

quarters above, continued throughout the year. (*See* Tr. 1573-75.) Also, the Student finished all of the "artifacts" in [student's] "student reading portfolio" to demonstrate mastery of Alabama's minimum third grade reading standards. (Tr. 1628-29.) [RT2] anticipated the Student would do that. (Tr. 1135.) and [student] did. (Tr. 1628-29.) As a result, the Student had done what needed to be done to promote to the [grade] for the 2025-26 school year. (*Id*.)

## V. CLAIMS AND ISSUES.

### a. Initial Evaluation.

The child-find duty requires an LEA to refer a student for evaluation if the student is "suspected of being a child with a disability." § 300.111(c)(1). While an LEA has a reasonable time to act, it violates the duty if it "overlooks clear signs of disability or negligently fails to order testing." *J.N.,* 12 F.4th at 1363, citing *Durbrow,* 887 F.3d at 1196. The IDEA's procedures also provide that if an LEA evaluates or reevaluates, it must assess "in all areas of suspected disability." § 1414(b)(3)(B). In Claim #1, the Parent asserts a procedural claim, alleging the LEA did not perform a "dyslexia evaluation" and therefore did not evaluate "in all areas of suspected disability …." (Comp., p. 4, ¶ 10.1; Issue Statement, p. 1, ¶ 1.) The Student was referred for an initial evaluation on August 17, 2023. On September 21, 2023, the team said that the Student met SLI criteria. Did the Parent prove that the LEA failed to evaluate in "all areas of suspected disability" when it first evaluated? If so, did the Parent prove substantive harm? § 1415(f)(3)(E)(ii). If so, did the Parent satisfy the added burdens to obtain compensatory relief? *See J.N.,* 12 F.4th at 1365-68.

### b. Reevaluation and "Dyslexia Evaluation."

An LEA must reevaluate if the school decides the student's needs warrant a reevaluation or if a parent requests a reevaluation. § 1414(a)(2)(A). In Claim #2, the Parent asserts a procedural claim, alleging the LEA should have performed a "dyslexia evaluation" *after* September 21, 2023. (Comp., p. 4, ¶ 10.1; Issue Statement, p. 1, ¶ 1.) Did the Parent prove the LEA violated a requirement to reevaluate? If so, did the Parent

prove substantive harm? § 1415(f)(3)(E)(ii). If so, did the Parent satisfy the added burdens needed to obtain compensatory relief? *See J.N.,* 12 F.4th at 1365-68.

**c. FAPE.**

*Endrew F.* provides that an LEA must offer an IEP that is "reasonably calculated" to enable the student to make progress that is "appropriate in light of the child's circumstances." 580 U.S. at 398-400. The IDEA's procedures also require "a statement of measurable annual goals" in an IEP. § 1414(d)(1)(A)(i)(II). Further, the IDEA's procedures require an LEA to include "a statement of [the] special education" that the school will provide. § 1414(d)(1)(A)(i)(IV). That instruction must be "based on peer-reviewed research," but only "to the extent practicable …." *Id*. In Claim #3, the Parent alleges the IEPs that the LEA offered denied a FAPE. Did the Parent prove the IEPs fell below the *Endrew F.* standard?

**d. Annual Goals.**

A claim that an annual IEP goal is not "measurable" is a procedural claim. *See Colonial Sch. Dist. v. G.K.,* 763 Fed. App'x 192, 197 (3rd Cir. 2019), citing *Adam J. v. Keller Indep. Sch. Dist.,* 328 F.3d 804, 811-12 (5th Cir. 2003). In Claim #4, the Parent alleges that IEP goals the LEA offered were not "measurable." (Issue Statement, p. 1, ¶ 4.) Did the Parent prove that the goals in the IEPs were not "measurable"? If so, did the Parent prove substantive harm? § 1415(f)(3)(E)(ii). If so, did the Parent satisfy the added burdens needed to obtain compensatory relief? *See J.N.,* 12 F.4th at 1365-68.

**e. Special Education.**

As noted, an LEA must include in the IEP "a statement of [the] special education" that will be provided. § 1414(d)(1)(A)(i)(IV). In Claim #5, the Parent asserts a procedural claim, alleging that the LEA failed to state in the IEP what special education it would deliver. (Comp., p. 4, ¶ 10.3; Issue Statement, p. 1, ¶ 3.) Did the Parent prove the LEA violated an IDEA procedure? If so, did the Parent prove substantive harm? 20 U.S.C. § 1415(f)(3)(E)(ii). If so, did the Parent satisfy the added burdens needed to obtain compensatory relief? *See J.N.,* 12 F.4th at 1365-68.

**f. Modifications and Accommodations.**

The IDEA's procedures require that an IEP includes "a statement of the program modifications" that the school will provide. § 1414(d)(1)(A)(i)(IV). The procedures also require "a statement of any individual appropriate accommodations that are necessary to measure the academic achievement or functional performance … on State and districtwide assessments …." § 1414(d)(1)(A)(i)(VI)(aa). In Claim #6, the Parent asserts

a procedural claim, alleging the LEA did not include in the IEP "accommodation services or program modifications such as preferential seating." (Comp., p. 5, ¶ 10.8; Issue Statement, p. 2, ¶ 8.) In the alternative, the Parent alleges that the LEA did not implement those items. (*Id.*) Did the Parent prove that the LEA violated an IDEA procedure by failing to include a required statement? Did the LEA fail to implement a modification or accommodation that was offered?

**g. Team Participants.**

An IEP team must include certain members, though there are exceptions to the rule. §§ 1414(d)(1)(B), (C). In Claim #7, the Parent asserts a procedural claim, alleging the LEA did not have "required" staff at one or more IEP team meetings. (Issue Statement, p. 2, ¶ 5.) Did the Parent prove the LEA violated this requirement? If so, did the Parent prove substantive harm? § 1415(f)(3)(E)(ii). If so, did the Parent satisfy the added burdens needed to obtain compensatory relief? *See J.N.,* 12 F.4th at 1365-68.

**h. Participation.**

A parent is a required IEP team member. §§ 1414(d)(1)(A), (B). And the IEP team develops, reviews, and revises a student's IEP. *Id*. The LEA must, therefore, afford a parent a meaningful opportunity to participate in team discussions. *See R.L. v. Miami-Dade Cnty Sch. Bd.,* 757 F.3d 1173, 1181 (11th Cir. 2014); *I.S. v. Fulton Cnty Sch. Dist.,* 2024 WL 4635026, **4-5 (11th Cir. Oct. 31, 2024). The right is not unfettered though; the school need not always agree to a parent's demands. *R.L.,* 757 F.3d at 1188. In Claim #8, the Parent alleges the LEA denied her meaningful participation for three reasons: (1) it omitted a statement of special education services from one or more IEPs;

(2) it mislead her "into believing that school personnel were not qualified to administer dyslexia evaluations"; and (3) it did not provide "accurate records when requested." (Issue Statement, p. 1, ¶ 3; p. 2, ¶¶ 6-7.) Did the Parent prove meaningful participation was denied? If so, did the Parent prove substantive harm? § 1415(f)(3)(E)(ii). If so, did the Parent satisfy the added burdens needed to obtain compensatory relief? *See J.N.,* 12 F.4th at 1365-68.

## VI. BURDEN OF PROOF.

"The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." *Schaffer ex Rel. Schaffer v. Weast,* 546 U.S. 49,62 (2005). *See also M.A.M. EX REL. C.M. V. Sch. Bd of Miami Dade City,* 437 F.3D 1085, 1096 n.8 (11th Cir. 2006).

The law places the burden of proof on the party asserting the claim and seeking relief. *J.N.,* 12 F.4th at 1365.

The standard of proof is by a preponderance of the evidence.

## VII. DISCUSSION.

### a. The LEA assessed "in all areas of suspected disability" when it first evaluated.

In Claim #1, the Parent alleges that the LEA did not assess "in all areas of suspected disability" when it first evaluated. (*See* Comp., p. 4, ¶ 10.1; Issue Statement, p. 1, ¶ 1.)

The IDEA's procedures require an LEA to refer a student for evaluation if the student is "suspected of being a child with a disability." § 300.111(c)(1). An LEA

violates that duty if it "overlooks clear signs of disability or negligently fails to order testing." *J.N.,* 12 F.4th at 1363, citing *Durbrow,* 887 F.3d at 1196. When a school evaluates, it must assess "in all areas of suspected disability." § 1414(b)(3)(B).

On August 17, 2023, the Parent asked the LEA to evaluate. (Tr. 390, 465; Resp. Ex. 25, p. 1.) The referral team met. (Resp. Ex. 25, p. 5.) Referral documents indicate that the parties identified articulation, and thus SLI, as the area of concern and the suspected disability. (*Id.,* p. 1.) At the Hearing, the Parent did not present evidence that there was any disagreement with that and the Parent did not present sufficient evidence to prove that she asked the LEA to factor reading difficulties, even though *she* perceived the Student having trouble at that point.

The Parent did not prove that the LEA should have suspected the Student of having a disparity between intellect and achievement, or any reading-related disability under the IDEA, on or before September 21, 2023. In fact, the parties' evidence proves otherwise, namely, that there was no basis for the LEA to believe the Student may have needed reading-related special education. In general, earlier performances on administrations of the mCLASS indicated that [student] was in line with general composite benchmarks. (Resp. Ex. 5, p. 1; Resp. Ex. 33, p. 1.) Most, if not all, of the education professionals who testified at the Hearing explicitly said that performance on one administration of the mCLASS or like measure is just *a* data point. (*See, e.g.,* Tr. 249, 1010, 1541.) The educators' view aligns with one of the IDEA's most steadfast principles; the law *prohibits* over reliance on a single measure. § 1414(b)(2)(B). Other data points, however, also confirm that there was no reason for the LEA to harbor

suspicion. Even in the Parent's view, the Student's [grade, -3] teacher did not report atypical reading concerns. (Tr. 69-62, 704.) Also, the status reports for [grade, -4] and [grade, -3] indicate that the Student was mastering or progressing toward mastering all of Alabama's academic standards for the grade levels. (Resp. Ex. 9, p. 1-3; Resp. Ex. 24, pp.1-3; Tr. 1572-73.) This included reading-related standards. (*Id*.)

It is, of course, true that [GET1] did learn in September or October that the Student had supposedly received Tier II. (*See* Tr. 350-55.) But the Student was dismissed from Tier II before [student] got to her. (*Id*.) And in the face of everything else that is available, past involvement in Tier II was not a flag that obligated the LEA to broaden its initial evaluation.

Thus, this Hearing Officer finds the Parent did not prove that the LEA overlooked clear signs of disability or acted negligently when it focused solely on articulation-related needs. Rather, the LEA's initial evaluation was appropriate in both scope and depth. Accordingly, the Parents did not meet their burden of proof as to Claim #1.

**b. The LEA was not obligated to conduct a "dyslexia evaluation" *after* September 21, 2023.**

The crux of Claim #2 is that circumstances arose *after* September 21, 2023, that should have prompted the LEA to conduct a "dyslexia evaluation." (*See* Comp., p. 4, ¶ 10.1; Issue Statement, p. 1, ¶ 1.) This Hearing Officer disagrees.

An LEA must reevaluate if the LEA decides the student's needs warrant a reevaluation or if a parent requests a reevaluation. § 1414(a)(2)(A). An LEA violates a procedural duty if it "overlooks clear signs of disability or negligently fails to order

testing." *J.N.,* 12 F.4th at 1363, citing *Durbrow,* 887 F.3d at 1196.

Here, the Parent wrote [GET1] on February 9, 2024, requesting a "dyslexia evaluation." (Pet. Ex. 23; Tr. 322.) The 11th Circuit has indicated that under the IDEA, there is an "initial evaluation," there is a "reevaluation," and there are "assessments" that are components of both the "initial evaluation" and the "reevaluation." *T.P. ex. rel. T.P. v. Bryan Cnty Sch. Dist.,* 792 F.3d 1284, 1291 n.13 (11th Cir. 2015). Using different terminology, as the court said, "plague[s]" things. *Id*. And on this record, it appears there was some relatable if not understandable confusion about what was requested or expected in terms of a "dyslexia evaluation." Even the Parent conceded she was not consistent in her verbiage; she used terms indiscriminately. (Tr. 419.) And to compound matters, an LEA does not provide a medical diagnosis of dyslexia. (*See* Tr. 1506-1507.) Nor does the IDEA require the LEA to do that to determine what special education it must offer to afford a FAPE. As at least one circuit court has put it: "The IDEA does not require schools to classify students by their particular diagnosis, and in many cases, the specific diagnosis 'will be substantively immaterial because the IEP will be tailored to the child's specific needs.' " *Minnetonka Pub. Sch., Indep. Sch. Dist. No. 276 v. M.L.K.,* 42 F.4th 847, 852 (8th Cir. 2022), citing *Fort Osage R-1 Sch. Dist. v. Sims ex rel. B.S.,* 641 F.3d 996, 1004 (8th Cir. 2011). It was, therefore, unsurprising that confusion from the February 9, 2024, message flowed into more confusion at the February 23, 2024, IEP team meeting, and that some sought input by the LEA's reading specialists.

The Parent, nevertheless, did not prove that between September 21, 2023, and February 9, 2024, the LEA should have reevaluated or conducted a "dyslexia evaluation."

On this point, the thrust of the Parent's presentation at the Hearing fixated on the Student's performance on isolated administrations of the mCLASS and iReady, as well as a screener that restated the mCLASS results. But having heard the education professionals' perspective and finding it credible, the Parent's reliance on the foregoing data for the period from September 21, 2023, to February 9, 2024, is overemphasized. And even if that data had relevance in isolation, it does not support the Parent's claim. [RT1] who is a trained special educator said that even when viewed in isolation, the iReady results showed the Student had "the ability to perform on grade level …." (Pet. Ex. 10.) Those who knew the Student well also described [student] glowingly and there was good reason to do that. [GET1] said the Student was "very smart" and "thriving" at the midpoint. (*See, e.g.,* Pet. Ex. 9, p. 1; Tr. 356-58, 395-96.) But, she said, [student] could "rush" things in a way that impacted [student's] ability to show mastery of concepts that she knew [student] knew. (*Id*.) Further, the mid-year standards report also evidenced continued progress toward [student's] mastering the ability to read at grade-level, per state requirements. (*See* Pet. Ex. 35, p. 1.) Given all of this, this Hearing Officer cannot find that for this time period, the Parent proved the LEA overlooked clear signs of disability, acted negligently, or otherwise acted unreasonably in not reevaluating or conducting a "dyslexia evaluation."

Nor can this Hearing Officer find that the Parent proved the LEA was obligated to reevaluate or conduct a "dyslexia evaluation" *between February 9, 2024, and March 5, 2024.* First, [GET1] and [RT1] each responded to the Parent's February 9, 2024, message in a reasonable time and manner. Second, testimony surrounding discussions at

the February 23, 2024, IEP meeting evidenced disagreement on what certain data meant and, thus, next steps. (*Cf.* Tr. 337-38, 341 *with* Tr. 443-46, 451, 729.) Third, despite this the LEA still added Tier II. Fourth, the decisions to meet with the Parent just four school days after the IEP meeting, to review data with the benefit of [RS's] expertise, to add a SRIP, and to add Tier III and even more multisensory strategies, were all reasonable. Fifth, even if the Parent's February 9, 2024, request for a "dyslexia evaluation" was in fact a request for reevaluation, and that is doubtful given its ambiguity, or even if provision of the pediatrician's note at the IEP meeting was a request for reevaluation, the LEA's response was timely. On March 5, 2024, the LEA agreed to reevaluate to gather data to see if SLD criteria were met. For these reasons, this Hearing Officer cannot find that for this time period, the Parent proved the LEA overlooked clear signs of disability, acted negligently, or otherwise acted unreasonably in not reevaluating or conducting a "dyslexia evaluation."

This Hearing Officer finds that the Parent did not prove Claim #2. The reliance on mCLASS and iReady in the foregoing time periods was overstated; it also ran afoul of the IDEA's express ban against fixating on and relying on a singular measure in rendering decisions regarding the adequacy of student-centered programming. § 1414(b)(2)(B).

As of March 5, 2024, the LEA had agreed to reevaluate to determine if the Student met SLD criteria and see if any basis existed for special education beyond the SLI-related services. On May 17, 2024, the team determined the Student met SLD criteria. The LEA also developed and offered an amended IEP that same day; it added specially designed

reading instruction. After this point, the claim that the LEA was supposedly required to conduct a "dyslexia evaluation" was not one of child-find, but rather a challenge to the propriety of what was offered on May 17, 2024, and after. That issue is subsumed in this Hearing Officer's discussion of Claim #3.

**c. The IEPs that the LEA offered afforded a FAPE.**

In Claim #3, the Parent alleges IEPs that the LEA offered fell below the *Endrew F.* standard. First, the Parent claims the "annual goals" were not "measurable" or "reasonable." (Comp., p. 4, ¶ 10.4; Issue Statement, p. 1, ¶ 4.) Second, she says the IEPs did not provide research-based instruction or address dyslexia-related needs. (Comp., pp. 2, ¶ 4; Issue Statement, p. 1, ¶ 2.)

**i. Any claim regarding SLI-related services fails.**

While technically sufficient, the parts of the complaint and pre-hearing statements that provide the basis for the Parent's claim that the LEA denied a FAPE are overbroad, if not vague altogether. To this point, the Parent has not presented evidence challenging, for example, the propriety of the past SLI-related special education. If that type of claim or any non-reading claim supposedly before this Hearing Officer, it fails; the Parent did not prove it.

**ii. The Parent's reading-related claims also fail.**

**1. The LEA provided a reading goal that was "measurable" and "reasonable."**

At the Hearing, the Parent's focus was largely on whether the LEA should have provided specially designed reading instruction earlier than it did (see above), and

whether what was offered in the May 17, 2024, IEP and after, met the *Endrew F.* standard. On the latter point, it is claimed that the "annual goals" in the IEP were neither "measurable" nor "reasonable." (Comp., p. 4, ¶ 10.4; Issue Statement, p. 1, ¶ 4.)

**a. The reading goal was "measurable."**

The IDEA's procedures require that a school include "a statement of measurable annual goals" in an IEP. § 1414(d)(1)(A)(i)(II). Here, the May 2024 IEP added a reading goal; it aimed to enhance the Student's understanding of what [student] read. (*See* Pet. Ex. 22, p. 5.) As [RT2] explained and the May 2024 IEP plainly reflects, the goal, as it was written, (1) included a baseline, based on the April 2024 achievement assessment data and the April 2024 administration of iReady; (2) required [RT2] to present a third-grade passage to the Student; (3) required the Student to read the passage; (4) required [RT2] to ask the Student open-ended questions about the passage; (5) required the Student to answer [RT2's] questions; and (6) required the Student to provide correct answers to 80% of [RT2's] questions to evidence understanding of what was read. (*Id*.) [RT2] and the Student, the goal indicates, would undertake this back-and-forth three times during the duration of the IEP. (*Id*.) And if the Student achieved 80% on two of the three times, the goal was met. (*Id*.) The goal gave the Student until "April 2025"—presumably the day of the annual IEP review—to hit the mastery mark. (*Id*.) Given all of this, this Hearing Officer finds not only that the LEA included a goal "statement" in the May 2024 IEP, but also that the goal was "measurable."

**b. The reading goal was "reasonable."**

This Hearing Officer also finds that the goal was "appropriately ambitious" for the

Student and, thus, "reasonable." *See Endrew F.,* 580 U.S. at 388. Because the Parent's claim effectively challenges the "content" of the IEP, the snapshot rule applies. On this point, [RT2] explained that the reading goal targeted comprehension—understanding what one reads—because it is at the core of proficiency. (Tr. 849.) The one goal was multifaceted; the Student had to build on underlying deficit skills to achieve it. When the LEA developed the goal in May 2024, it envisioned moving the Student to the point of understanding third-grade material at the end of [student's] third-grade year. So, the goal aimed for progress that was "appropriate," the goal challenged the Student, and the degree of advancement that was envisioned was not *de minimis. See Endrew F.,* 580 U.S. at 401-402. The goal also aligned with the Alabama's general education standards as required. § 290-8-9-05(6)(o). And tellingly, the Parent did not present any alternative as to how the goal supposedly should have been written. That, alone, is fatal to the Parent's claim of unreasonableness. *See T.T. as next friend of C.T. v. Jefferson Cnty Bd. of Edu.,* 2020 WL 6870506, *5 (N.D. Ala. Nov. 30, 2020).

**2. The LEA provided appropriate reading instruction.**

The Parent also claims that the May 2024 IEP fell short of the *Endrew F.* standard because it did not provide instruction that was based on peer-reviewed research or address dyslexia-related needs. (Comp., pp. 2, ¶ 4; Issue Statement, p. 1, ¶ 2.)

**i. The LEA provided reading instruction that was based on peer-reviewed research; the Parent did not prove otherwise.**

The IDEA's procedures provide that the IEP must include a "statement" of the "special education" that the school will provide. § 1414(d)(1)(A)(i)(IV). That

"special education" must be "based on peer-reviewed research," but only "to the extent practicable." § 1414(d)(1)(A)(i)(IV). Here, the LEA included a plain "statement" of "special education" in the "service detail" section of the IEP. (Pet. Ex. 22, p. 6.) The description did not state a specific program or methodology, but the IDEA did not require that: "IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education." 64 Fed. Reg. 12,552 (Mar. 12, 1999). And "[t]here is nothing in the definition of 'specially designed instruction' that would require instructional methodology to be addressed in the IEPs of students who do not need a particular instructional methodology in order to receive educational benefit." *Id.* The State Department has endorsed this exact premise. *Hilyer* at *9. And federal courts have also endorsed it. *Id.; see also J.L. v. Mercer Island Sch. Dist.,* 592 F.3d 938, 952 (9th Cir. 2010). ("[T]he LEA did not commit a procedural violation of the [IDEA] by not specifying teaching methodologies in [the student's] individualized educational programs ….'). In short, the IDEA does not require professional educators to limit their toolbox in the manner that is suggested; it grants the educational experts the professional latitude they are due. *See M.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade Cnty, Fla.,* 437 F.3d 1085, 1102-1103 (IDEA does not require school to use parent's preferred methodology); *Crofts v. Issaquah Sch. Dist. No. 411,* 22 F.4th 1048, 1056-57 (9th Cir. 2022) (same); *see also Rowley,* 458 U.S. at 208 ("[O]nce a court determines that the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States."); *J.L.,* 592 F.3d at 945 n.5 (schools are "entitled to deference in deciding what programming is

appropriate as a matter of educational policy.").

[RT2], nevertheless, explained at the Hearing and in great depth what programming was used and why, as well as the instructional approaches that were used during the 2024-25 school year. (Tr. 1031-32, 1037, 1060-61, 1071, 1112, 1138.) And what she did benefited the Student. By October 10, 2024, [student] was well on [student's] way to meeting the goal; [student] made actual progress. (Pet. Ex. 40, p. 2; Tr. 1020-21, 1025-27.) [RT2] detailed account at the Hearing, alone, is "reliable evidence" that the programs and multisensory practices that were used were "effective" for the Student given [student's] needs. *See Hilyer* at **9-10. The Parent did not present evidence to overcome the education professionals' testimony, or to prove that the LEA *did not* offer instruction that was based on peer-reviewed research "to the extent practicable." *Id*. at *10. This is also fatal to the Parent's claim. *Id*.

**ii. The LEA provided appropriate dyslexia-specific instruction.**

Next, the Parent claims that the May 2024 IEP fell short of the *Endrew F.* standard because it did not address dyslexia-related needs. (Comp., p. 2, ¶ 4; Issue Statement, p. 1, ¶ 2.) For support, the Parent cites [SLP's] report and testimony. (*Id*.)

While the burden of proof lies with the Parent, the LEA presented evidence that showed what it offered as of May 17, 2024, and after, afforded a FAPE and met or exceeded the *Endrew F.* standard. Not only did the LEA's May 17, 2024, IEP *envision* appropriate progress; it also delivered *actual* progress. That actual progress is not itself determinative, yet it is highly relevant here and important to assessing the Parent's

"content" claim. As detailed above, the education professionals have observed the Student's progress at different points and in different ways, and the annual goal afforded benefit. The record evidence also indicates that the Student has consistently achieved very high grades relative to all state-approved standards, and that at least as of the second quarter of the 2024-25 school year, [student] had met Alabama's grade-level standards in all academic courses. Further, [student] also satisfied the requirements of the Literacy Act; [student] will proceed to the [grade] next school year. The Parent's private evaluator, [SLP], did not expressly opine on any of these points, including whether the LEA's May 2024 IEP was substantively appropriate or fell short of any IDEA requirement.

While the LEA shouldered a burden of proof that it did not bear, the Parent failed to overcome a hurdle that, by law, she had to clear. [SLP] labeled a CALT an expert in dyslexia-based intervention, but she also confirmed that she is not a CALT. [EES], who is a CALT, detailed at the Hearing many issues that existed with the results and conclusions that [SLP] had reported. (*See, e.g.,* Tr. 1609, 1634, 1638, 1640-47, 1650, 1653-56.) [EES] also outlined bases for confirming the Student's progress. Her Hearing testimony on these points and others was not only credible and comprehensive, but highly compelling—particularly given the depth of her expertise regarding structured literacy intervention and the programs that are used. But even if all of the stylistic and substantive failings that [EES] identified are overlooked, problems with [SLP's] analysis and conclusions remain. For example, while what she recommended from a service standpoint may in fact be a "gold standard" program, that is more than what the IDEA

and *Endrew F.* require an LEA to afford. An IEP need not, of course, be the best plan or try to maximize a student's potential. *Endrew F.,* 580 U.S. at 401-402; *Rowley,* 458 at 198. That, however, is precisely what [SLP's] recommendations aim to do: "[W]hat we would want for any student that would give them the most – the highest chance of success … in closing those reading gaps." (Tr. 173-174.) Importantly, [SLP] did not plainly indicate that the LEA had to do what she said to afford the Student a FAPE.

One related point is needed. At the Hearing, the Parent alleged that the LEA did not consider [SLP's] recommendations at the August 22, 2025, IEP meeting, or in another, later IEP meeting. (Tr. 12-13.) The Parent did not assert that theory in the complaint or the pre-hearing issue statement, nor was the complaint amended to add it. The LEA did not expressly consent to it either. The claim is, therefore, improper. § 1415(f)(3)(B).

Still, the claim overlooks important points. First, there is evidence that [SLP's] report *was* considered on August 22, 2024; [RT2], for example, said just that. (Tr. 1042-44, 1089.) The recommendations in the report gave LEA staff pause. (*Id*.) Because the recommendations were never expressly adopted, they were at least conceivably tacitly refused. Either way, the issue did not preclude the Parent from pursuing safeguards to try to obtain what she believed was due and the Parent did so within days of the IEP meeting.

Second, the filing of the complaint had ripples. When it was done, it triggered the automatic stay-put guarantee. § 1415(j). It was, thus, incumbent on the LEA to continue to implement the "educational placement"—the special education and related services in the IEP—while things played out. The complaint filing, thus, changed

the course of action that was annotated in the August 22, 2025, IEP. (Pet. Ex. 23, p. 1.) The LEA's efforts to comply with the IDEA's annual review requirement on April 16, 2025, did not change things. *See C.P.,* 483 F.3d at 1157. And nothing obligated the LEA to "otherwise agree" to alter the stay-put circumstances that were created, instead of implementing that IEP and defending the propriety of the LEA's past programmatic offer. § 1415(j).

Finally, the added claim is a procedural one. For the reasons above, what [SLP] recommended exceeded what the IDEA and *Endrew F.* required for a FAPE; she recommended, as she said, a "gold standard" program. (Tr. 139-43, 173.) The Parent has, further, failed to present sufficient evidence of how any failure to consider [SLP's] recommendations denied any ability to participate in any process, what she would have done at another meeting that she did not already do at the meeting on August 22, 2024, or how the student's "education would have been different" if another meeting was held. *J.N.,* 12 F.4th at 1366. In fact, at least one attendee of the meeting perceived that nothing but [SLP's] recommendations would be acceptable to the Parent. (Tr. 1073, 1695.) There was no express testimony to the contrary at Hearing. Here, even if a procedural violation is assumed, it is not actionable. § 1415(f)(3)(E)(ii).

This Hearing Officer finds that the Parent did not prove Claim #3 and its various subparts.

**d. The LEA offered "measurable" annual goals.**

In Claim #4, the Parent alleges that the "annual goals" in the IEPs were not "measurable." (Issue Statement, p. 1, ¶ 4.) This Hearing Officer has addressed this

claim. Still, this Hearing Officer confirms that even if any procedure was violated, the Parent, alternatively, did not prove substantive harm or the added burdens needed for an award of compensatory relief. *See J.N.,* 12 F.4th at 1365-68.

**e. The LEA provided a "statement of special education" and instruction based on peer-reviewed research; the Parent did not prove otherwise.**

In Claim #5, the Parent alleges that the LEA did not state in the IEPs what special education it would deliver. (Comp., p. 4, ¶ 10.3; Issue Statement, p. 1, ¶ 3.) This Hearing Officer has also addressed this claim. This Hearing Officer confirms that even if any procedure was violated, the Parent, alternatively did not prove substantive harm or the added burdens needed for an award of compensatory relief. *See J.N.,* 12 F.4th at 1365-68.

**f. The LEA provided "preferential seating."**

In Claim #6, the Parent alleges that the LEA did not include a statement of "accommodation services or program modifications such as preferential seating" in the IEPs, or that the LEA did not implement those things. (Comp., p. 5, ¶ 10.8; Issue Statement, p. 2, ¶ 8.)

First, this claim does not distinguish "accommodation[s]" from "modifications." And the claim misconstrues what the IDEA requires an LEA to state in the IEP in this area and why. §§ 1414(d)(1)(A)(i)(IV), (V)(aa). The May 2024 IEP, nonetheless, identifies the only identified missing modification or accommodation—preferential seating—in the "Supplementary Aides and Services" section of the IEP. (*See* Pet. Ex. 22, p. 6.) Thus, in addition to the predicate of the claim being *legally* flawed, it is also

*factually* flawed. The Parent, thus, did not provide sufficient proof that the LEA violated an IDEA procedure. And even if a violation is assumed, the Parent, further, did not prove any substantive harm or meet the added burdens that must be met to obtain compensatory relief. *See J.N.,* 12 F.4th at 1365-68.

Second, to the extent the Parent asserts an "implementation" claim here, the claim fails. She did not prove any misstep, or that any misstep, whether actual or assumed, was material. *See L.J.,* 997 F.3d at 1211. The question, again, is whether the District "failed to implement the IEP as a whole"; it "is not whether [the District] materially failed to implement an individual provision in isolation …." *Id*. at 1215. To this point, earlier findings relative to the Student's performance and progress under the May 2024 IEP further undermine any suggestion that an implementation failure was anything but *de minimis. Id*. at 1211.

This Hearing Officer finds that the Parent did not prove Claim #6.

**g. The LEA included appropriate members at relevant meetings.**

In Claim #7, the Parent alleges that "all *required* personnel [were not] present" at one or more IEP meetings. (Comp., p. 5; ¶ 10.5; Issue Statement, p. 2, ¶ 5) (emphasis added). This, the Parent says, resulted in "delay in decision-making and implementation of services." (*Id*.)

The analysis of the claim is twofold. First, *required* team members, under § 1414(d)(1), were arguably present to the extent it was necessary at each meeting relevant to this case. Second, even if it is assumed that a member was not present when required, prejudice and substantive harm are not assumed. *See J.N.,* 12 F.4th at 1363. The 11th

Circuit says that these items are not equivalent. *Id*. Based on the record, this Hearing Officer cannot find that the Parent proved the composition of any given team truly resulted in the sort of "delay" that is claimed. By way of example only, during the February 23, 2024, IEP meeting, the Parent herself perceived that her February 9, 2024, request for a "dyslexia evaluation" was rejected. (Tr. 420, 459.) And with respect to the August 22, 2024, IEP meeting, there is evidence to suggest that [SLP's] recommendations *were* considered, the recommendations were never expressly adopted, and the IEP was finalized and signed. (Pet. Ex. 23, p. 1; Tr. 1042-44, 1089, 1690-94.) Safeguards, of course, remained available at all times. And when they were ultimately invoked, it triggered the stay-put guarantee and changed the landscape.

The Parent also failed to present evidence sufficient to prove how any failure to include a required team member denied participation, what the Parent would have done different had a member been present, or how the student's education would have supposedly been different. *J.N.,* 12 F.4th at 1366. Indeed, these points are especially true given this Hearing Officer's earlier findings on substantive points: the LEA has demonstrated that it afforded a FAPE, even though it does not bear the burden here; the Parent did not prove that the LEA denied a FAPE; what [SLP] recommended exceeded the LEA's legal obligations; and the LEA was not required to adopt what [SLP] recommended to afford a FAPE to the Student. These findings, alone, negate any claim regarding a purported delay in services.

In short, this Hearing Officer finds that the Parent did not prove that the LEA violated an IDEA procedure. And even if a violation is assumed, the Petitioner, further,

did not prove prejudice, substantive harm, or entitlement to compensatory relief. This Hearing Officer, thus, finds the Parent did not prove Claim #7.

**h. The LEA afforded meaningful participation.**

In Claim #8, the Parent alleges that the LEA denied her meaningful participation in the development of the May 2024 IEP. The Parent does not allege predetermination, where claims of denial of parental participation are traditionally raised. *See R.L.,* 757 F.3d at 1188. Instead, participation was denied because the LEA supposedly: omitted a statement of special education services from the IEP; mislead her "into believing that school personnel were not qualified to administer dyslexia evaluations"; and failed to provide "accurate records when requested." (Issue Statement, p. 1, ¶ 3; p. 2, ¶¶ 6-7.) Each reason is addressed in order.

The issue of whether the LEA included a plain "statement" of "special education" in the "service detail" section of the IEP was already addressed—it did. Plus, the IDEA, the Federal Registrar commentary relative to the IDEA, and federal court authority all confirm the type of "statement" that the Parent claims is due is, in fact, not due. The first reason that the LEA supposedly denied participation is not only factually incorrect; it is also legally incorrect.

Next, the Parent alleges that the LEA denied her a right of meaningful participation because it mislead her "into believing that school personnel were not qualified to administer dyslexia evaluations." (Issue Statement, p. 1, ¶ 3; p. 2, ¶¶ 6-7.) The predicate of that allegation is wrong. *See M.L.K.,* 42 F.4th at 852. Even if it was not, though, this Hearing Officer finds that the Parent failed to present sufficient evidence

to prove that anyone misled anyone. Unlike most, the Parent participated in hundreds of education-related meetings over the years. (Tr. 645.) As recounted above, there was, understandably, much ambiguity that flowed from the Parent's initial "dyslexia evaluation" request on February 9, 2024. But in this Hearing Officer's view, nothing here rose to the level of impacting, let alone significantly impacting, any of the Parent's ability to voice input on any aspect of the Student's educational program.

Finally, the Parent alleges that the LEA denied her a right of meaningful participation because the LEA failed to provide "accurate records when requested." (Issue Statement, p. 1, ¶ 3; p. 2, ¶¶ 6-7.) The premise of this claim is also incorrect; it overextends the IDEA's right-of-access provision. That provision, of course, only obligates an LEA to afford a requesting parent a chance to "inspect and review" the "education records" of the parent's child. §§ 300.501(a); 300.613(a), (b); *see also* 20 U.S.C. § 1232g(1). Copies of "education records" are only available in narrow situations. §§ 300.613(b)(2); 300.617; *see also Bevis v. Jefferson Cnty Bd. of Edu.,* No. 2:06-cv-0085-RDP, *22 (N.D. Ala. Jan. 31, 2007) (IDEA only requires provision of copies where circumstances preclude a physical examination, namely, where the parent resides too far away to inspect and review). And importantly, what is subject to the right of inspection and review is also limited; it does not include everything. As the U.S. Supreme Court has limited items, "education records are institutional records kept by a single central custodian, such as a registrar …." *See Owasso Indep. Sch. Dist. No. I-011 v. Falvo,* 534 U.S. 426, 433 (2002); *see also, e.g., Doe v. Rutgers,* 2023 WL 2239399, *1 (3rd Cir. Feb. 27, 2023) (applying *Owasso*).

Here, the IDEA's right-of-access provision does not grant the far-reaching entitlement that is suggested. The LEA staff may have regularly provided copies of items as a matter of course or courtesy, but that does not mean it was required in all instances. This Hearing Officer does not find that the Parent presented sufficient evidence to prove the LEA violated any procedural obligation. Nor did the Parent prove, to any degree required to succeed here, what she would have done differently had "accurate records" been provided, or how any purported violation of the right-of-access provision significantly impacted participation in program development. § 1415(f)(3)(E)(ii). On the record as a whole, the Parent was *extremely* active in communicating on a weekly if not daily basis, and in voicing perspective. She has regularly and fully participated in all program-related matters, both formal and informal. Those acknowledgments are by no means an indictment, but, rather, evidence of the depth of participation and a testament to it.

For the foregoing reasons, Claim #8 also fails. The Parent did not prove a procedural violation, prejudice or substantive harm, or entitlement to corresponding relief.

## VIII. CONCLUSION.

It is absolutely apparent that the Parents love and care for their [child], and that the Parents want their [child] to receive the absolute best educational program that [student] can receive—no one can fault anyone for that. This Hearing Officer is also sympathetic to parental frustrations in some circumstances. However, in this case, many claims are laser-focused on particularized data points to the exclusion of other points that paint a

better, broader picture, as well as a more holistic view of the Student and progress. The Student's consistently high marks in all academic subjects and [grade] promotion alone merit not just focus, but acclaim. Both are proof of commitment by the Student, the Parents, and others.

With respect to matters of the IDEA and a FAPE, what is sought here is understandable but is just more than what the law obligates the LEA to provide. This Hearing Officer finds that the Parent did not meet the Parent's respective burdens on the claims that were presented. This Hearing Officer, therefore, finds in favor of the LEA and denies the Parent's request for relief.

## I.X. NOTICE OF APPEAL RIGHTS.

Any party aggrieved by the findings and decisions made herein has the right to bring a civil action in the appropriate court under 20 USC §1415(e)(2).

Alabama Administrative Code 290-080-090-.10(4)(c)(12) provides an aggrieved party shall file a notice of intent to file a civil action with a11 parties to the Impartial Due Process Hearing within thirty calendar (30) days upon receipt of the Decision of the Impartial Due Process Hearing Officer. Said section further provides that a civil action in a court of competent jurisdiction must be filed within thirty (30) days of filing of the notice of intent to file a civil action.

**DONE** and **ORDERED** this 22nd day of August 2025.

**s/P. Michael Cole**

P. Michael Cole, Hearing Officer
P. MICHAEL COLE, LLC
PO Box 1800
Athens, Alabama 35612

## X. CERTIFICATE OF SERVICE.

I hereby certify that a true copy of the foregoing Hearing Decision was duly served upon the following individuals by placing a copy of same in the United States Mail, postage prepaid and by electronic mail:

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DONE and ORDERED this 22nd day of August, 2025.

**s/P. Michael Cole**
**P. Michael Cole**
**Hearing Officer**