

SOAH DOCKET NO. 701-22-0308.IDEA
TEA DOCKET NO. 031-SE-0921

**STUDENT, B/N/F PARENT and
PARENT,
Petitioner**

v.

**SPRING BRANCH INDEPENDENT
SCHOOL DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friends *** and *** (Parents or, collectively, Petitioner) brought this action against the Spring Branch Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. The main issue in this case is whether Respondent denied Student a free, appropriate public education (FAPE) during the relevant time period.

The Hearing Officer concludes Student was provided FAPE during the relevant time period and Student’s IEP was reasonably calculated to address Student’s needs in light of Student’s unique circumstances.

II. PROCEDURAL HISTORY

A. Legal Representation

Petitioner was represented throughout this litigation by Petitioner’s legal counsel Michael O’Dell with the Law Offices of Michael O’Dell. Respondent was represented throughout this litigation by its legal counsel Amy Tucker with Rogers, Morris & Grover LLP.

III. DUE PROCESS HEARING

The due process hearing was conducted via the Zoom videoconferencing application on December 1, 2021. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner’s legal counsel Michael O’Dell. In addition, ***, Student’s mother, attended the due process hearing.

Respondent continued to be represented by its legal counsel Amy Tucker. In addition, ***, the Assistant Director of Special Education for the District, attended the hearing as the party representative. Both parties filed written closing briefs in a timely manner. The Decision in this case is due February 11, 2022.

IV. ISSUES

A. Petitioner’s Issues

As stated by Petitioner, the relevant time period for the claims raised in this case is from November 20, 2020, of the 2020-21 school year to the date the complaint was filed.¹ Petitioner raised the following legal issues from this time period for decision:

- Whether Respondent denied Student a FAPE during the relevant time period;
- Whether Respondent denied Student a FAPE by failing to provide appropriate related services;

¹ See Initial Prehearing Conference Transcript at 5 (November 22, 2021). Notably, Petitioner raised allegations in their written closing argument that the District failed to provide Student an appropriate program throughout Student’s entire time in the District and, in particular, failed to provide appropriate virtual services during the fall of 2020. Because Petitioner did not raise these claims, or an exception to the statute of limitations, in advance of the due process hearing, they are not considered here. The application of the statute of limitations in this matter is discussed below.

- Whether Petitioner is entitled to private placement at District expense; and
- Whether Respondent failed to educate Student in Student's least restrictive environment (LRE).

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Petitioner's Complaint. Respondent contends it provided Student with a FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requested the following items of relief:

- A determination Respondent denied Student a FAPE;
- Compensatory education services;
- Compensatory related services;
- A determination that Student's placement at the *** is appropriate;
- Reimbursement for Student's placement at the *** for the 2020-21 school year;
- Placement of Student at the *** for the 2021-22 school year;
- A determination Respondent failed to educate Student in Student's LRE;
- Upon Student's return to the District, a placement for Student consistent with the recommendations of the Independent Education Evaluations; and
- Reimbursement for education expenses incurred by Parents during the relevant time period.

VI. FINDINGS OF FACT

Student's Educational History

1. Student is ***-year-old child with ***. Student is eligible for special education services under the categories of *** disability and speech impairment.²
2. Student attended the District from the 2013-14 school year through October 2020.³
3. Student began attending the *** on November 17, 2020, and continues to do so. Student was placed at this private school by Parents, who are paying tuition.⁴
4. The *** serves children with moderate to significant disabilities. It clusters students by age and level of assistance required and does not have grade levels. The school has a ratio of one staff member per two students.⁵

The District's 2019 Evaluation of Student

5. On May ***, 2019, the District convened Student's Admission, Review, and Dismissal (ARD) committee to conduct a Review of Existing Evaluation Data (REED). Parents requested a Full Individual Evaluation (FIE), including a Functional Behavior Assessment (FBA) and an Assistive Technology (AT) evaluation in the areas of communication, writing, and reading. The ARD committee determined an FIE was needed to evaluate Student in the areas of psychological, intellectual, adaptive behavior, academic achievement, AT, FBA, speech, and occupational therapy (OT).⁶
6. On September ***, 2019, the District completed the FIE for Student. The evaluators concluded Student continued to meet special education eligibility criteria for *** disability and a speech impairment.⁷
7. The evaluators determined Student has deficits in language, articulation, semantics, syntax, and morphology. Student is able to demonstrate comprehension of more receptive language skills than Student is able to express. Student has errors in connected speech that

² Joint Exhibit (JE) 5; JE 6.

³ JE 5 at 11; Transcript (TR) at 52.

⁴ Petitioner's Exhibit (PE) 1; PE 13; TR at 52-54.

⁵ TR at 132-36.

⁶ JE 6.

⁷ JE 5 at 36-37.

significantly impact Student's intelligibility and create frequent communication breakdowns. The evaluators recommended Student be provided an AT communication device with vocabulary organized by categories to help increase Student's expressive and receptive vocabulary, assist with word finding, and reduce intelligibility issues.⁸

8. The evaluators found Student to have global *** functioning in the very low range and to have *** functioning below Student's same aged peers. Student has difficulty with working memory, auditory working memory, and spoken language.⁹
9. The evaluators concluded Student needs OT services to benefit from Student's education and the support of adaptive health and fitness in general education.¹⁰
10. The evaluators determined the function of Student's noncompliance behavior is to avoid a task or gain attention. They determined Student occasionally engaged in aggressive behavior following incidents of noncompliance related to being given a demand and occasionally engaged in aggressive behavior when ***. The evaluators recommended Student be taught replacement behaviors focusing on appropriately communicating with peers and adults to indicate wants and needs, to request a break, to request assistance on a difficult task, to request peers leave Student alone, and to request peers engage with Student.¹¹
11. Student has language deficits that impact Student's communication and language skills. Student's articulation is poor, which impacts Student's intelligibility, especially with unfamiliar listeners. Student has commensurate pragmatic language skills for Student's cognitive ability. Student can ***. During conversation, Student takes appropriate turns when interested in the topic of discussion, initiates conversation by asking a question or commenting on a shared activity, and matches the tone and facial expression of conversation partners. Student can follow two-step commands and one step directions. Student has difficulty following oral instructions, does not understand grade level word meaning, ***. Student generally expresses ***self using ***.¹²
12. Student is able to build relationships, desires to please preferred peers and adults, and is motivated by preferred reinforcers. Student works best with prompting, modeling, visuals, and hands on activities.¹³

⁸ JE 5 at 8, 36.

⁹ JE 5 at 12, 15, 36.

¹⁰ JE 5 at 9-10.

¹¹ JE 5 at 11, 37.

¹² JE 5 at 4, 6, 7, 33.

¹³ JE 5 at 36-37.

13. Student's handwriting legibility, handwriting speed, *** coordination, gross motor coordination, mobility within a school environment, and Physical Education (PE) ability are below average when compared to Student's same-aged peers. Student has ***, but this does not interfere with Student's ability to access the educational environment. Student has functional range of motion in Student's arms and legs and can walk independently throughout the school.¹⁴
14. Student is able to sit in a regular classroom chair, get up from a chair and return without difficulty, open and close the classroom door, use the restroom without physical supports, and go up and down the stairs. Student is successful with most self-help skills at school, requesting to go to the restroom when necessary, washing Student's hands independently, going through the lunch line, carrying Student's lunch tray, opening packages, feeding ***self, manipulating a variety of classroom materials, cutting with scissors, and gripping a writing utensil.¹⁵
15. Student requires ***. Student requires OT services to learn strategies for ***.¹⁶
16. Student requires prompting and attention for completion of Student's work, is independent with managing Student's backpack and folders in a *** setting, and requires prompting to manage classroom materials in the general education setting. Student can follow directions, but requires frequent redirection to the task because Student is easily distracted.¹⁷

2019-20 School Year

17. On October ***, 2019, the District convened Student's ARD committee for Student's annual meeting. The ARD committee reviewed Student's FIE and agreed Student continued to be eligible for special education services as a student with *** disability and a speech impairment. Parents expressed disagreement with some portions of the FIE and the District staff directed them to the District's procedures for requesting an IEE.¹⁸
18. At Parents' request, the ARD committee modified Student's written expression goal to include *** from the *** curriculum and developed an IEP goal to address independent use of a work system to complete tasks.¹⁹

¹⁴ JE 5 at 8-9.

¹⁵ JE 5 at 9-10.

¹⁶ JE 5 at 10.

¹⁷ JE 5 at 10.

¹⁸ JE 2 at 19.

¹⁹ JE 2 at 20.

19. The ARD committee met again on October ***, 2019 and November ***, 2019 to complete its work on Student's IEP and program.²⁰
20. The District proposed Student be placed in *** for all academic subjects. Parents objected to this placement and requested Student attend a general education *** class. Parents also disagreed with the proposed OT services for Student.²¹
21. Parents requested a Board Certified Behavior Analyst (BCBA) be utilized to assist with Student's behavior. The District declined this request, indicating Student's behavior is improving with the current services provided and District staff have proper training and qualifications for addressing Student's behavior.²²
22. On November ***, 2019, the District reconvened Student's ARD committee because the prior meetings did not result in consensus. Parents requested additional speech therapy services, but the District declined this request. In response to Parents' request for general education ***, the District proposed Student attend two general education *** per month. Parents rejected this request, continuing to request full-time general education *** placement for Student.²³
23. The ARD committee determined Student required small group instruction based upon prerequisite skills and noted Student benefits from frequent and immediate feedback, positive reinforcement, choices, wait time, reminders of rules, and clearly-defined boundaries. They determined Student requires simplified vocabulary and language in academic and nonacademic settings. The ARD committee placed Student in a special education *** class for *** and in a general education class for special area subjects such as ***. Student was provided thirteen, 30-minute speech therapy sessions each *** weeks, one 30-minute OT session each *** weeks, and four 30-minute *** sessions each *** weeks. The ARD committee decided Student required extended school year (ESY) services.²⁴
24. The ARD committee developed annual goals for Student for using a ***.²⁵

²⁰ JE 2 at 21.

²¹ JE 2 at 21-22.

²² JE 2 at 22.

²³ JE 2 at 24.

²⁴ JE 2.

²⁵ JE 2.

25. The ARD committee developed a behavior intervention plan (BIP) for Student to address noncompliance and physical aggression and teach replacement behaviors.²⁶

Independent Education Evaluations of Student

26. On February ***, 2020, Dr. *** completed an independent FBA. She indicated the District's FBA was complete, thorough, and accurate. She observed Student's teacher was implementing Student's BIP, good classroom behavioral techniques, good organization strategies, and appropriate teaching strategies. Dr. *** assessed Student to have matured, gained important functional communication skills, and formed attachments to the adults Student works with consistently. She indicated at the time of her assessment Student was exhibiting no behaviors requiring a BIP and reported the one behavior she observed during her FBA was handled easily and well by the adults in the classroom. Dr. *** recommended the District continue doing exactly what is currently being done in the classroom, including giving Student choices between two viable options, giving Student frequent breaks, giving Student time to choose the appropriate behavior, and giving Student praise and adult positive attention for appropriate behavior. During her FBA, she also observed that the manner in which Student assists with taking attendance and distributing materials is excellent, because it gives Student a job, Student learns to read the other students names and Student practices one-to-one correspondence, which is a great example of incorporating an IEP objective into a daily, functional routine. She observed Student's teacher to use throughout the school day the excellent strategies of giving Student the choice of two viable options when possible, giving praise when deserved, redirecting Student when off task, and thanking Student for changing Student's behavior. She observed District staff to ask Student to try again when Student made an error, which is an excellent way to encourage Student to correct an error without giving negative attention. Dr. *** observed the *** classroom to be very well organized, attractive, and easy for the students to navigate independently and observed the campus *** to be a great place with excellent, age appropriate, challenging activities.²⁷
27. On March ***, 2020, ***, a speech pathologist, completed an independent AT evaluation. She assessed Student to have deficits in language and articulation. She determined Student has deficits in the language areas of semantics, syntax, and morphology and determined Student is able to comprehend more receptive language than Student is able to express. Ms. *** assessed Student to have errors in connected speech that significantly impact Student's intelligibility and create frequent communication breakdowns. Ms. *** recommended Student have a dedicated iPad with a communication application for Student's use as a communication device, that the application be customized for Student, and that Student

²⁶ JE 2.

²⁷ JE 10.

practice with the application several times per day. She recommended the District use *** as Student's communication application on the iPad.²⁸

28. *** is a comprehensive, customizable augmentative and alternative communication application for the iPad that utilizes core words, picture/text pairs, pre-programmed phrases and sentences and scenes with embedded "hot spots" to aid a user in effective communication. The application is core word and category-based and is customizable for the user.²⁹
29. On May ***, 2020, *** completed an independent OT evaluation. Ms. *** determined Student had below average *** skills with Student's *** precision, *** integration, and *** being well below average. Student has ***. Student has difficulty with ***. Student has difficulty processing sensory information in a meaningful way at school. Ms. *** recommended that Student learn strategies to process sensory information at school to help with Student's focus and attention during instruction. She concluded Student required OT services at school to address Student's ***.³⁰

The District's Proposed Program For Student For The 2020-21 School Year

30. On September ***, 2020, the District convened Student's ARD committee for Student's annual meeting. The ARD committee reviewed Dr. ***'s IEE FBA with Dr. *** participating in the meeting and endorsing the District's plans for addressing Student's behavior. The ARD committee determined Student had mastered Student's behavior goals, eliminating incidents of physical aggression and significantly reducing Student's incidents of sustained noncompliance. The ARD committee decided to continue Student's BIP for noncompliance because of the *** with a new campus, unfamiliar staff, new routines, and new transitions.³¹
31. The District proposed continuing to place Student in a special education *** class for *** and in *** of general education *** with special education support. The ARD committee determined Student required small group instruction based upon prerequisite skills. The District proposed providing Student with thirteen 30-minute speech therapy sessions each *** weeks; one 30-minute OT session each *** weeks, and four 30-minute *** sessions each *** weeks.³²

²⁸ JE 9.

²⁹ JE 9.

³⁰ JE 8.

³¹ JE 1.

³² JE 1.

32. The District *** class has curriculum based on state standards, allows for small group and individual instruction, allows for repetition of skills, has a small student-to-teacher ratio, and focusses on functional skills.³³
33. The ARD committee reviewed the OT IEE. The District agreed to implement the recommendations of this IEE, including the recommended hand writing and sensory interventions. Consistent with the OT IEE, the District delivers one-on-one direct OT services at school.³⁴
34. The ARD committee reviewed the AT IEE. The District had already begun to implement the recommendation for a dedicated iPad with *** for AT communication and had started in-home training on the AT. The ARD committee also incorporated Student’s AT communication device into Student’s IEP goal related to repairing communication breakdowns.³⁵
35. The District proposed a ***.³⁶
36. The District determined the September ***, 2020 meeting ended in non-consensus and, on September ***, 2020, the District reconvened Student’s ARD committee. Parents requested Student be placed in general education for ***. The District declined this request, indicating the academic language, writing skills, and reading skills in these general education classes are above Student’s level. Parents also requested Student be included in the weekly general education *** lessons, and the District agreed to implement this request.³⁷
37. The September ***, 2020 ARD committee meeting ended in non-consensus and Parents declined an additional reconvened meeting. Parents disagreed with the frequency of OT services, the instructional methodology for reading and math instruction, the amount of speech therapy, the number of general education classes, and the type of training related to the AT communication device.³⁸
38. Prior to convening the ARD committee meetings, the District provided Parents with copies of Student’s proposed BIP, IEP goals, and present level statements. District staff also met

³³ TR at 271-72.

³⁴ JE 1; TR at 207.

³⁵ JE 1.

³⁶ JE 1.

³⁷ JE 1.

³⁸ JE 1 at 30.

with Parents and their advocate prior to the ARD committee meetings to discuss the IEP and parental concerns.³⁹

VII. DISCUSSION

A. **Burden of Proof**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁴⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit.

B. **Statute of Limitations**

Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a student with a disability or the provision of FAPE to the student within two years of the date the parent knew or should have known of the alleged action(s) forming the basis of the complaint. 20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a)(1)-(2).

The two-year limitations period may be more or less than two years if the state has an explicit time limitation for requesting a due process hearing under the IDEA. 20 U.S.C. §1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2). Texas has adopted an alternative limitation period, and state regulations require a parent to request a hearing within one year of the date he or she knew or should have known of the alleged action(s) forming the basis of the complaint. 19 Tex. Admin. Code § 89.1151(c). The

³⁹ JE 1.

⁴⁰ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009).

limitations period begins to run when a party knows, or has reason to know, of an injury. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995).

There are two exceptions to this rule. The timeline does not apply if the parent was prevented from filing a due process complaint due to:

- (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or
- (2) the public education agency's withholding of information from the parent that was required by 34 C.F.R. § 300.1, *et seq.* to be provided to the parent.

19 Tex. Admin. Code § 89.1151(d).

Petitioner filed their due process hearing request on September 30, 2021, and raised neither exception to the statute of limitations. Petitioner also confirmed during the initial prehearing conference that the relevant time period began on November 20, 2020 of the 2020-21 school year, after Student had been unenrolled from the District. Petitioner's closing brief, however, argues that the District denied Student a FAPE in various ways throughout Student's entire education in the District. Because Petitioner neither pled nor proved an exception to the one-year statute of limitations applies, any claims arising prior to November 20, 2020, are time-barred and will not be considered or analyzed.

C. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). The District has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

The District is obligated to provide Student with specially designed, personalized instruction with sufficient support services to meet Student’s unique needs so Student can receive an educational benefit. The instruction and services must be provided at public expense and comport with Student’s IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). Here, Petitioner contends the District denied Student a FAPE by failing to develop an appropriate program to meet Student’s individual needs.

D. FAPE

A hearing officer must apply a four-factor test to determine whether a school district has provided a program of FAPE to an individual student. Those factors are:

- Whether the program is individualized on the basis of the student’s assessment and performance;
- Whether the program is administered in the least restrictive environment;
- Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
- Whether positive academic and non-academic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).⁴¹

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district’s educational program.

⁴¹ Even after the Supreme Court’s 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018) (citing *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000-01 (2017)).

Richardson Indep. Sch. Dist. v. Leah Z., 580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

Petitioner takes issue with the District’s development of Student’s IEP, contending the IEP does not address Student’s identified needs. The District has an obligation to have an IEP in place for Student at the beginning of each school year. 34 C.F.R. § 300.323(a). The IEP must be more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student’s potential, the District must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The basic inquiry in this case is whether the IEP developed by the District was reasonably calculated to enable Student to make progress appropriate in light of Student’s circumstances. *Andrew F.*, 137 S. Ct. at 999.

a. Overall Program and Placement

The District’s obligation when developing Student’s IEP is to consider Student’s strengths, Student’s parent’s concerns for enhancing Student’s education, results of the most recent evaluation data, and Student’s academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(i)-(iv). Here, the District based Student’s IEP on Student’s identified ***, speech, language, communication, functional, and behavioral deficits, as identified in the 2019 FIE. Moreover, the District reviewed and incorporated the recommendations of the AT, OT, and FBA IEEs. To address Student’s significant *** deficits and Student’s need for small group instruction on prerequisite skills, the District proposed placing Student in a *** class for core academic

content. This proposed placement addresses Student's needs by allowing for small group and individual instruction, allowing for repetition of skills, having a small student-to-teacher ratio, and focusing on functional skills.

b. Related Services

Petitioner contends the District failed to provide appropriate levels of related services. The evidence presented, however, does not support this contention. To address Student's identified communication deficits, the District's proposed program for the 2020-21 school year included 13 direct speech therapy sessions each *** weeks, two speech goals addressing effective communication during conversations, and three speech goals addressing enhancing language. The District's proposed program addressed Student's needs through direct OT services and multiple goals addressing Student's *** deficits, problems with hand writing, functional deficits *** and sensory needs. Both the speech and OT proposals were consistent with the IEEs in these areas.

c. Assistive Technology

Petitioner alleges the District failed to address Student's need for AT. In developing a student's IEP, the ARD Committee must consider whether the student needs AT devices and services. 34 C.F.R. § 300.324(a)(2)(v). Student exhibited an identified deficit in communication and the District indicated Student required AT to address Student's communication deficits. To determine the most appropriate communication device for Student, the District conducted an AT evaluation as part of the 2019 FIE. The AT evaluator recommended an iPad with the *** communication application as the best AT device to address Student's communication needs. The AT IEE evaluator also recommended an iPad with *** for Student.

The District determined AT was necessary as special education, a related service, or a supplemental aid or service Student needed in order to access and make progress in the general

curriculum. 34 C.F.R. § 300.105(a). As such, the District identified the appropriate AT device, provided it to Student, and trained Parents on the use of the AT.

d. Behavior

For Student, whose behavior impedes Student’s learning and that of others, the District was also required to consider positive behavioral interventions and supports and other behavioral strategies when developing Student’s IEP. 34 C.F.R. § 300.324(a)(2)(i); *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir. 2012). Here, the District conducted an FBA to determine the nature of Student’s behavioral needs. The District then developed a BIP to address Student’s noncompliance and physical aggression. As the FBA IEE evaluator concluded, the District’s FBA was complete, thorough, and accurate and District staff should continue behavior interventions exactly as currently being performed.

2. Least Restrictive Environment (LRE)

The IDEA requires that a student with a disability shall be educated with non-disabled peers to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the “least restrictive environment requirement.” 34 C.F.R. § 300.114(a)(2)(i)-(ii). To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Educ., 874 F. 2d 1036, 1048 (5th Cir. 1989).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.*

Here, Student has significant ***, and communication deficits. The District is unable to educate Student in a general education setting for core academic subjects while also addressing Student's significant deficits. Student's limited ability to follow oral instructions and understand grade level word meanings, along with Student's distractibility, make Student's placement in general education for academic subjects inappropriate. A *** classroom, with its small group and individual instruction, repetition of skills, small student-to-teacher ratio, and focus on functional skills is the most appropriate setting to address Student's individual needs. The District proposed including Student with Student's peers without disabilities in ***. Petitioner argues that Student's proposed placement is not Student's LRE and Student's parents previously requested more general education classes. However, Petitioner presented no evidence to support that more time in a general education setting, particularly for core academic content, is appropriate for Student. Given the nature and severity of Student's disability, the District proposed educating Student in Student's least restrictive environment. 34 C.F.R. § 300.114(a)(2)(i)-(ii); *Daniel R.R.*, 874 F.2d at 1048.

3. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), *aff'd* 909 F.3d 754 (5th Cir. 2018). Here, Petitioner contends the District failed to collaborate with Parents, because the District did not respond to all of Parents' requests. However, the IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome,

because parents do not possess “veto power” over a school district’s decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student’s parents or refusal to listen to them, a school district must be deemed to have met the IDEA’s requirements regarding collaborating with a student’s parents. *Id.*

The District allowed Parents to be active participants in the ARD process and honored many parental requests. Parents and their advocate attended and participated in multiple ARD committee meetings during the 2019-20 and 2020-21 school years. Prior to ARD committee meetings, the District provided Parents with copies of IEPs and met with them to review parental concerns. At Parents’ request, the District conducted an FBA, conducted an AT evaluation, added ***, and included Student in the weekly general education *** lessons. In addition, the District implemented most of the recommendations of the three separate IEEs.

A preponderance of the evidence demonstrates that services were provided in a coordinated, collaborative manner by key stakeholders during the relevant timeframe. Petitioner failed to show that the District excluded Parents in bad faith or refused to listen to them.

4. Academic and Non-Academic Benefits

Here, there is no evidence of benefit or progress from the District’s program during the relevant time period because Student was in a private placement during the entire period. Thus, the inquiry is not whether the Student actually made progress, but whether the IEP developed by the District was reasonably calculated to enable Student to make appropriate progress in light of Student’s circumstances. *Andrew F.*, 137 S. Ct. at 999. The IEE performed by Dr. *** emphatically endorses the *** and behavior program the District had provided to Student and proposed to continue providing to Student. The evidence also showed Student made significant behavioral progress with the services provided by the District. Moreover, the District and the OT and AT IEE evaluators concurred in significant part on the best programming for Student for the 2020-21 school year. Petitioner presented no expert evidence to challenge the District’s proposed program for Student. As

detailed above, this program was based upon Student's identified needs and addressed Student's deficits.

The District developed a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs. *Andrew F.*, 137 S. Ct. 988. Student's IEP and program were developed using District evaluations, three IEEs, input from Parents, and placed Student in Student's least restrictive environment. Parents, as well as key stakeholders from the District, provided input to develop Student's program. A review of the overall educational program shows Student was provided a FAPE and was likely to make progress with the program as it was developed. *Michael F.*, 118 F.3d at 253; *Klein Indep. Sch. Dist. v. Per Hovem*, 690 F. 3d 390, 399 (5th Cir. 2012).

E. Private Placement

Petitioner must meet a two-part test in order to secure reimbursement from the District for Student's placement at the ***. First, Petitioner must prove the District's proposed program was not appropriate under the IDEA. Second, Petitioner must prove placement at the *** is appropriate. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993). Petitioner failed to meet their burden of proving the District's program was not appropriate under the IDEA. Therefore, Petitioner is not entitled to private placement at District expense.

VIII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer*, 546 U.S. at 62; *Teague Indep. Sch. Dist.*, 999 F. 2d at 131.
2. Student was provided FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188, 203-04; *Andrew F.*, 137 S. Ct. at 999.

3. Petitioner did not meet their burden of proving that Respondent denied Student a FAPE during the relevant time period. *Schaffer*, 546 U.S. at 62 ; *Teague Indep. Sch. Dist.*, 999 F. 2d at 131 ; *Rowley*, 458 U.S. at 188, 203-04; *Andrew F.*, 137 S. Ct. at 999.
4. Petitioner is not entitled to private placement at District expense. *Burlington Sch. Comm.*, 471 U.S. at 370; *Florence Cty. v. Carter*, 510 U.S. 7 (1993).

IX. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.

All other relief not specifically stated herein is **DENIED**.

SIGNED February 11, 2022.



Steve Elliot
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a) (b).