United States Court of Appeals

for the

Fifth Circuit

Case No. 20-50373

AMANDA P., as Parent/Guardian/Next Friend of T.P., a Minor Individual with a Disability; CASEY P., as Parent/Guardian/Next Friend of T.P., a Minor Individual with a Disability,

Plaintiffs-Appellants,

v.

COPPERAS COVE INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO, IN CASE NO. 6:19-CV-197, ALAN D. ALBRIGHT, U.S. DISTRICT JUDGE

BRIEF FOR PLAINTIFFS-APPELLANTS

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order for the judges of this Court to evaluate any possible disqualifications or recusal:

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STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument. This case involves important procedural and substantive issues under the Individuals with Disabilities Education Act in relation to the evaluation, eligibility, and special education supports and services provided to a student with a specific learning disability—specifically dyslexia. The record in this matter is large, and therefore oral argument will assist the Court in understanding the complex factual framework surrounding the issues in this proceeding.

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JURISDICTION

Jurisdiction in the district court was predicated upon 20 U.S.C. § 1415(i)(3) and 29 U.S.C. § 1331, and jurisdiction in this Court is predicated upon 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Did the District Court abuse its discretion by denying Plaintiffs'/Appellants' *Motion for Additional Evidence* in light of this Court's precedent that hindsight evidence is to be embraced in individualized educational program ("IEP") appropriateness cases and for the purpose of crafting an appropriate remedy?

2. Did the District Court err in finding that an eight-month gap between conducting a dyslexia assessment and the provision of services was reasonable?

3. Did the District Court err in finding Copperas Cove ISD ("CCISD") did not procedurally violate the IDEA by failing to evaluate T.P. for a Specific Learning Disability?

4. Did the District Court err in finding T.P. was provided a free appropriate public education because T.P. made "some" or "objective" progress, when T.P. only made four months of reading progress over the course of one and a half years despite having an average ability to learn?

5. Did the District Court err in failing to order relief to Plaintiffs/Appellants?

STATEMENT OF THE CASE

Student T.P. was diagnosed with autism at a young age and has received intensive, ongoing, private ABA therapy, which has largely remediated his symptoms. ROA.2706-2707. T.P. has also been diagnosed with Attention-Deficit/Hyperactivity Disorder ("ADHD"). ROA.1215. T.P. also has dyslexia. ROA.1406.

Parent Clifford P. is an active-duty member of the armed forces. When T.P. was five, his family relocated to North Carolina, and T.P. was enrolled in Kindergarten in the Wake County Public School System ("WCPSS"). ROA.1194. WCPSS found T.P. eligible for special education and related services as a student with a Significant Developmental Delay and a Speech-Language Disorder. ROA.1194. During the second semester of Kindergarten, T.P. began receiving 1:1 tutoring with his classroom teacher twice per week to address his literacy skills. ROA.1195. At the beginning of first grade, Parent expressed concern about T.P.'s lack of progress. ROA.1194. Accordingly, T.P.'s IEP Team requested additional evaluations to determine T.P.'s need for specially designed instruction. ROA.1194. Beginning in October 2016, WCPSS created a plan to address T.P.'s weaknesses in reading comprehension. ROA.1195. T.P. began receiving fifteen minutes per week

of small group instruction in reading comprehension skills and small-group reading intervention with a reading specialist three times per week. ROA.1195.

In-class assessment data from WCPSS showed T.P. struggled with decoding and required specially designed instruction to address those deficits. ROA.1302. WCPSS' evaluations also indicated T.P. had trouble concentrating, following directions, and maintaining necessary levels of attention at school. ROA.1200. By the end of first grade, WCPSS determined T.P. still had not made appropriate progress in reading and therefore required Tier II interventions in phonics/word recognition and reading comprehension. ROA.1551. WCPSS began providing T.P. with thirty minutes per week of instruction on consonant-vowel-consonant ("CVC") words and forty minutes per week of small group instruction for reading comprehension. ROA.1553.

In July 2017, at the beginning of second grade, the IEP Team at WCPSS changed T.P.'s primary eligibility category to Other Health Impairment ("OHI") due to T.P.'s recent diagnosis of ADHD. ROA.1309. The IEP Team noted T.P. "has continued to struggle with reading and has made slow progress." ROA.1309. The IEP Team determined T.P. also met IDEA-eligibility criteria as a student with a speech impairment. ROA.1309. T.P. was provided with the following specialized instruction and related services:

- Resource Reading: 5 sessions/week, 15 minutes per session to address T.P.'s decoding deficits;
- Resource Writing: 5 sessions/week, 30 minutes per session to address T.P.'s weaknesses in writing multiple sentences.
- Speech Therapy: 12 sessions per 9-week grading period, 30 minutes per session.

ROA.1303.

In September 2017, T.P.'s family was transferred to Copperas Cove, Texas, and T.P. enrolled in House Creek Elementary School within Copperas Cove ISD ("CCISD") for second grade. Upon T.P.'s enrollment, CCISD received T.P.'s IEP from WCPSS; however, CCISD kept no records regarding what services, if any, it provided to T.P. during his first month of enrollment in CCISD. ROA.3368.

On October 20, 2017, CCISD convened an Admission, Review, and Dismissal Committee ("ARDC") meeting to develop T.P.'s IEP. ROA.1326. The October 20, 2017 IEP included in-class assessment data from T.P.'s first two months in CCISD. ROA.1331. T.P. scored in the Kindergarten range for reading on an in-class iReady assessment. ROA.1331. T.P.'s reading skills were also assessed using the Fountas & Pinnell ("F&P") Reading System and determined to be on a Level F—an "early first grade" level. ROA.1223, 1232, 1876.

The IEP stated T.P. was failing reading class with a grade of 67 and was "performing on a Kindergarten level." ROA.1327. T.P. was given one IEP goal for

reading: "In 36 instructional weeks, provided his accommodations, [T.P.] will read grade level text with fluency an comprehension including 180/200 high frequency sight words and CVC words with short vowels, with 80% accuracy." ROA.1333. T.P.'s special education case manager conceded T.P.'s present levels of academic achievement and functional performance ("PLAAFP") statements did not provide baselines for the skills targeted by this goal, and were not based on T.P.'s assessment. ROA.2869-2872. T.P. may have already mastered this goal prior to its inception.

CCISD inexplicably reduced T.P.'s speech therapy services from twelve sessions every nine weeks to five sessions every six weeks. ROA.1343. T.P.'s ARDC determined T.P. continued to meet IDEA-eligibility criteria under Speech Impairment. ROA.1324. CCISD required Parent to obtain, and pay for, an updated OHI form from a physician in order to consider T.P.'s OHI eligibility. ROA.1320.

In December 2017, after working with T.P. for less than a month, T.P.'s private ABA Therapy provider began to suspect T.P. had dyslexia. ROA.2682. The ABA provider recommended T.P. be evaluated for dyslexia. ROA.2682.

In January 2018, T.P.'s ARDC met to review the completed OHI form. ROA.1368. The ARDC also reviewed and revised T.P.'s PLAAFP statements. According to the mid-year iReady assessment, T.P. was on a first-grade level in reading. ROA.1289. On the F&P assessment, T.P. moved up to a Level G, which is

considered to be a mid-year first grade level. ROA.1223, 1232. For a second-grader, performing on a Level G means T.P. "does not meet expectations, requires intensive intervention." ROA.1876. T.P.'s teachers reported T.P. still struggled with reading fluency and "often relies on his teachers reading to him…" ROA.1378.

During the ARDC, Parent expressed concern about T.P.'s lack of progress and requested an evaluation for possible dyslexia. ROA.1378. Parent believed T.P. was going to be reevaluated. ROA.2713. CCISD staff did not explain the difference between a "screening" and a full individual reevaluation during the ARDC. In February 2018, a reading teacher conducted a dyslexia "screening" assessment. ROA.1378. The reading teacher, Loretta Stone, administered the Word Identification and Spelling Test ("WIST"). ROA.1503. T.P. scored in the "very poor" range on almost all components of the WIST. ROA.1503. T.P.'s results were so low that some areas could not be measured. ROA.2184. Stone testified CCISD conducted a screener before the evaluation for dyslexia because the evaluation was a "long process. And we don't like to do that to students unless we really need to see if they probably do qualify or if they might qualify. And so we don't like to just give the test without looking and seeing if there is a need." ROA.2261-2262.

CCISD did not convene an ARDC to discuss the results of the dyslexia "screener" until April 6, 2018. ROA.1390. Stone attended the meeting and

indicated T.P. "could benefit by targeted instruction." ROA.1391. The ARDC recommended further assessment to determine if T.P. has a disability in reading—specifically dyslexia. ROA.1217. During the ARDC, Parent signed consent for the Full and Individual Evaluation ("FIE"). ROA.1216-1217, 1390. CCISD did not provide the targeted instruction recommended by Stone. ROA.2185.

Stone, who is not a licensed specialist in school psychology, completed the FIE/dyslexia assessments on May 18, 2018. ROA.1220, 2179, 1646. T.P. scored in the "below average" range on all subtests measuring the "Characteristics of Dyslexia" (decoding, word recognition, oral reading fluency, accuracy, rate, and spelling). ROA.1220. T.P. scored in the average range for cognitive and academic ability. ROA.1220. The dyslexia assessments neither assessed T.P. in all areas of suspected disability nor were they conducted by a qualified professional. The report recommended T.P. be considered for general education dyslexia services. ROA.1222. CCISD did not communicate the FIE results to Parent and did not convene an ARDC meeting to revise T.P.'s special education services.

For the entirety of the 2017/18 school year, T.P. received whole-group instruction in Fundations, a component of the Wilson Reading System ("Wilson"). ROA.2068, 2573, 2587. Based on T.P.'s iReady results, T.P.'s teacher conceded T.P. was not doing well in reading. ROA.2624. By the end of second grade, according to iReady, T.P. regressed to a Kindergarten level in reading. ROA.1289,

2622-2623. T.P. remained on a F&P Level G. ROA.1223, 1232. Parent asked CCISD if T.P. could attend summer school to address his reading deficits. ROA.2714. CCISD disqualified T.P. from summer instruction because his grades were too high. ROA.2714.

CCISD requires a student to fail two semesters in a row, based on report card grades, to be eligible for summer school. ROA.2579. Unbeknownst to either Parent or T.P.'s case manager, T.P.'s second grade teachers decided to record a "65" in the grade book when a student scored below a 65. ROA.2576-2578, 2773. T.P.'s grades were not an accurate reflection of his academic performance. ROA.2579; *see also* ROA.3286, 3290, 3300, 3302, 3303. Parent enrolled T.P. in academic tutoring at Sylvan Learning Center at a cost of $7,451.00. ROA.1639-1649, 2758. Parent paid for the program by taking out a loan. ROA.2740-2741, 2758.

In July 2018, Parent requested an Independent Educational Evaluation ("IEE") based in part on CCISD's failure to evaluate T.P. in all areas of suspected disability and need. ROA.1607. CCISD granted her request and subsequently entered into a contract with Jason Craig to perform the IEE. ROA.1602, 1597. CCISD also granted Parent an IEE in the area of speech; however, CCISD failed to contract with the parent-selected provider to conduct the speech evaluation. ROA.1597.

When T.P. began third grade in August 2018, he had not made any progress in reading—remaining on a F&P Level G. ROA.1397. On August 23, 2018, Parent emailed Stone asking about T.P.'s FIE results from May. ROA.1621-1623. Stone indicated T.P. "fit the dyslexic profile" and offered to allow T.P. to begin participating in her general education dyslexia class, even though T.P.'s ARDC had not yet met. ROA.1621. Parent agreed, and T.P. began receiving group instruction using Wilson for forty-five minutes per day, four days per week. ROA.2159.

The record is devoid of any indication CCISD considered peer-reviewed research before recommending Wilson for T.P. T.P. attended the Wilson class for the 2018/19 school-year. ROA.2159. T.P. did not make progress with this methodology. Wilson focuses on phonics through an Orton–Gillingham methodology. ROA.2278, 2512, 3017. Stone testified Wilson was used because it was what CCISD had available, not because it was appropriate to meet T.P.'s individual needs. ROA.2156-2157. The class was not individualized. Stone started all students in the class at the same instructional "level" and progressed the class through the levels together—even if some students in the group had not mastered the skills sufficient to advance. ROA.2267, 2291-2292.

In September 2018, CCISD convened an ARDC meeting to review the results of the May 2018 FIE. ROA.1406. The resulting IEP states T.P. is

"Dyslexia/Qualified" but does not include any reference to eligibility under SLD/ reading. ROA.1406. The deliberations and schedule of services briefly state T.P.'s "dyslexia" services would be provided in the general education setting. ROA.1415, 0750. T.P.'s PLAAFPs and IEP goals did not reference T.P.'s dyslexia or Wilson. ROA.1397. The IEP states T.P. was "currently performing on a 1st grade level." ROA.1397. T.P. would continue to receive some reading and writing instruction in the resource setting. ROA.1415. No methodology or peer-reviewed research discussion was noted.

Craig completed the IEE of T.P. on December 4, 2018. Craig concluded T.P. met eligibility criteria as a student with a Specific Learning Disability in basic reading, reading comprehension, reading fluency, and written expression. ROA.1852. Craig compared his evaluation results to those obtained by WCPSS and noted T.P.'s academic ability "has not increased since first grade." ROA.2397. Craig recommended a whole-language methodology be used with T.P. rather than a phonics-based methodology. ROA.2255. The IEE reported T.P. also demonstrated characteristics of an auditory processing disorder and further evaluation in this area should be conducted. ROA.2390-2391.

T.P.'s special education case manager testified she had, the morning prior to her testimony, decided to conduct an additional F&P assessment of T.P. ROA.2819. The case manager testified T.P. had suddenly and miraculously

progressed to a F&P Level H. ROA.2819. The case manager later conceded she had assessed T.P. using a story which T.P. was already familiar with—meaning the results were likely an overestimate of T.P.'s abilities. ROA.2860-2861. Even so, Level H is still considered a mid-first grade level. ROA.1232. Assuming *arguendo* this assessment was valid, T.P. made approximately four months of reading progress over the course of 1.5 years of enrollment at CCISD.

Dr. Rachel Robillard was admitted as an expert in dyslexia evaluation and programming at the due process hearing. ROA.2985-2986. Robillard has a Ph.D. in educational psychology with specialties in school psychology and neuropsychology. ROA.2982. Robillard is a licensed specialist in school psychology and a licensed psychologist. ROA.1813-1825. Robillard reviewed the evaluations conducted by WCPSS, CCISD, and Craig. ROA.2986. Robillard concluded T.P. has a "moderate to severe" presentation of dyslexia. ROA.3038. Robillard testified T.P.'s progress in reading from September 2017-December 2018, as measured through the F&P assessments, was not meaningful progress. ROA.2999. Robillard testified even if T.P. had progressed to "Level H" after remaining on Level G for 1.5 years, he was still on a mid-first grade level and two standard deviations below the mean for his age which means T.P. was "significantly delayed in educational progress." ROA.2999. Robillard also testified, based on T.P.'s average-range cognitive abilities and the amount of

Wilson instruction and intervention he had received, T.P. should be making more progress. ROA.3011.

Based on CCISD's failure to offer T.P. appropriate specialized and individualized instruction in reading, Parent requested, and was granted, a compassionate duty military station transfer by the armed forces. T.P. and his family moved to Tennessee where T.P. is currently in fourth grade and making meaningful reading progress through individualized instruction.

PRIOR PROCEEDINGS

This is an action brought by Appellants appealing an administrative decision following an impartial due process hearing pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* Appellants initiated the action via a complaint dated March 7, 2019. Following motion practice, on April 14, 2020, the District Court Judge, Hon. Alan Albright, issued an order and a final judgment granting CCISD's motion for summary judgment and denying Appellants' motion for summary judgment. On May 7, 2020, Appellants filed a notice of appeal.

SUMMARY OF ARGUMENT

The IDEA requires states to make a free appropriate public education ("FAPE") available to all children with disabilities residing within the state between the ages of three and twenty-one. 20 U.S.C. § 1412(a)(1)(A). The IDEA

contains thirteen eligibility categories, including Specific Learning Disability, which is defined as:

> a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

34 C.F.R. § 300.8(c)(10)(i). It is the evaluation process, determination of eligibility and services, and the provision of special education and related services to a student with dyslexia that is at issue in this proceeding. This issue implicates both procedural and substantive compliance with the IDEA's requirements, as well as whether CCISD satisfied its obligation to provide T.P. with an IEP that was reasonably calculated to enable T.P. to make meaningful progress and receive a meaningful educational benefit. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1002, 197 L. Ed. 2d 335 (2017).

FAPE is defined as special education and related services provided at public expense and without charge to parents, and in conformity with an IEP that meets the requirements described in the IDEA. 20 U.S.C. § 1401(9). In Texas, the IEP team, called the Admission, Review and Dismissal Committee ("ARDC"), meets annually to draft an individualized educational program ("IEP") for qualifying

students. *Endrew F.*, 137 S. Ct. at 994 (citing 20 U.S.C. § 1414(d)(1)(B)); 19 TEX. ADMIN. CODE § 89.1050. The IEP must include "'a statement of the child's present levels of academic achievement and functional performance,' describe 'how the child's disability affects the child's involvement and progress in the general education curriculum,' and set out 'measurable annual goals, including academic and functional goals,' along with a 'description of how the child's progress toward meeting' those goals will be gauged." *Endrew F.*, 137 S. Ct. at 994 (citations omitted). IEPs must also contain a "statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable . . . " (20 U.S.C. § 1414(d)(1)(A)(i)(IV) "so that the child may 'advance appropriately toward attaining the annual goals' and, when possible, 'be involved in and make progress in the general education curriculum.'" *Endrew F.*, 137 S. Ct. at 994.

While the IDEA permits a district to use any educational methodology that allows an IDEA-student to receive FAPE, in some instances a student may need a particular methodology to receive an educational benefit. 71 Fed. Reg. 46,665 (2006). Conversely, the IEP may need to rule out a specific methodology. *I.S. v. Sch. Town of Munster*, 2:11-CV-160 JD, 2014 WL 4449898, at *5 (N.D. Ind. Sept. 10, 2014) (finding that the district's continuation of the Read 180 program, a

methodology that had proven highly ineffective the previous school year, made the IEP substantively inappropriate.)

During T.P.'s second-grade year, T.P. received phonics-based interventions using the Fundations program, a component of the Wilson program. ROA.2068, 2573, 2587. T.P.'s second-grade teacher conceded T.P. did not do well in reading. ROA.2624. In February 2018, T.P. was administered the Word Identification and Spelling Test ("WIST"); T.P.'s results were so low some areas could not be measured. ROA.1503, 2184. By the end of second grade, according to iReady, T.P. regressed to a Kindergarten level in reading. ROA.1289, 2622-2623. T.P. remained on a F&P Level G—a first grade level. ROA.1223, 1232. A Level G means T.P. "does not meet expectations, requires intensive intervention." ROA.1876. CCISD continued the same methodology with T.P. despite it proving highly ineffective.

While in third grade, T.P. received small-group instruction using the Wilson program, a phonics-based methodology, for forty-five minutes per day, four days per week. ROA.2159. By November 2018, T.P.'s progress was "less than expected." ROA.1873. According to the mid-year iReady assessment, T.P. remained on a first-grade level in reading. ROA.1289. On the F&P assessment, T.P. remained on a Level G. ROA.1223, 1232. T.P.'s performance indicated T.P. "does not meet expectations, requires intensive intervention." ROA.1876.

CCISD's continuation of the Wilson program, using a methodology that had proven highly ineffective during the previous school year and during T.P.'s third-grade year, demonstrates the IEPs were substantively inappropriate. CCISD selected Wilson not because it was appropriate for T.P., but because it is what CCISD had available. ROA.2156-2157. However, Craig recommended T.P. be provided with a "whole language" methodology. ROA.1972, 2255. The ARDC never discussed which methodology might be appropriate for T.P. CCISD failed to individualize T.P.'s IEPs to meet his unique needs; consequently, T.P. did not make meaningful progress and was denied a FAPE.

The Court erred in finding CCISD's administration of general education assessments for dyslexia satisfies the IDEA's requirements for reevaluation or justifies denial of an IDEA reevaluation. *See, e.g.*, 34 C.F.R. § 300.301. Specifically, the Court erred in finding CCISD's process of "screening" students for general education dyslexia services in lieu of conducting a reevaluation was appropriate. ROA.633. However, CCISD's process impermissibly delayed the provision of general education dyslexia services to T.P. by eight months and denied T.P. specialized instruction completely.

While the Court agreed CCISD's process "may have prevented Student from receiving meaningful benefits" (ROA.634), the Court excused CCISD's IDEA violation by finding CCISD was taking proactive steps towards evaluating T.P.

ROA.632. However, "response to intervention strategies cannot be used to delay or deny the provision of an [evaluation]." *Spring Branch Indep. Sch. Dist. v. O.W.*, 938 F.3d 695 (5th Cir. 2019), *withdrawn and superseded on reh'g*, 961 F.3d 781 (5th Cir. 2020). However, CCISD used the "screener" delay the "dyslexia evaluation" and deny an IDEA reevaluation. The Court concluded CCISD's screening procedure was entitled to "deference...with respect to the means and method of providing the FAPE." ROA.633. Taken in context, the Court found CCISD's evaluation procedure was entitled to deference, not the actual method of providing T.P. a FAPE. In the context of reevaluations, the Court's holding creates a "perverse incentive" to delay and deny reevaluations as mandated by the IDEA. *Woody,* 865 F.3d at 320.

The Court also stated, because Parent did not actively object to CCISD's process, no procedural violation of the IDEA occurred. ROA.633. "A child's entitlement to special education should not depend upon the vigilance of parents (who may not be sufficiently sophisticated to comprehend the problem)." *Hicks v. Purchase Line Sch. Dist.,* 251 F. Supp. 2d. 1250 (W.D. Pa. 2003). The duty to comprehensively reevaluate a student lies squarely on CCISD. 34 C.F.R. § 300.303(a). CCISD failed to explain to Parent the delay its process would cause. 20 U.S.C. § 1414(c)(3). Parent did object by seeking an IEE after she comprehended the problem. CCISD failed to comprehensively reevaluate T.P. to

include assessment of SLD in violation of the IDEA, and did so despite having more than a suspicion of T.P.'s reading disability and need for special education services, which caused T.P. substantive harm.

The Court erred in finding the IEPs created by CCISD for T.P. during the relevant time period were substantively compliant with the IDEA because T.P.'s "IEP demonstrated *some* educational and academic benefit" (ROA.639)(emphasis added), and "[s]tudent demonstrated *objective* progress in all areas." *Id*. (emphasis added). That T.P. may have made "some" progress does not answer the fundamental question of whether T.P.'s progress was meaningful or whether the IEPs were likely to produce meaningful progress. *Michael F.*, 118 F.3d at 248. "A student offered an educational program providing merely more than *de minimis* progress from year to year can hardly be said to have been offered an education at all." *Endrew F.*, 137 S. Ct. at 1001 (internal quotation marks omitted). A student must receive more than just "some" educational benefit from the IEP; the educational benefit must be meaningful. *Id.* at 998. The preponderance of evidence shows T.P. made four month's of progress over the course of a year and a half and such progress was not meaningful given T.P.'s average ability to learn. *Ringwood Bd. of Educ. v. K.H.J.*, 258 F. App'x 399, 402-403 (3d Cir. 2007).

The Court further erred by excluding additional post-hearing evidence, which was relevant to the issue of the appropriateness of T.P.'s IEPs. This Circuit

"embraces hindsight evidence" in IEP appropriateness cases. *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 214-215 (5th Cir. 2019) (internal citations omitted). Despite IEP appropriateness being squarely at issue, the Court erroneously concluded "the main issue before the SEHO at the December 2018 hearing was whether CCISD correctly found T.P. was eligible as a student with a Specific Learning Disability;" therefore, the District Court erroneously concluded the offered supplemental evidence was an attempt "to relitigate the issue of eligibility." ROA.453. This conclusion by the Court and omission of evidence was misplaced as the primary issue in this case, and the purpose for offering supplemental evidence, was for determination of the appropriateness of the IEPs.

ARGUMENT

I. Standard of Review

This Court reviews the decision of the District Court as a "mixed question of law and fact." *Lisa M.*, 924 F.3d at 213 (internal quotations omitted). "Mixed questions should be reviewed under the clearly erroneous standard if factual questions predominate, and *de novo* if the legal questions predominate." *Seth B. v. Orleans Parish Sch. Bd.*, 810 F.3d 961, 967 (5th Cir. 2016) (internal quotations omitted). The clear error standard of review precludes reversal of a district court's findings unless the court is left with a definite and firm conviction that a mistake has been committed." *Houston Indep. Sch. Dist. v. V.P.*, 582 F.3d 576, 583 (5th

Cir. 2009). Whether the student obtained meaningful educational benefits from the school district's special education services is a finding of underlying fact. *Klein Indep. Sch. Dist. v. Hovem,* 690 F.3d 390, 395 (5th Cir. 2012).

II. The District Court Erred in Finding CCISD's Dyslexia Assessment Process Complied with the Requirements of the IDEA

Evaluation criteria are explicit as the assessments are used to collaboratively consider the services and eligibility. 34 C.F.R. § 300.304. The Court erred in finding CCISD's assessment procedure for dyslexia services did not procedurally violate the IDEA's reevaluation procedures. 20 U.S.C. § 1414(a)(2). Additionally, the eight-month gap between the parent's request for evaluation and the provision of services was not reasonable. The Court erred in finding because CCISD had district policy of conducting a "screener" followed by an (inappropriate) reevaluation—months later, "deference must be given to the District with respect to the means and methods of providing the FAPE." ROA.633. However, district procedures that violate the IDEA are not entitled to deference; otherwise, there would be no need for IDEA administrative hearings under any circumstances. *R.S. v. Montgomery Twp. Bd. of Educ*., CIV. 10-5265 AET, 2012 WL 2119148, at *7 (D.N.J. June 11, 2012) (finding "if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then

administrative hearings conducted by an impartial decision maker would be unnecessary.")

Citing *Dallas Indep. Sch. Dist. v. Woody*, the District Court found CCISD "justified the reevaluation process," and therefore "in the context of the surrounding circumstances," CCISD did not violate the IDEA. ROA.633-634; *Woody*, 865 F.3d 303, 320 (5th Cir. 2017). The Court made this finding while acknowledging CCISD's process, which violates the IDEA, "may have prevented Student from receiving *meaningful* benefits." ROA.633 (emphasis added). The District Court's finding on this issue is clear error and is contrary to established law.

A. CCISD Impermissibly Delayed Assessing T.P. for "General Education" Dyslexia Services

The facts and timeline surrounding the assessment of T.P. for general education dyslexia services is not disputed. Parent requested an evaluation due to suspicion of dyslexia during the January 30, 2018, ARDC meeting. ROA.1378. Instead, CCISD conducted a dyslexia "screener." ROA.1378. CCISD did not explain the implications or delay of conducting a "screener." The reading teacher who conducted the assessment testified the reason CCISD preceded an evaluation for dyslexia services with a "screener" was because the "full" dyslexia evaluation was "long" and CCISD wanted to establish in advance T.P. had a need for the full

evaluation before it was conducted. ROA.2261-2262. However, reevaluation is warranted when a parent makes such a request (34 C.F.R. § 300.303 (a)) and when an additional disability classification is suspected. *See, e.g., Phyllene W. v. Huntsville City Bd. of Educ.*, 630 F. App'x 917, 926 (11th Cir. 2015). CCISD was required to follow IDEA reevaluation procedures and at the very least, explain to Parent the implications of a "screener" as opposed to an IDEA-compliant reevaluation, which CCISD failed to do.

The screener was conducted on February 15, 2018. ROA.1503. CCISD did not convene an ARDC meeting to discuss the screener until April 6, 2018. ROA.1390. At that time, CCISD presented Parent with an IDEA *Notice and Consent for a Full Individual Evaluation*, stating CCISD wished to conduct evaluations of possible learning disability—specifically "dyslexia testing." ROA.1217-18. Parent signed the consent form on April 6, 2018. ROA.1216. The reading teacher conducted the limited dyslexia testing on May 18, 2018. ROA.1220. The 2018/19 school year ended on May 31, 2018. ROA.3418. CCISD convened an ARDC meeting the following school year on September 17, 2018, wherein the district formally determined T.P. would receive dyslexia services—but only under general education. ROA.0750, 1396.

CCISD's delay was unreasonable. Parent initially requested evaluation due to concerns with T.P.'s lack of reading progress on January 13, 2018 during an

ARDC meeting. The ARDC did not meet until September 2018—103 school days after parental request for evaluation. ROA.3418; ROA.3419 (CCISD Academic Calendars). However, Texas requires CCISD obtain consent within fifteen school days of parental request. 19 TEX. ADMIN. CODE § 89.1011(b)(1). By using the "screener," CCISD was able to delay seeking parental consent for dyslexia evaluation for 42 school days (April 6, 2018, ROA.1390) after parental request for evaluation.

The FIE for dyslexia was not completed until 72 school days after Parent's request for evaluation (May 18, 2018, ROA.1220) when Texas mandates completion within 45 school days (19 TEX. ADMIN. CODE § 89.1011(c)(1)). The ARDC did not meet to discuss the results until 103 school days after parental request for evaluation (September 17, 2018, ROA.1396, 0750) when CCISD had only 30 calendar days, excluding summer break, to do so. 19 TEX. ADMIN. CODE § 89.1011 at (d). Had CCISD instead obtained consent for the May dyslexia evaluation (or an IDEA-compliant reevaluation) within the 15-day timeline, on January 30, 2018, the testing should have been completed by March 21, 2018, and the ARDC should have convened by May 2, 2018.

Had CCISD completed a timely and appropriate reevaluation for dyslexia, T.P. would have received individualized dyslexia services during the 2017/18 school year, including during the summer months. At very least, Parent would have

been able to obtain appropriate summer services during Summer 2018. CCISD's use of the dyslexia "screener" to delay formal evaluation, much less an IDEA-compliant reevaluation, was unreasonable delay which impeded T.P.'s right to a FAPE; caused deprivation of educational benefit; and impeded the parents' opportunity to participate in the decision making process as she was not provided the information. *O.W.*, 961 F.3d at 794.

Further, the Court's reliance on *Woody* to validate CCISD's dyslexia assessment procedure is misplaced. The portion of the *Woody* decision cited by the District Court states "a student must be referred for an evaluation within a 'reasonable time' after the District has reason to suspect a qualifying disability." *Woody*, 865 F.3d at 320. First, T.P. had already been identified as IDEA-eligible and required a reevaluation. Second, parental request triggered the reevaluation, as the IDEA requires districts reevaluate students upon parental request. 34 C.F.R. § 300.303(a)(2).

Moreover, the three-month delay between identification and referral in *Woody* was found to be reasonable "partly … because the district court found that the delay was not solely attributable to the District." *Id.* Here, the delay between Parent's request for an evaluation and CCISD seeking consent to conduct the evaluation was solely attributable to CCISD's impermissible "screener" procedure and not to any action or inaction on Parent's behalf. Indeed, Parent signed the

consent for CCISD to conduct the evaluation on the day the document was presented to her. However, CCISD failed to assess in all areas of suspected disability and need. The Court's reliance on the *Woody* "reasonableness" standard is not applicable to the facts in this proceeding.

CCISD's policy of conducting a dyslexia "screener" to delay obtaining consent from the parent to conduct a FIE to determine if a student has an SLD due to dyslexia, appears to be an issue of first impression for this Circuit. Neither the IDEA nor the Texas implementing regulations specify a timeframe for the completion of the reevaluation; however, a reevaluation must meet the same requirements as a pre-placement evaluation. *See, i.e.*, 34 C.F.R. § 300.301. Moreover, the IDEA specifies that a "screening for instructional purposes is not evaluation." 34 C.F.R. § 300.302. The issue in the present proceeding is whether, in the context of a reevaluation requested by the Parent under 34 C.F.R. § 300.303(a)(2), CCISD's use of a "screener" to delay obtaining consent for the, albeit insufficient, reevaluation by forty-two school days, and the delay in the provision of services by eight months, was a procedural violation of the IDEA which denied T.P. a FAPE.

This Court and the IDEA have both made clear that, in the context of an initial evaluation, delaying an evaluation by relying on other assessment or intervention methods when it is on notice a student has a suspected disability is a

violation of the IDEA. *See* 34 C.F.R. § 300.302; *O.W.*, 961 F.3d at 794 (finding, the district's failure to pursue evaluation, even while concurrently implementing intermediate accommodations, can be described as nothing less than a delay or denial.) There is no reason why the same standard should not apply in the context of reevaluations—except the "trigger" date for the reevaluation process is not just a suspicion of disability in the Child Find context, but also to one of the conditions listed in 34 C.F.R. § 303.303 including parental request for evaluation. Children who are already receiving special education and related services should not receive fewer procedural protections than children who have not yet been identified for services. To find otherwise would be to create a "perverse incentive" to "stall accrual" of a school district's ongoing duty provide a FAPE to students who are already receiving special education services. *Woody,* 865 F.3d at 320.

CCISD's "screener" policy is not an appropriate procedure as the Court found; rather, it is an impermissible attempt to delay reevaluation and the provision of services to students. Indeed, based on the testimony of the reading teacher at the underlying hearing, it appears the purpose of the screener is to eliminate the need to evaluate and to provide specialized instruction. ROA.2261-2262. In T.P.'s case, the use of the screener resulted in a delay of 103 school days, plus an entire summer vacation, before his ARDC even met to discuss T.P.'s May evaluation—which was not a compliant reevaluation under the IDEA in any event. This Court

should not permit CCISD to continue, "minimizing the special education needs of its students" and continue shirking its obligations under the IDEA. *Tex. Educ. Agency v. U.S. Dep't of Educ.*, 908 F.3d 127, 135 (5th Cir. 2018). The delay caused by CCISD's use of the initial dyslexia "screener" was a denial of FAPE.

B. CCISD Procedurally Violated the IDEA by Failing to Evaluate T.P. for a Specific Learning Disability

The District Court did not directly address Appellants' argument that CCISD procedurally violated the IDEA by failing to appropriately reevaluate T.P. for a Specific Learning Disability (SLD); instead only conducting a limited assessment for general education dyslexia services by a reading teacher. The Court appeared to conflate the assessment for general education dyslexia services with a compliant reevaluation for a SLD under the IDEA finding Appellants failed to show the "deficiency" of the dyslexia assessment. ROA.633-634.

It cannot be gainsaid that accurate evaluations are a driving force behind the promise of IDEA. *Schaffer v. Weast,* 546 U.S. 49, 60-61 (2005). To this end, a district must ensure a reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. § 300.304 through 34 C.F.R. § 300.311. 34 C.F.R. § 300.303(a). The IDEA establishes many additional procedures for evaluating students with SLDs. *See generally* 34 C.F.R. §§ 300.307-11. By way of example, a team of qualified individuals must conduct the evaluation, and the evaluation must

be sufficiently comprehensive to identify all the student's special education and related services needs whether or not commonly linked to the disability category in which the child is suspected of needing specialized instruction. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1109 (9th Cir. 2016).

CCISD cannot defer to the dyslexia assessments to assert in conducted an appropriate reevaluation. The IDEA mandates children receive different assessments embedded in the evaluation as a whole. *Jones-Herrion v. D.C.*, CV 18-2828 (RMC), 2019 WL 5086693, at *3 (D.D.C. Oct. 10, 2019) (explaining "[d]iagnostic assessments—which the IDEA refers to simply as 'assessments'—are the tools used as part of an evaluation or reevaluation of a student to ensure that the child is evaluated in 'all areas of suspected disability' and to 'determin[e] an appropriate education program for the child'.") The May 2018 dyslexia assessments conducted by CCISD did not create an IDEA-compliant reevaluation. Rather, the dyslexia assessment(s) should have been merely one component of a comprehensive reevaluation.

Specific aspects for conducting a legally compliant eligibility evaluation under the IDEA require, *inter alia*, the evaluation be comprehensive in scope and assess a student in all areas related to the suspected disability and need, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34

C.F.R. § 300.304(c)(4). Importantly, CCISD identified the May evaluation as a "Full and Individual Evaluation." Parent signed consent for a FIE. ROA.1216; ROA.1217-1219. The May 2018 dyslexia assessments did not meet the IDEA's FIE requirements for consideration of SLD/reading. For example, the assessment did not include a documented observation of T.P. in his classroom setting to document T.P.'s "academic performance and behavior in the areas of difficulty," (34 C.F.R. § 300.310), nor did the reevaluation ensure a qualified individual evaluated T.P. in all areas of suspected disability and need; instead focusing solely on dyslexia. 34 C.F.R. §§ 300.305(a)(2)(i)(B); (a)(2)(iii)(B).

When there is information that a student may qualify under the IDEA under an additional disability classification, reevaluation is warranted. *See, e.g., Phyllene W.*, 630 F. App'x at 926. When CCISD convened an ARDC in September to discuss the results of the dyslexia assessments, there was no consideration or discussion of SLD eligibility for T.P. *See* 34 C.F.R. §§ 300.309, 300.311; ROA.1419. Further, T.P.'s IEP does not list a SLD in his eligibilities, instead only stating T.P. is "Dyslexia/Qualified." ROA.1396. While there is no question CCISD conducted an assessment to determine T.P. has dyslexia; the May 2018 assessment and subsequent ARDC discussions did not satisfy the requirements for a SLD reevaluation under the IDEA. Because the District Court appeared to conflate the limited dyslexia assessments with a full and comprehensive IDEA reevaluation, the

Court did not fully reach the issue as to whether CCISD *should* have reevaluated T.P. for consideration of SLD eligibility and whether the dyslexia assessment was appropriate under the IDEA.

Further, the "Notice and Consent for Evaluation" form signed by Parent explicitly indicates CCISD was to conducted as a FIE under the IDEA. ROA.1217. The form specifically states an evaluation report would be generated "to determine whether the student has a disability and needs special education services." ROA.1218. Therefore, CCISD was required to ensure the reevaluation was conducted in accordance with 34 C.F.R. §§ 300.304-300.311. Because CCISD's reading teacher only conducted dyslexia assessments, CCISD failed to assess T.P. "in all areas related to the suspected disability" and need. 34 C.F.R. § 300.304(c)(4). The relevant question, then, is whether CCISD, based on parental request, had a duty to conduct a compliant reevaluation, which met the same requirements as a pre-placement evaluation. *See e.g*. 34 C.F.R. §§ 300.301; 305(a)(2)(i)(B). CCISD had a duty to conduct an appropriate reevaluation but failed to do so.

The preponderance of the evidence establishes a suspicion of SLD, in addition to parental request for evaluation. CCISD was obligated to conduct full and comprehensive reevaluation. When a district "is on notice that a child may have a particular disorder, it must assess that child for that disorder, regardless of

the subjective views of its staff members concerning the likely outcome of such an assessment." *Timothy O.*, 822 F.3d at 1121; *Dep't of Educ., Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001) (finding the "threshold for 'suspicion' is relatively low...) In the context of a student suspected of having a SLD, the fact the student is achieving passing grades with accommodations or is generally seen as an "academic rock star," does not mean the student may not also need specialized instruction to address the student's SLD. *See Lisa M. v. Leander Indep. Sch. Dist.*, No. 1:16-CV-01085-SS (W.D. Tex. Jan. 30, 2018), *aff'd, Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205 (5th Cir. 2019).

When T.P. enrolled in CCISD, he came with an IEP from WCPSS, which identified T.P.'s lack of progress in reading and provided T.P. with specialized instruction in reading and writing in order to address that lack of progress. ROA.1309, 1303. CCISD adopted the evaluation results from WCPSS and, accordingly, also provided T.P. with special education reading support in the "resource" classroom. ROA.1343. Thus, CCISD was aware from the moment T.P. enrolled in the district that he displayed below-average progress and deficits in reading. CCISD's own assessments conducted during the Fall 2017 semester corroborated the reports from WCPSS—placing T.P. on a kindergarten or early-first grade level in reading. ROA.1223, 1331. Thus, CCISD staff was aware T.P. was at least one, if not two, grade levels behind in reading.

Even with accommodations and specialized instruction in reading, T.P. had a failing grade in reading as of October 2017. ROA.1327. T.P.'s grade in reading did improve to a 70 by January 2018, but that is hardly meaningful progress that removes the suspicion of an additional disability. ROA.1289; *Indep. Sch. Dist. No. 701, Hibbing Pub. Schs. v. J.T.*, No. Civ. 05-1892-DWFRLE, 2006 WL 517648 at *9-10 (D. Minn. Feb. 28, 2006). Further, even with accommodations and specialized instruction, in-class assessment data continued to show *de minimis* progress in reading over the course of the Fall 2017 semester. Finally, by January 2018, when Parent requested an evaluation for a reading disability, T.P. was still reported to "struggle with reading fluency and often relies on his teachers reading to him instead of trying to read passages himself first." ROA.1378. There is ample evidence in the Record to raise a reasonable of T.P.'s reading disability and need for specialized reading instruction well before parental request for evaluation. In light of both circumstances, CCISD was required to conduct an appropriate and comprehensive reevaluation but failed to do so.

In January 2018, CCISD made the decision to not conduct a reevaluation, as Parent requested, but instead conducted a general education "screener" for dyslexia. ROA.1378. T.P.'s scores on the screener were "very poor" in all categories—constituting further evidence to support a suspected disability. ROA.1503. Yet, when CCISD convened an ARDC in April 2018 to review the

dyslexia screener results, it chose only to evaluate T.P. in May 2018 for general education dyslexia under the guise of an IDEA consent for an FIE. ROA.1390, 1217. CCISD then chose not to conduct an appropriate reevaluation when T.P.'s May 2018 dyslexia assessment scores showed he had dyslexia—which is a qualifying condition for SLD eligibility. ROA.1220, 1222; 34 C.F.R. § 300.8(c)(10)(i). That CCISD instead chose to conduct a limited assessment for general education dyslexia services in lieu of an IDEA-compliant reevaluation for a SLD is a procedural violation of the IDEA, which entitles Appellants to relief.

At the underlying due process hearing, T.P.'s reading teacher testified she had no suspicion T.P. had dyslexia before Parent requested the dyslexia assessment in January 2018—despite the ample evidence to the contrary. ROA.2625-2626. However, giving overwhelming deference to school district witnesses over the student's parents or the parents' expert can result in a flawed conclusion because "it is hard to ignore the partisan motive of [school district] teachers and staff, who are effectively parties in [the] case." *L.H. v. Hamilton Cnty. Dep't of Educ.,* 900 F.3d 779, 794 (6th Cir. 2018). Indeed, at the same time, other CCISD staff attempted to dismiss T.P.'s lack of reading progress by claiming T.P. had enrolled in CCISD with significant deficits, which could not be easily remediated and expressed surprise that T.P. was not evaluated for dyslexia before he came to CCISD. ROA.2793, 2808, 2262. Yet, CCISD failed to conduct an appropriate

evaluation for SLD at any point. Further, T.P.'s ABA therapy provider testified that after only two months of working with T.P., she suspected T.P. might have a learning disability in reading. ROA.2681-82. Parent also consistently voiced concerns regarding T.P.'s lack of progress in reading and requested evaluation. ROA. 1373, 1378, 3366. T.P. also required teachers to read aloud to him. ROA.1378. The testimony of T.P.'s reading teacher therefore should not be given deference over the extrinsic evidence.

Regardless of whether CCISD staff suspected T.P. had dyslexia specifically, the Record establishes that CCISD staff was aware of T.P.'s reading deficits and lack of progress by at least January 2018. By failing to evaluate T.P. in all areas of suspected disability and need—namely, SLD/reading—CCISD delayed conducting an inappropriate FIE, which delayed the provision of individualized reading instruction designed to meet T.P.'s unique needs.

C. T.P. Was Denied an Educational Benefit and Is Entitled to Relief

The District Court erred in determining CCISD did not procedurally violate the IDEA. The Court additionally erred in finding that "while the reevaluation time from start to finish may have prevented T.P. from receiving meaningful benefits, CCISD justified their decision-making process without any objections." ROA.634. However, a parent cannot be expected to understand the nuances of the IDEA, and "a parent who is a neophyte to special education and is unacquainted with IDEA

cannot be expected to appear and say 'My child is eligible for special education services under IDEA, and I am here to refer my child for an individual assessment.' A request for assessment is implied when a parent informs a school that a child may have special needs." *Robertson Cnty. Sch. Sys. v. King*, 99 F.3d 1139 (6th Cir. 1996) (citations omitted). The Court's finding is inconsistent with the IDEA's explicit provisions regarding whether a procedural violation of the IDEA results in a denial of FAPE.

Further, the Court committed clear error in determining T.P. was not denied educational benefit due CCISD's failure to evaluate T.P for a SLD. The Court advances an unsupported legal standard that required Parent to actively object to CCISD's assessment procedures in order to establish a procedural violation of the IDEA. However, the IDEA places the burden for evaluating a student in accordance with the IDEA squarely on the school district—not the parent. 34 C.F.R. § 300.304(a) ("A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304-300.311…"). However, a student's entitlement to special education "should not depend upon the vigilance of parents (who may not be sufficiently sophisticated to comprehend the problem) nor be abridged because the district's behavior did not rise to the level of slothfulness or bad faith." *M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1996). Moreover, the Court ignores that in July 2018, Parent requested an

Independent Educational Evaluation (IEE) based on CCISD's failure to evaluate T.P. in all areas of suspected disability and need, which is a clear indication of her disagreement with CCISD's assessment procedures. ROA.1607; 34 C.F.R. § 300.502.

The preponderance of evidence demonstrates T.P. did not make meaningful progress in reading during the 2017/18 school year while CCISD delayed conducting the dyslexia assessment and delayed providing T.P. with dyslexia services. T.P. was on F&P "Level G" in January 2018 when Parent requested the evaluation for a reading disability. ROA.1223, 1232. In April 2018, CCISD's reading teacher stated T.P. "could benefit by targeted instruction." ROA.1391. Yet, CCISD did not provide T.P. with any additional supports or services during this time. In May 2018, T.P. remained on a "Level G" in F&P. ROA.1223, 1232. Further, T.P.'s iReady reading assessment results showed T.P. remained on a Kindergarten level in reading even when tested over three consecutive weeks in May 2018. ROA.1289. CCISD did not provide T.P. with additional services or supports to address his reading deficits nor did CCISD provide Parent with the results of the district's May 2018 dyslexia assessment so Parent could have obtained appropriate summer services for T.P.

T.P.'s grade book from the Spring 2018 semester also shows T.P.'s struggles in reading. For example, in May 2018, T.P. was still scoring below a 65 on

multiple language arts assignments—with "actual grades" of 50, 64, 50 and 47. ROA.3287. However, because all grades below a 65 were modified, T.P. was able to pass Language Arts with a 76 for the grading period. T.P. also received a 77 on the only assignment during the last grading period, which CCISD considered to be a progress-monitoring measure for his reading IEP goal. ROA.3294.

Dr. Robillard testified that T.P. had an average cognitive ability and did not make meaningful progress in reading during the relevant time period. ROA.2999, 3011. In its briefing before the District Court, CCISD attempted to minimize the expert's testimony by stating that T.P. could not be expected to make meaningful reading progress because he had only received dyslexia interventions for four months. In making this argument, CCISD ignores that T.P. would have received dyslexia interventions for a longer period if CCISD had not delayed evaluation and delayed providing dyslexia instruction until September 2018. Moreover, this argument ignores that T.P. was receiving intervention through Fundations. ROA.2068, 2573, 2587. The Court committed clear error in finding T.P. was not denied an educational benefit due to CCISD's impermissible delay in providing dyslexia services.

III. The District Court Erred in Determining T.P.'s IEPs During the Relevant Time Period Were Substantively Compliant with the IDEA

Though the Court correctly found that CCISD delayed providing dyslexia services to T.P. for over eight months following Parent's request for evaluation, the Court erred in finding that T.P.'s IEPs during the relevant time period were substantively compliant despite the IEPS not conferring a meaningful educational benefit. Instead of considering whether T.P.'s progress under his IEPs was meaningful, the Court merely found that T.P.'s IEP "demonstrated some educational and academic benefit," which is not the appropriate standard as the benefit must be meaningful. ROA.639; *see Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 (5th Cir. 2009).

The preponderance of evidence demonstrates that T.P.'s IEPs were not individualized on the basis of his assessment and performance; were not created or implemented in a coordinated and collaborative environment; and did not result in meaningful benefit, especially in the area of reading. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253 (5th Cir. 1997). The fourth *Michael F.* "factor," whether T.P.'s IEP was implemented in the least restrictive environment, was not at issue in the due process proceeding. *Id.* at 253. The Court erred in determining T.P.'s IEPs substantively complied with the requirements of the IDEA, and Appellants are entitled to relief.

A. T.P.'s IEPs Were Not Individualized on the Basis of Assessment and Performance

The District Court erred in finding T.P.'s IEP was individualized on the basis of assessment and performance. For the 2017-2018 school year, the Court apparently based its determination on the fact that T.P.'s second-grade PLAAFP statement includes a description of how T.P.'s disability affected his involvement and progress. The PLAAFP included measurable annual goals with detailed descriptions of how Student could obtain these goals." ROA.637. For the 2018/19 school year, the Court found "[w]hen Student's dyslexia assessment results came back, CCISD modified the IEP goals, and they provided different services." ROA.637. The Court failed to determine if the different services were appropriate.

The District Court misapplied its own standard in determining T.P.'s IEPs were individualized on the basis of assessment and performance. In *Candi M. v. Riesel Indep. Sch. Dist.*, which also involved a student with dyslexia, the Court stated:

> An IEP is sufficiently individualized when multiple assessments are conducted of the student, the ARD committee considers these assessments and parent and teacher input in developing the student's IEP, accommodations and modifications are made based on the student's test performance and parent input, and the IEP goals are revised or added to based on the new assessment data.

Candi M. v. Riesel Indep. Sch. Dist., 379 F. Supp. 3d 570, 597 (W.D. Tex. 2019) (citing *Z.C. v. Killeen Indep. Sch. Dist.*, No. W:14-CV-086, 2015 WL 11123347 at * 6 (W.D. Tex. Feb. 17, 2015)). Outside of the clerical error stating that T.P.'s 2017/18 IEP PLAAFPS "included measurable annual goals," the Court erred in finding T.P.'s 2017/18 IEPs were individualized on the basis of assessment and performance.

In October 2017, CCISD convened an ARDC for T.P. and developed an IEP, which included PLAAFPs and IEP goals for the 2017/18 school year. T.P.'s PLAAFP statements are fairly minimal in content—reporting generic strengths and weaknesses; T.P.'s grade in the course; and in-class assessment results. However, T.P.'s goal in reading does not relate to the strengths and weaknesses discussed in the PLAAFP statement and appears to be an outdated amalgamation of T.P.'s prior three reading goals from the July 2017 WCPSS IEP. 34 C.F.R. § 300.324 (a).

At the underlying hearing, T.P.'s special education case manager testified that T.P.'s PLAAFP statements did not contain baselines for the skills targeted in his IEP goals—meaning that it would be difficult, if not impossible, to measure T.P.'s progress towards that goal. 34 C.F.R. § 300.324(a) (PLAAFPs must be all encompassing so as to provide a baseline that reflects the entire range of the child's needs). If PLAAFPs do not consider the unique needs of the child, establish a baseline for establishing goals and monitoring progress, or allow informed parental

participation in the IEP process, then the IEP may be found to deny FAPE. *See, e.g., Friedman v. Vance et al.*, 487 F. App'x 968 (D. Md. 1996) (not designated for publication); *Portland Pub. Schs.*, 24 IDELR 1196 (SEA ME 1996). Further, because CCISD reported progress towards IEP goals using IEP "grades" on assignments, T.P.'s case manager conceded that it was difficult to determine what progress, if any, T.P. actually made towards his IEP goals.

In April 2018, CCISD convened the ARDC to discuss the results of T.P.'s dyslexia "screener." ROA.1390. The April 2018 IEP does not include the results of T.P.'s dyslexia screener nor were T.P.'s PLAAFP statements updated to include information from that assessment. Even though the reading teacher stated at the ARD meeting that T.P. "could benefit from targeted instruction," the IEP does not include any changes to the IEP goals and services. ROA.1391. At the very least, by April 2018, T.P.'s IEP was not individualized on the basis of assessment and performance because no changes were made in response to new assessment data.

In September 2018, T.P.'s ARDC convened to create another IEP for T.P. for the 2018/19 school year. The resulting IEP mentions T.P.'s dyslexia in four places: 1) where T.P. is listed as "Dyslexia/Qualified;" 2) on a Least Restrictive Environment chart where it states T.P. is being provided with general education dyslexia services; 3) on the "schedule of services" page; 4) and in the deliberations where the IEP again states T.P. "was also evaluated and found eligible for dyslexia

services which will be provided in the general education setting." ROA.1396, 1412, 1415, 1419.

However, the actual results of the February 2018 dyslexia screener and the May 2018 dyslexia assessment do not appear anywhere nor does T.P.'s IEP PLAAFP for reading or written expression mention dyslexia—much less identify T.P.'s unique reading needs. ROA.1397-1399. T.P.'s reading IEP goal, while updated from the previous year, does not reflect the fact that T.P. has dyslexia. ROA.1404. T.P.'s case manager testified at the due process hearing that T.P.'s September 2018 reading IEP goal was set based on results from F&P assessments. ROA.2799-2800. The case manager further testified that she believed setting a specific reading level for T.P.'s IEP goal would leave him "stuck" at the level articulated in the goal. ROA.2800. Thus, though T.P.'s IEP was revised to include some mentions of dyslexia, it does not appear that T.P.'s IEP goals were revised or added to based on the dyslexia assessment. Further, the services provided to T.P. for his dyslexia were not provided through special education but rather through general education, which means the dyslexia services were not individualized nor was progress monitored.

Stone testified that she "selected" the Wilson Reading System ("Wilson") for T.P. because it was one of two programs available to her and not necessarily because it was appropriate for T.P. ROA.2156-2157. The services were provided in

a group setting, and the teacher taught to the "middle" of the group. ROA.2166. Stone was not trained to provide group instruction using Wilson and was only trained to provide 1:1 instruction. ROA.2171-2172. Stone started all her students at the same level in Wilson and moved all students in the group through the Wilson "steps" together—even if some students were not ready to advance. ROA.2267, 2291-2292. Thus, even though the Court is technically correct in stating that the "services" provided to T.P. changed after the dyslexia assessment was conducted, the Court erred in finding that those services were individualized to T.P.'s unique needs and were based on T.P.'s assessment and performance.

Moreover, CCISD's "dyslexia" class is comprised of only children who have been identified as having a reading disability and have removed from their regular general education classes in order to receive "dyslexia" instruction. By characterizing this class as general education, CCISD obviated their obligation to comply with the IDEA's procedural and substantive duties including individualizing instruction, monitoring and reporting T.P.'s progress, and adjusting his IEP as necessary. *Endrew F.*, 137 S. Ct. at 999. Regardless of whether the dyslexia services were considered special education or not, the services were not appropriate to meet T.P.'s unique needs.

B. T.P. Did Not Demonstrate a Meaningful Academic Benefit Under His IEPs

The Court correctly summarized the substantial evidence relied upon by Appellants to support their position that T.P. did not make meaningful progress. ROA.639-640. Yet, despite the preponderance of the evidence supporting Appellants' position, the Court instead found T.P.'s "reading scores showed objective progress, and T.P. also showed improvement in his math and writing skills." ROA.640. Further, the Court looked at T.P.'s academic "results as a whole" and concluded T.P. "demonstrated objective progress in all areas." ROA.640. These findings were contrary to the weight of evidence and are the result of a misapplication of relevant legal standards to the facts of the case as "some" progress does not mean "meaningful" progress.

The "fourth" *Michael F.* factor regarding meaningful academic benefit is considered to be one of the most critical factors in the substantive compliance analysis. *V.P.,* 582 F.3d at 588. Meaningful academic benefit should "be measured not by [a student's] relation to the rest of the class, but rather with respect to the individual student." *Houston Indep. Sch. Dist. v. Bobby R.,* 200 F.3d 341, 349 (5th Cir. 2000). The Court found that T.P. moved from a F&P Level F in September 2017 to a F&P Level H in December 2018. ROA.639. This constitutes approximately four months of reading progress over the course of 1.5 years. *See*

ROA.1876. There is substantial legal authority to support Appellants' position that this amount of progress for a student with dyslexia is not appropriate progress and results in a denial of FAPE. *See, e.g., Florence Cnty. Sch. Dist. Four v. Carter,* 510 U.S. 7 (1993), *aff'g Carter v. Florence Cnty. Sch. Dist. Four,* 950 F.2d 156 (4th Cir. 1991)*; Ringwood Bd. of Educ.*, 258 Fed.Appx. at 402-03; (*Adams by Adams v. Hanson*, 632 F.Supp. 858, 861-862 (N.D. Cal. 1985) (inappropriateness of IEP for student with dyslexia demonstrated through student's lack of progress in reading—four months of progress over a 20-month period); *Preciado v. Bd. of Educ. of Clovis Municipal Schs.,* 2020 WL 1170635 at *6-12 (D.N.M. Mar. 11, 2020). The Court's findings on what constitutes meaningful progress are contrary to the great weight of legal authority.

The Court erred in determining the substantive compliance of T.P.'s IEP based on T.P.'s academic progress as a whole, which was not meaningful, and when T.P's area of deficit and need was specifically in reading. *See Doe v. Cape Elizabeth Sch. Dist.,* 832 F.3d 69 (1st Cir. 2016). During the underlying special education due process hearing, Dr. Robillard testified that T.P., who has an average cognitive ability and average ability to learn, did not make meaningful progress in reading remaining on a mid-first grade level and two standard deviations below the mean and after 1.5 years of special education services and three months of general education dyslexia services. ROA.2999.

"Congress did not intend that a school system could discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall v. Vance Cnty. Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985). In a similar case, the Third Circuit Court of Appeals found that "negligible progress," which left a student with dyslexia with above-average intelligence one to two years behind grade level, constituted a denial of FAPE. *Ringwood*, 258 F. App'x at 402-03. The Court noted that even though the IDEA does not require school districts to "'maximize' the potential of their disabled students…expecting a child with 'above average' intelligence to perform in the 'average' range hardly qualifies as 'maximizing' that child's potential." *Id.* at 402.

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. Dr. Robillard testified that based on T.P.'s cognitive abilities and the instruction he was receiving; T.P. should be making more progress than what had been documented by CCISD. ROA.3011. The record demonstrates T.P. made *de minimis,* if any, progress in reading during the relevant time period. That this *de minimis* progress was "objectively" moving in a positive direction still does not mean that T.P. was provided with a substantively compliant IEP that was designed

to confer *meaningful* benefit. The Court erred in finding that T.P. received an some objective academic benefit under his IEP was sufficient.

C. T.P.'s IEPs Were Not Developed and Implemented in a Coordinated and Collaborative Environment

The District Court erroneously found that "CCISD provided educational services in a coordinated and collaborative manner," and that Appellants did not "show the Court how CCISD failed to implement substantial or significant provisions of the IEP due to various communication errors by CCISD staff." ROA.638-639. The Court also determined that parental participation in the development of T.P.'s IEP was not impeded. ROA.638. The Court's decision is contrary to the prevailing legal standard regarding meaningful parental participation and compliant progress reporting.

The Court's inquiry was limited to whether Appellants demonstrated "more than a *de minimis* failure to implement all elements of [a student's] IEP" in order to show a lack of coordination and collaboration. *Bobby R.*, 200 F.3d at 349. However, the standard espoused in the *Bobby R.* decision is not applicable to the current proceeding. In *Bobby R.*, the parents alleged a failure to coordinate and collaborate based on the district's failure to implement portions of the student's IEP and alleged a failure to offer sufficient compensatory services to remediate this failure. *Id.* at 348-49. Accordingly, this Court determined "a party challenging the

implementation of an IEP" under the IDEA can only prevail on its claim if it shows more than a *de minimis* failure to implement the IEP. *Id.* at 349. However, Appellants never alleged that CCISD failed to implement T.P.'s IEP. Thus, the *Bobby R.* standard is not relevant to Appellants' claims regarding coordinated and collaborative manner.

While CCISD seemingly implemented T.P.'s IEP as written, the lack of internal coordination and collaboration between CCISD staff led to an erroneous denial of summer school services or extended school year services for T.P., and CCISD failed to inform Parent of the delay a "screener" would cause. Further, CCISD's failure to report T.P.'s progress (or lack thereof) towards his IEP goals denied Parent the ability to meaningfully participate in the development of T.P.'s educational program. These failures constitute procedural violations of the IDEA, which impeded both T.P.'s right to a FAPE and the parent's opportunity to participate in the decision making process, as well as causing a deprivation of educational benefit.

D. Lack of Coordination and Collaboration Amongst CCISD Staff Caused T.P. to be Denied Summer Services

The lack of coordination and collaboration amongst CCISD staff deprived T.P. of summer services during Summer 2018, forcing Parents to obtain summer services at their own expense. At the beginning of second grade, all of the second

grade teachers decided collectively to modify all of their students' grades in order to remove the potential stigma of failure and determining that any grade below a 65 would be modified up to a 65. ROA.2235, 2576-2578. T.P.'s grade book from the 2017/18 school-year demonstrates that this policy of grade inflation was used throughout the year. *See, e.g.* ROA.3290, 3300, 3302-3303, 3286. While T.P.'s actual grades on assignments were included as "comments" in the grade book, T.P.'s report card only reflected the inflated grades.

At the due process hearing, T.P.'s special education case manager testified that she was unaware of this grading policy and had only been reviewing T.P.'s report card grades to determine whether T.P. was making progress. ROA.2771-73. If the case manager was unaware of this practice, how would the parents be aware? Further, the case manager testified that she relied on T.P.'s inflated grades, not his actual grades, in determining that T.P. did not display the requisite amount of academic failure to qualify for summer services. ROA.2714. When Parent asked about summer school services for Summer 2018, she was told that T.P.'s grades were too high to qualify. Thus, because T.P.'s case manager was not aware of the decision made by T.P.'s second grade teachers to modify grades, T.P. was denied needed service. Parent had to take out a loan to pay $7,451.00 for summer academic tutoring. ROA.2740-2741. Thus, substantive harm was caused as a result of CCISD's internal failure to collaborate.

In *Caldwell Independent School District v. L.P.*, like here, the United States District Court for the Western District of Texas found that a student's IEP was not developed and implemented in a coordinated and collaborative environment when teachers and district staff ceased communications with the parent following the filing of the parent's due process hearing request. *Caldwell Indep. Sch. Dist. v. L.P.*, 994 F. Supp. 2d 811, 818-19 (W.D. Tex. 2012), *aff'd Caldwell Indep. Sch. Dist. v. Joe P.*, 551 F. App'x 140 (5th Cir. 2014). The standard espoused by the District Court in *Caldwell* is more relevant to the facts in this proceeding than the *Bobby R.* standard utilized by the Court. Here, T.P.'s case manager testified that she ceased communicating with Parent during the 2018/19 school year because she "didn't know if [she] was allowed to" during the pendency of the due process hearing. ROA.2924.

CCISD staff did not inform Parent of the results of T.P.'s May 2018 dyslexia assessment until Parent asked for the results in August 2018. ROA.1621-1623. Then, after T.P. began receiving general education dyslexia services, CCISD did not communicate T.P.'s progress with the Wilson Reading Program to Parent instead providing Parent with a generic form that stated, T.P. "made progress, less than expected" in November 2018. ROA.1873. The reading teacher testified that while she kept data regarding T.P.'s progress in the Wilson program, this information was not shared with Parent. There was a lack of communication and

collaboration between CCISD staff internally and between CCISD staff and Parent. The District Court therefore erred in determining T.P.'s IEP had been implemented in a coordinated and collaborative environment

E. CCISD's Method of Progress Reporting Did Not Provide Parents with Information Regarding T.P.'s Academic Performance

Measuring progress is essential to determining whether an IDEA-eligible student is receiving benefit from the IEP. 34 C.F.R. §300.320 (a)(3). The purpose of an IEP progress report is to "report meaningfully to parents on [their] child's progress in meeting the annual IEP goals." *Letter to Lenz,* 37 IDELR 95 (OSEP, Feb. 7, 2014). Though the form and frequency of an IEP progress report is left to the district's discretion, the content of the IEP progress report assists Parents and the student's ARDC in understanding whether a student has made appropriate progress towards the student's annual IEP goals. *Id; see also Endrew F.,* 137 S.Ct. at 999 ("The IEP must enable the child to make progress … A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.") Had CCISD meaningfully reported T.P.'s progress, T.P. may have avoided academic stagnation.

CCISD's use of "IEP grades" created an incomprehensible system that denied Parents and the ARDC meaningful information regarding T.P.'s progress towards his IEP goals. T.P.'s IEPs during the relevant time period stated that

Parents would receive IEP progress reports "concurrent with the issuance of report cards." ROA.1331-1336. However, CCISD actually issued the progress reports for T.P.'s academic goals as part of T.P.'s report cards. According to a letter CCISD sent to parents, the report cards for students who received special education services outside the general education setting would receive an "IEP grade" for each subject that would note "grades and progress toward the student's IEP goals." ROA.3354. CCISD stated that the student's "monitor teachers" would "pull his/her Progress Letter each six weeks." ROA.3353. The document would show the accommodations used by the student on each assignment and "may also include a brief description of the IEP goal that assignment is measuring." ROA.3353.

However, T.P.'s case manager testified that the "IEP grades" did not correspond to a "mastery percentage" for each of T.P.'s IEP goals. ROA.2791, 2888-2890. In practice, this meant that the only report of T.P.'s progress that Parents received was a generic "IEP grade" with no accompanying explanation of its applicability to the goals. *See, e.g.* ROA.3286 (June 4, 2018 Report Card). Further, T.P.'s teachers chose not to include the brief descriptions of the IEP goals that each assignment was measuring. T.P.'s case manager could not provide a cogent explanation as to how Parents were supposed to use the IEP grades to track T.P.'s progress towards his IEP goals. ROA.2886-2890. The case manager conceded Parents would have to decipher a combination of both T.P.'s IEP grades

on his report cards and his individual grades on his "IEP assignments" to determine T.P.'s progress, or lack thereof, on their own. ROA.2890. This violates the IDEA, which explicitly places the burden of reporting a student's progress on the school district—not on the parents.

CCISD's failure to provide Parent with meaningful information regarding T.P.'s progress towards his annual IEP goals constitutes a denial of FAPE in multiple ways. First, by depriving T.P.'s ARDC of information that it required to understand T.P.'s progress and performance on his IEP goals, CCISD diminished the ARDC's ability to create an appropriate IEP that was individualized on the basis of T.P.'s assessment and performance and tailored to his unique needs. The result was the creation of generic IEP goals for T.P. for the 2018/19 school year. For example, T.P.'s reading IEP goal targeted a number of specific skills with specific targets for mastery—including reading high frequency sight words and reading CVC words with short vowels. ROA.1333. By contrast, in September 2018, T.P.'s reading goal was merely that T.P. would read literature "at his instructional level" with "fluency…and comprehension with 90% accuracy." ROA.1404. This goal does not actually require T.P. to make any progress through reading levels, but merely to achieve 90% accuracy at his *current* level; this goals essentially requires T.P. to continue performing at his then-current level. Because CCISD failed to meaningfully report T.P.'s progress during the 2017/18 school

year, there is no information in the record regarding T.P.'s mastery of his IEP goals for that year; therefore, it is unknown whether the September 2018 IEP goal was actually appropriate for T.P. at all, and it was certainly not based on T.P.'s assessment and performance. CCISD's method of reporting progress denied T.P. a FAPE and impeded the parent's opportunity to meaningfully participate in placement decisions.

CCISD's failure to provide Parent with meaningful information regarding T.P.'s progress towards his IEP goals constitutes both a procedural and a substantive denial of FAPE. Parents have "an independent stake…in the substantive decisions to be made" regarding the development of their child's IEP. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 531 (2007). Though Parent attended all of T.P.'s ARDC meetings during the relevant time period and gave input at the ARDC meetings, her participation cannot be considered meaningful if she did not have the information she needed to contribute to the development of T.P.'s educational program. *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004); *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). The lack of information regarding T.P.'s progress towards his IEP goals hindered Parent's ability to coordinate and collaborate with CCISD staff on the development of T.P.'s IEP. The Court erred in finding that this *Michael F.*

factor weighed in favor of CCISD as T.P. was denied a FAPE and the parents were denied meaningful parental participation.

IV. The District Court Erred in Denying Appellants' *Motion for Additional Evidence*

The District Court erred in denying Appellants' *Motion for Additional Evidence* on the basis of clear factual error. Appellants offered post-hearing educational records for T.P., including subsequent IEPs and evaluations of T.P. created by CCISD, as additional evidence to supplement the Record from the due process proceeding. *See* ROA.340-348. These documents were offered to show the inappropriateness of T.P.'s IEPs during the relevant time period. Further, Appellants offered the first IEP from T.P.'s school district in Tennessee for the purpose of updating the Court on T.P.'s current location and school enrollment so that the Court could fashion appropriate relief.

At that time, the Court lacked "sensitivity to the complexity of the issues presented" as this case is primarily an IEP appropriateness case. *Dep't of Educ. v. L.S.*, 2019 WL 1421752, at *5 (D. Haw. Mar. 29, 2019) (internal citations omitted). However, the Court denied Appellants' motion on the basis that "the main issue before the SEHO at the December 2018 hearing was whether CCISD correctly found that T.P. was not eligible as a student with a Specific Learning Disability ("SLD"). ROA.453. Thus, issues before the SEHO concerned eligibility,

not appropriateness." ROA.453. Appellants raised claims regarding the appropriateness of T.P.'s IEPs in both their *Request for Special Education Due Process Hearing* (ROA.735-749), and in their *Original Complaint* with the District Court. ROA.8-59. The Decision of the hearing officer also stated the main issue in this case is IEP appropriateness. ROA.669. However, the Court found that the post-hearing evaluations and IEPs constituted inappropriate hindsight evidence as to eligibility. ROA.453. However, the Court's subsequent order denying Appellants' *Motion for Judgment on the Administrative Record* discusses issues of IEP appropriateness contradicting the prior reasoning for denying Appellants' additional evidence. *See* ROA.635-640. The Court committed clear error.

The IDEA explicitly states that a reviewing court must "hear additional evidence at the request of a party." 34 C.F.R. § 300.516(c)(2). This Court "embraces hindsight evidence" in IEP appropriateness cases. *Lisa M.*, 924 F.3d at 214-15. Though the determination of what is "additional" evidence is left to the trial court's discretion, the court should avoid adopting a rigid position that "would unduly limit a court's discretion and constrict its ability to form the independent judgment Congress expressly directed." *Town of Burlington v. Dep't of Educ.,* 736 F.2d 773, 790-91 (1st Cir. 1984), *aff'd on other grounds,* 471 U.S. 359 (1985).

The additional evidence offered by Appellants was not offered to "patch up holes in their administrative case" or "authorize witnesses at trial to embellish their

prior administrative hearing testimony." *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 763-64 (5th Cir. 2018). The District Court's misstatement of the issues results in a rigid and unduly limiting position which conflicts with this Court's prior rulings.

Further, 20 U.S.C. § 1415 "does permit supplementing the record with additional 'evidence concerning relevant events occurring subsequent to the administrative hearing.'" *Archer v. Northside Indep. Sch. Dist.*, No. CV-5:17-1202, 2018 WL 7572498 at * 1 (W.D. Tex. Dec. 10, 2018), *aff'd on other grounds A.A. v. Northside Indep. Sch. Dist.*, 951 F.3d 678 (5th Cir. 2020). T.P.'s IEP from his new school in Tennessee was relevant post-hearing evidence offered for the purpose of demonstrating T.P. was no longer enrolled in CCISD and allowing the Court to develop an appropriate remedy for Appellants. *See, e.g. Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 760 (3d Cir. 1995). Thus, the Court erred in denying Appellants' motion to supplement the record in this regard. In sum, the District Court committed erred in denying Appellants' request to supplement the record.

V. Appellants Are Entitled To the Relief Ordered by the Hearing Officer

The preponderance of evidence supports the Decision's award of relief, which included requiring CCISD to: convene an ARDC meeting to discuss SLD eligibility; fund multiple independent educational evaluations; and provide T.P.

compensatory services designed to appropriately address T.P.'s unique needs. Further, Appellants are entitled to reimbursement for the summer services obtained by Parents at their own expense during Summer 2018 due to CCISD's failure to provide an appropriate IEP for T.P.

CONCLUSION

Appellants request this Court vacate and reverse the judgment of the District Court; affirm the relief requested and ordered in the underlying due process hearing; order reimbursement for Sylvan, and grant such relief as the Court determines is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2020, a true and correct copy of the foregoing Brief for Plaintiffs-Appellants were served via electronic filing with the Clerk of Court and all registered ECF users.

/s/ Elizabeth Angelone
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CERTIFICATE OF COMPLIANCE

This brief has been prepared using 14-point, proportionately spaced, serif typeface, in Microsoft Word. Excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), this brief contains 12,909 words.

/s/ Elizabeth Angelone
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