

SOAH DOCKET NO. 701-22-0770.IDEA
TEA DOCKET NO. 063-SE-1121

STUDENT, B/N/F PARENT and PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
BEAUMONT INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student (Student), by next friends Parent and Parent, (collectively Petitioner) brings this action against the Beaumont Independent School District (Respondent or the School 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 the School District provided Student with a Free Appropriate Public Education (FAPE).

The Hearing Officer concludes the School District did provide Student with a FAPE, did not fail to implement substantial or significant portions of the IEP, and has a program capable of providing Student a FAPE.

II. PROCEDURAL HISTORY

A. Legal Representation

Student was represented throughout this litigation by Student’s legal counsel: Andrea Koch, Jennifer Swanson, and Kevin Shields with the Shields Law Firm. The School District was represented throughout this litigation by its legal counsel, Erik Nichols and Matthew Acosta with Karczewski Bradshaw Spaulding.

B. Due Process Hearing

The due process hearing was conducted virtually via the Zoom platform February 23-25, 2022. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel: Andrea Koch, Jennifer Swanson, and Kevin Shields. In addition, next friend, *** (Parent) also attended the due process hearing.

Respondent continued to be represented by its legal counsel, Erick Nichols and Matthew Acosta. In addition, Dr. ***, Special Education Director for the School 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 on May 6, 2022.

III. ISSUES

A. Petitioner's Issues and Requested Relief

Petitioner confirmed the following IDEA issues for decision in this case:

1. Whether the School District provided Student a FAPE during the 2021-2022 school year.
2. Whether the School District failed to implement Student's IEP from the May 2021 Admission, Review, and Dismissal (ARD) Committee meeting.
3. Whether the School District is unable to make a FAPE available to Student during the current School year on a District campus.

Petitioner confirmed the following items of requested relief:

1. Order the School District to place Student at *** (***).
2. Order the School District to provide Student with an Independent Education Evaluation (IEE) in all areas of suspected need.
3. Order the School District to reimburse parents for past expenses on educational services.

4. Order the School District to provide Petitioner any other relief that the Hearing Officer deems appropriate.

B. Respondent's Legal Position and Additional Issues

Respondent generally and specifically denied Petitioner's issues and denies responsibility for providing any of Petitioner's requested relief. Respondent moved to dismiss non-IDEA claims and requested relief. Respondent also asserted the one-year statute of limitations. Petitioner confirmed that claims are not being asserted outside the one-year statute of limitations.

IV. FINDINGS OF FACT

1. Student is ***-year-old, *** grader at ***. Student qualifies for special education services under the eligibility categories of Autism, ***, and Speech Impairment. Student is *** and expresses Student's wants and needs with ***. Student is ***. Student is a sweet child from a loving family. Student requires a high level of supervision. Student is happy, energetic, and sociable to others.¹
2. Student was enrolled at *** from 2018 to October ***, 2021. Pursuant to a settlement agreement, the School District agreed to provide payments towards private educational and related services of Parent's choosing through May ***, 2021. *** implemented Student's IEPs, which were developed by the School District and ***. While at ***, Student was educated in a self-contained classroom. Student had tantrums, *** behavior, and aggression towards staff and peers on multiple occasions.²
3. The School District held an annual ARD Committee meeting on April ***, 2021. Student was enrolled at *** during the time of this ARD Committee meeting. Parent attended the meeting and it ended in agreement that Student would remain at *** until the end of the settlement agreement period of May ***, 2021. The Committee agreed to meet again on May ***, 2021.³

¹ Joint Stipulations; Joint Exhibit (hereafter JE) 11 p. 382; JE 13 p. 426; Petitioner's Exhibit (hereafter PE) 23 p. 253; Transcript. Volume I (hereafter Tr. Vol.) p. 203-300; Tr. Vol. II p. 107.

² Joint Stipulations; JE 5, JE 8; JE 11 p. 402; PE 2; PE 6 p. 82; PE 9; PE 10; PE 12; PE 13; PE 19; Respondent's Exhibit (hereafter RE) 1 p. 1.

³ JE 11 p. 401-03.

4. The ARD Committee met again on May ***, 2021. The May IEP was essentially the exact same as the April IEP. The May ***, 2021, IEP included Student's Present Levels of Academic Achievement and Functional Performance (PLAAFPs). Student performs most of Student's education skills with *** assistance or multiple ***. Student can feed ***self, dress ***self, and has very good receptive and imitative skills.⁴
5. Student's May ***, 2021, IEP included conflicting information on Student's strengths. It stated Student can ***. Additionally, it stated Student can ***. It stated Student can ***. The *** (***) Classroom teacher noticed conflicting information in Student's IEP.⁵
6. Student's IEP included Student's strengths and weaknesses in Student's classes at the time. Student's classes included ***. The IEP also included strengths and weaknesses for behavior, occupational therapy, and speech.⁶
7. Student's IEP included a Behavior Intervention Plan (BIP) and Assistive Technology (AT). Student's classroom instruction accommodations in all subjects were: ***. Student's behavior accommodations included: clearly defined limits, frequent breaks, frequent eye contact/proximity control, minimize auditory distractions, positive reinforcement, and supervision during transition activities. Student's positive behavior interventions included: visual supports, consistent routine, familiar staff, compliance training, minimize downtime, token economy, and reinforcement schedule.⁷
8. Positive reinforcement is important for Student. Student also needs environmental reinforcers such as ***. The School District must assess additional types of things Student likes and dislikes for reinforcers.⁸
9. Student's IEP required a staff-to-student ratio of *** for learning new skills and *** for all other activities. Student requires *** services, which include ***, and communication assistance.⁹
10. The May ***, 2021, ARD Committee meeting ended with all members in agreement except for Parent. The School District informed Parent of his right to reconvene and Parent declined. He reported his concern Student would lose Student's gains from *** if removed from ***. The School District asked if Parent planned to enroll Student in the School

⁴ JE 11; JE 13 p. 421-23, 464-86.

⁵ JE 13 p. 420-21, 466-67, 470, 472, 484; Tr. Vol. I p. 62-63.

⁶ JE 13 p. 420-23.

⁷ JE 13 p. 429, 432.

⁸ Tr. Vol. III p. 82-84.

⁹ JE 13 p. 453, 454.

District on June ***, 2021, and Parent indicated he did not. The School District personnel ended the meeting asking Parent to notify the School District when or if he planned to enroll Student in the School District.¹⁰

11. The May IEP included a residential and nonpublic day school placement reintegration plan. In the reintegration plan, parent training was contingent on Parent notifying the School District of Student's return. *** as a related service was to be provided after Student's return in conjunction with In-Home Training.¹¹
12. Parent, the School District Director of Special Education, and the School District Low-Incident Program Specialist/former Autism Specialist met in-person, outside of the ARD Committee on May ***, 2021. The discussion centered around settlement negotiations and Parent's potential contribution towards the expense of ***. The Director of Special Education notified Parent he would take the counteroffer to the superintendent and the School District is "ready, willing, and able" to transition Student to the School District and provide Student a FAPE.¹²
13. Parent engaged in settlement negotiations with the Superintendent of the School District via email. The Superintendent reiterated that the School District was able to implement Student's IEP. On June ***, 2021, Parent requested a reconvene ARD Committee meeting via email.¹³
14. The ARD Committee reconvened on June ***, 2021. Parent's attorney and the School District's attorney attended the ARD Committee meeting. The reason for the ARD Committee meeting was Parent's concern about the School District's ability to implement the IEP. The June IEP included the same information as the April and May IEPs regarding evaluations used to develop the IEP, Student's strengths/weaknesses and needs, BIP, and accommodations.¹⁴
15. The June IEP included Student's class schedule for Fall 2021. Student's schedule included ***. The IEP also included speech and language therapy, AT, occupational therapy, transportation, parent training, and in-home training.¹⁵
16. On October ***, 2021, Parent emailed the School District notice of Student enrolling in the *** on October ***, 2021. On the same day, the School District's former Autism

¹⁰ JE 13 p. 447; PE 27.

¹¹ JE 13 p. 490-91; PE 31 p. 295.

¹² PE 25.

¹³ PE 38; PE 39.

¹⁴ JE 11; JE 13; JE 14 p. 523.

¹⁵ JE 14 p. 519-20.

- specialist/current low-incident program specialist emailed the *** teacher with notification of Student's return the following day. On October ***, 2022, the *** teacher, the School District's former Autism specialist/current low-incident program specialist, and the adaptive physical education teacher *** Student to the *** classroom. Student was ***. The *** teacher encouraged Student to ***. Student improved each day and by the last two days on campus Student was able to *** and come to the classroom.¹⁶
17. The *** classroom had *** while Student was enrolled. The *** teacher reviewed Student's IEP on October ***, 2021.¹⁷
 18. The *** classroom uses ***, a variety of Applied Behavior Analysis (ABA) elements based on each student's needs, and sensory integration or a sensory diet. The *** teacher received training from a School District-contracted Board Certified Behavior Analyst (BCBA) on ABA strategies in December 2019.¹⁸
 19. The *** classroom has 2 break or cool-down areas for de-escalation. The classroom has many visual icons and more could easily be created. Each student has a bookshelf and desk in the classroom with binders that include the student's sensory items, positive reinforcers, and schedules.¹⁹
 20. The *** teacher introduced Student to the classroom on Thursday, October ***, and began an informal assessment. The School District had two types of flexible seating for Student at Student's area, including a *** because it was reported Student enjoyed it. On Day 1, Teacher began with transitions, familiarizing Student with the classroom, the staff, the other students, and sensory input. Teacher began pairing on Day 1. Pairing is connecting with a student to get the student comfortable with a teacher/staff and environment.²⁰
 21. Teacher began implementation of the IEP the next day, on October ***, 2021. The *** teacher has a *** in the *** classroom. It includes ***. Student had AT with ***, one for positive reinforcer and one for communication. Teacher attempted to upload the communication program, *** but it was not uploaded during the *** days Student attended the School District.²¹

¹⁶ RE 16; RE 17; Tr. Vol. I p. 39-40.

¹⁷ Tr. Vol. I p. 16, 23.

¹⁸ Tr. Vol. II p. 137-38, 248.

¹⁹ Tr. Vol. I p. 101; Tr. Vol. III p. 105, 107.

²⁰ Tr. Vol. I p. 41-2, 119-20; Tr. Vol II p. 266.

²¹ Tr. Vol. I p. 42, 45-46, 103; Tr. Vol. III p. 22-23.

22. Student received speech therapy one day during Student's *** enrolled at the School District. The speech therapist wanted to work on a combination of communication methods for Student, including *** and other visuals. Student attended ***. Student's *** teacher implemented a token system. The teacher used *** for *** class and Student worked on a ***. The teacher used sensory activities/items to assist Student, which Student enjoyed. The teacher worked on *** to determine Student's fine motor skills and identification skills. The next step would have been ***. The teacher developed a visual schedule for Student. The teacher was in the process of making a list for items she needed for Student in her classroom prior to Student withdrawing from the School District.²²
23. Students in the *** classroom participate in ***. On ***, the *** students go around campus and *** to students and staff. This helps these students engage with peers without disabilities, learn about money, and develop communication skills. *** students eat lunch in the cafeteria with general education peers.²³
24. Student's *** class was not on Student's schedule for Student's first day at the School District because the School District had to verify *** for the class from *** before they could add it to Student's schedule. The class is on a different School District campus. The School District planned to discuss transportation for Student to the *** class and supports needed during transport to the class at a transfer ARD Committee meeting to be held after Student returned. The bus plan was not made prior to Student's enrollment because the School District needed time to determine what Student could tolerate.²⁴
25. The *** teacher took data on Student's behaviors during Student's time at the School District. Specifically, she noted tantrums, physical aggression, and ***. The teacher recorded these behaviors occurring on November ***, 2021. Student exhibited two incidents of *** on November ***; zero incidents of physical aggression on any of the days; and *** incidents of tantrums, with no such incidents on the last day. The *** teacher handled the behaviors with redirecting, prompting, and response blocking.²⁵
26. During the week Student was enrolled in the School District, the *** teacher worked with the School District's former Autism specialist/current low-incident program specialist and School District contracted BCBA to assist with Student's program and routine.²⁶

²² Tr. Vol. I p. 55, 59-60, 78, 80-81, 151; Tr. Vol. III p. 24-25, 38-39.

²³ Tr. Vol. I p. 164-66; Tr. Vol. II p. 255.

²⁴ Tr. Vol. II p. 327-29; Tr. Vol. III p. 26-28, 42.

²⁵ PE 54 p. 356-59; Tr. Vol. I p. 74; Tr. Vol. II p. 277.

²⁶ Tr. Vol. I p. 25-27

27. It is not appropriate to give Student every facet of Student’s IEP on day one in a new school. Working on unmastered IEP goals on Student’s first day could cause higher rates of error, higher rates of prompting, and increased physical prompting, which is invasive. Additionally, Student needed time to adjust to the environment and the teachers. Otherwise, Student could make a negative association instead of a positive association or pairing.²⁷
28. The School District planned for the BCBA to assist with Student’s ongoing reintegration at a School District campus. School District staff were to receive ongoing training and classroom support throughout the year to assist with implementing Student’s IEP.²⁸
29. Children with autism like Student need to become familiar with their environment and need *** training for new skills acquisition. The rapport with a child with autism does not happen “overnight.”²⁹
30. The School District had planned to convene a transfer ARD Committee meeting after Student attended classes for a while. The *** teacher planned to use information from her observations and informal assessments to adjust the IEP as needed during the ARD Committee meeting. The *** teacher planned to reach out to *** prior to the transfer ARD Committee meeting to obtain additional information on Student. School District requested records from *** during the *** days of Student’s attendance and never received them.³⁰
31. On November ***, 2021, Parent emailed the School District with notice of his intent to seek private placement. Parent reenrolled Student at ***. After Student left the School District, the School District’s contracted BCBA finalized the *** program overview specific to Student. The plan is a comprehensive ABA program for Student with specifics on what Student needs for Student’s curriculum, educational environment, instructional activities, instructional methods, treatment protocols, progress monitoring, family involvement, staff training, and oversight.³¹

V. DISCUSSION

A. Burden of Proof

²⁷ Tr. Vol. II p. 99-101.

²⁸ JE 14 p. 531; Tr. Vol. III p. 102.

²⁹ Tr. Vol. II p. 199-201.

³⁰ PE 57; RE 19; Tr. Vol. I p. 61, 65-66; Tr. Vol. II p. 325; Tr. Vol. III p. 29.

³¹ PE 58; RE 12; Tr. Vol. III p. 95-97.

The burden of proof in a due process hearing is on the party challenging the IEP and/or placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the School 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. 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 (FAPE) 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 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 responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student’s unique needs in order to 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). The basic inquiry is whether the IEP implemented by the school district “was reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

The Four Factors Test

The Fifth Circuit has articulated a four-factor test to determine whether a Texas school district's program meets IDEA requirements. Those factors are:

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

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).³²

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

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, a school district must have in effect an IEP at the beginning of each school year. An IEP is 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 school district must nevertheless provide Student with

³² 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).

a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The School District’s obligation when developing Student’s IEP and BIP 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. § 300.320(a)(1)(i). For Student, whose behavior impedes Student’s learning and that of others, the School District must also consider positive behavioral interventions and supports and other behavioral strategies when developing Student’s IEP and BIP. 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).

The evidence showed the School District provided an IEP that was individualized based on assessment and performance. Student’s IEP was based on Student’s most recent evaluations performed in 2019, included Student’s strengths/weaknesses and needs, educational and behavioral accommodations, related services, and Student’s class schedule with specific class settings. The IEP also included a BIP with positive behavior support strategies based on the most recent Functional Behavior Assessment. Student’s IEP that Petitioner complains about in this case is essentially the same IEP utilized at ***, which Petitioner approved. Petitioner did not complain about the IEP’s individualization; the only complaint Petitioner has is the location where the IEP is implemented, as laid out in Petitioner’s arguments and closing brief.

2. Least Restrictive Environment

The IDEA requires that a student with a disability shall be educated with peers without disabilities 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). State regulations require a school district's continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005.

To determine whether a school district is educating a student with a disability in the LRE, 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.* This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting;
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting; and
- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

Id.

The School District educated Student in Student's LRE. Due to the severity of Student's disabilities and the amount of supervision Student needs to access Student's educational program,

a self-contained classroom is Student’s LRE. While this is more restrictive than a general education setting, the ARD Committee determined it was necessary for Student and any potentially harmful effects were outweighed by the benefit. Student did have the opportunity to engage with peers without disabilities in the cafeteria at lunch, at ***, during transportation, and during ***. Petitioner has not challenged whether the School District’s placement is Student’s LRE. The placement Petitioner wants at *** is a more restrictive setting than at the School District campus.³³ Student was educated in a self-contained classroom at ***, just like at the School District; however, Student never engaged with peers without disabilities, because all students at *** have disabilities. The placement in an *** Classroom on a School District campus is less restrictive and represents Student’s LRE.

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). 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 evidence showed services were provided in a coordinated, collaborative manner by key stakeholders. One of Student’s parents attended all ARD Committee meetings and had several

³³ See Tex. Admin. Code §89.1005.

conversations either in person or via email with School District employees. The fact that the School District did not agree with Parent's location choice for implementation of the IEP does mean the process was noncollaborative. Parent's interpretation of conversations outside of the ARD Committee regarding whether the School District could provide a FAPE does not equal noncollaboration. The conversations included settlement negotiations regarding financial contributions from Parent. However, the settlement negotiations between Parent and the School District cannot be considered an admission by the School District of its failure to provide a FAPE because School District staff, including the Superintendent, continuously informed Parent of the School District's ability to implement Student's program. An attempt to settle a case is not an admission of inability to provide a FAPE.

School District staff collaborated in deciding how to implement Student's IEP. The former Autism specialist was in the *** classroom several days during Student's *** days at the campus to assist the *** teacher if she needed it.

Additionally, the *** teacher planned to reach out to the contracted BCBA for strategies and the BCBA completed a program review for Student even after Student withdrew from the School District. Overall, Student's services were provided in a coordinated, collaborative manner.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 812-13 (5th Cir. 2012).

The evidence showed the IEP developed by the ARD Committee was reasonably calculated to provide Student academic and non-academic benefit. Student was only in the School District for *** from October ***, 2021, to November ***, 2021. During that time, Student's behaviors

decreased according to the *** teacher's datasheets. Student also released from Parent to go inside the school more easily each day. The *** teacher worked with Student on academic skills while also trying to evaluate Student's actual abilities due to the conflicting information in the IEP. *** is a short timeframe to determine academic and non-academic benefit; however, student was making progress and the IEP was reasonably calculated to provide benefit. Petitioner did not meet Petitioner's burden of demonstrating the IEP was not calculated to allow Student to make academic and non-academic progress.

C. Implementation

When a parent brings a claim based on a school district's failure to *implement* an IEP, the first factor (whether the program is individualized) and second factor (whether the program is administered in the least restrictive environment) are generally "not at issue." *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hannah W.*, 961 F. 3d 781, 795-96 (5th Cir. 2020) (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 348 (5th Cir. 2000)). Rather, a court must decide whether a FAPE was denied by considering, under the third factor, whether there was a "substantial or significant" failure to implement an IEP; and under the fourth factor, whether "there have been demonstrable academic and non-academic benefits from the IEP." *Id.* at 796 (citing *Bobby R.* at 349). School districts are allowed some flexibility in implementing IEPs. *Bobby R.* at 349.

The evidence showed no substantial or significant failure by the School District to implement Student's IEP. Parent was asked directly in an ARD Committee meeting to notify the School District when and if he intended to enroll Student. Parent never indicated that he planned to enroll Student in the School District any time between April 2021 and the email on October ***, 2021. At the June ARD Committee meeting, Parent stated he did not intend to enroll Student in summer school. Parent did not enroll Student at the beginning of the Fall 2021 semester. Parent

gave the School District less than a day's notice of his intent to enroll Student on October ***, 2021, which was the middle of the semester.

During Student's *** of attendance, the School District was implementing parts of Student's IEP while working with Student to familiarize Student with the *** teacher and *** classroom staff, which Student required due to Student's need for familiar staff and consistency. Petitioner's own expert predicted some challenges in transitioning to a new campus as a result of Student's need for consistency. Student received *** instruction when the *** teacher worked on ***. Due to the conflicts in Student's IEP, the *** teacher was working with Student to determine Student's actual skills. Student was educated with either *** or *** while at the School District, which is Student's required staff to student ratio. The *** teacher had the *** system in her classroom, ***, all of which are in Student's IEP. In response to Student's behaviors, the *** teacher used redirection, prompting, and response blocking which are all in Student's IEP. While Student did not receive***during Student's *** at the School District, Student was able to communicate with School District staff using other strategies.

Petitioner argues the School District was not ready, willing, and able to implement Student's IEP on Day 1 as they had stated during ARD Committee meetings.³⁴ Implementation of every aspect of Student's IEP on Day 1 could cause a negative association for Student. Petitioner cites the lack of *** class as an example of one of the failures to implement the IEP. The School District was working on the transportation issue for the *** class because it was on a different campus. Transporting Student to a different campus required planning due to Student's specific needs. One class missing from Student's schedule is not a substantial or significant failure to implement the IEP.

³⁴ Petitioner's Closing Brief p. 21.

Petitioner argues *** as listed in Student’s reintegration plan was not provided; however, this training was to be provided *after* Student’s return for reintegration support in conjunction with in-home training.

Based on the one-day notice of enrollment, it is reasonable for the School District to need time to fully implement Student’s IEP. Petitioner argues the School District had six months to prepare for Student’s return; however, this expectation is unreasonable when Parent gave no indication he intended to enroll Student. Additionally, Student was only enrolled in the School District for *** and the School District was implementing Student’s IEP during those ***. The School District was working towards complete implementation while collecting data to use at Student’s transfer ARD Committee meeting to determine if Student’s IEP needed changes.

It is difficult to measure progress when Student only attended for ***; however, Student had no tantrums Student’s last day at the School District and was releasing from Parent easier each day Student attended. No evidence was presented that Student regressed in any educational or behavioral areas during the ***. IEPs are intended to be implemented and measured for a given academic year; therefore, academic and non-academic benefits must be weighed considering the entirety of the academic year. *Lamar Consol. Indep. Sch. Dist. v. J.T. b/n/f Apr. S.*, No. 4:20-CV-02353, 2021 WL 6197312, at *6 (S.D. Tex. Dec. 31, 2021). In this case, the *** Student attended is well short of the academic year, limiting the weight of the concerns raised by Petitioner.

Based on the analysis under the four-factor test and implementation, the School District did provide Student with a FAPE, did not fail to implement substantial or significant portions of the IEP, and has a program capable of providing Student a FAPE.

D. Reimbursement for Private School

Student must meet a two-part test in order to secure private placement at School District expense. First, Student must prove that the school district's program was not appropriate. Second, Student must prove that the proposed private placement is appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school. *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 School District's program was not appropriate under the IDEA. Therefore, Petitioner is not entitled to private placement at the School District's expense.

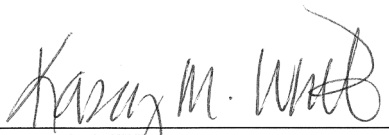
VI. CONCLUSIONS OF LAW

1. 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. 176; *Endrew F.*, 137 S. Ct. 988.
2. Petitioner did not meet Petitioner's burden of proving that the School District failed to appropriately implement Student's IEP. *Spring Branch*, 961 F. 3d 781.

VII. ORDERS

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

SIGNED May 6, 2022.



Kasey M. White
Special Education Hearing Officer
For the State of Texas

VIII. 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. 20 U.S.C. § 1415(i)(2); 19 Tex. Admin. Code §89.1185(n); Tex. Gov't Code, §2001.144(a)-(b).