DOCKET NO. 115-SE-1222

STUDENT b/n/f PARENT & PARENT,	§	**BEFORE A SPECIAL EDUCATION**
Petitioners	§	
	§	
v.	§	
	§	**HEARING OFFICER FOR**
	§	
FRANKLIN INDEPENDENT SCHOOL DISTRICT,	§	
Respondent	§	
	§	**THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

I. Statement of the Case

This matter concerns a claim brought by Petitioner pursuant to the Individual with Disabilities Education Act [hereinafter IDEA], and its implementing state and federal regulations, for violations of the Act. In particular, the issue in this case is whether the District violated the IDEA by failing to: adequately evaluate and develop an Individual Education Plan (IEP) including the provision of related services; and provide a Free, Appropriate, Public Education (hereinafter FAPE) to the Student.

The hearing officer finds that the Respondent District complied with the IDEA, and at all times at issue, provided a FAPE to the Student.

II. Procedural History

Petitioners, Student, b/n/f Parent & Parent (collectively, Petitioner), filed a request for an impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA). The Complaint was received by the Texas Education Agency (TEA or Agency) on the 5th day of December, 2022, and the Notice of Filing of Request for a Special Education Due Process Hearing was issued by TEA on December 6, 2022. The Respondent to the Complaint is the Franklin Independent School District (hereinafter District or Respondent). The

Agency assigned the matter to this Hearing Officer, who then issued the Initial Procedural Scheduling Order on December 6, 2022. On December 14, 2022, Respondent District filed its Response to the Complaint, along with a Plea to the Jurisdiction. Thereafter, on December 29, 2022, Respondent filed a Joint Motion for Continuance, and on January 6, 2023, Respondent also filed a Notice of Appearance of Co-Counsel. The first Pre-Hearing Conference (PHC) was convened on Friday, January 6, 2023, and thereafter, the Order following the PHC and for Continuance was issued January 7, 2023.

Another PHC was held on March 15, 2023, and the Second Revised Scheduling Order, Order No. 3, was then issued on March 15, 2023, setting the Due Process Hearing in this case for May 24 & 25, 2023. In accordance with Order No. 3, the parties then timely filed their respective disclosures of witnesses and exhibits, and each filed objections to some of the exhibits. On May 23, 2023 Order 4, the ruling on the objections, was issued. On May 24,2023 the due process hearing was commenced. During the proceeding, however, testimony revealed a potential concern with the standing of the parents to bring this due process case, and specifically as to who had educational decision-making for the Student at the time in issue in this matter. The due process hearing was temporarily suspended, pending the parties' submissions on the issue to the hearing officer. Order No. 5, on the status and briefing schedule on the issues was issued on June 1, 2023.

On June 2, 2023, Respondent filed its Motion to Dismiss with Prejudice with regard to the issue, and on June 8, 2023, Petitioner filed Petitioner's Response to the Respondent's Motion, and a Request for Sanctions. Order No. 6, the Order on the Motion, was issued on June 10, 2023, denying the Motion to Dismiss and declining to issue sanctions. The Order also set another PHC for the purpose of setting the final days of the due process hearing. In accordance with the Order, the PHC was held on June 13, 2023, and the parties agreed on August 14 & 15, 2023 as the dates to conclude the hearing. Order No. 7, was issued on June 15, 2023, establishing the dates for the hearing. The final segment of the due process hearing was held on August 14, 2023. On August 14, 2023, Order No. 8 was then issued and set forth the schedule for post-hearing briefs and the decision due date, that being September 12, 2023 and September 28, 2023, respectively.

A. Representatives

Petitioner was represented throughout the case by counsel, Mr. Michael O'Dell. The Respondent District was represented by Ms. Kelly Janes and Ms. Jamie Turner of Walsh, Gallegos, Trevino, Kyle, and Robertson.

B. Mediation and Resolution

The parties agreed to participate in mediation in lieu of a resolution session. The mediation was held, and no agreement was reached at that time, and the parties did continue negotiations for a period of time thereafter.

C. Continuances

There have been two standard Pre-Hearing Conferences (PHC) held in this matter, and two standard continuances granted on such dates as set forth above. In light of the legal issue that surfaced during the hearing, a temporary suspension of the due process hearing occurred, and the hearing rescheduled.

D. Preliminary Matters

In accordance with the deadlines in the most recent Scheduling Order, the parties made their respective disclosures. Thereafter, the parties filed their respective objections to the disclosures in advance of the hearing, pursuant to the hearing officer's request. The Order on the objections was issued in advance of the hearing.

The due process hearing (DPH) was then commenced on May 24, 2023 on the Zoom platform; however, as noted above, was suspended late in the day. The Petitioner continued to be represented by Mr. Michael O'Dell, and the Student's parents, *** and *** were also in attendance. The Respondent District continued to be represented by its legal counsel, Ms. Kelly Janes and Ms. Jamie Turner. Ms. ***, Executive Director of Robertson County Special Services, was present as District Representative.

E. Post-Hearing Matters

Upon the conclusion of the presentation of evidence on August 14, 2023, but prior to closure of the hearing, the parties discussed the schedule for filing closing briefs in light of the final decision due date of September 28, 2023. They discussed the timeline, and it was agreed that the transcript of the hearing would be received no later than August 21, 2023, and that Petitioner's and Respondent's Closing Briefs were due no later than September 12, 2023. The Decision remains due no later than September 28, 2023, and Order No. 8 establishing these deadlines was issued August 14, 2023. The decision is now being issued in compliance with the due date.

III. Issues

A. Petitioner's Issues

Petitioner alleges that the District has denied Student a free, appropriate public education (FAPE). The allegation of a denial of FAPE consists of the following issues:

- Whether the District violated the IDEA by failing to properly evaluate and then develop an Individual Education Plan (IEP), including the provision of educational and related services; and
- Whether the District failed to implement an adequate IEP, thereby denying the Student FAPE.

B. Petitioner's Requested Relief

Petitioner requested some remedies in the Complaint that were outside of the hearing officer's jurisdiction, and therefore cannot be considered in this due process hearing as set forth in Order No. 3. The following requests are in consideration in this proceeding:

- That the Student be provided compensatory education services for the time Petitioner alleges that Petitioner did not receive FAPE, that being the time at issue in this case, December 6, 2020 to May ***, 2021.

C. Respondent's Issues and Legal Position

In addition to a general denial, Respondent District specifically asserted that the District provided the Student a FAPE at all times in issue in this case.

IV. Findings of Fact*

1. During the time at issue in this case, the Student was residing with Student's parents within the boundaries of the Franklin Independent School District [hereinafter FISD or District]. At the time in question, Student was *** years old, and was in the *** grade at *** within the District.[1]

2. It was unclear from the evidence where the Student currently lives. While some of the testimony indicated that Student was ***, testimony also noted that Student had residency with Student's ***. However, Student's address on the *** evaluation is the same as on Student's evaluation in 2015. The Student is currently attending school in the *** Independent School District. [2]

3. The Student attended school within the District since the time that Student began ***, and attended through the end of Student's *** grade year.[3]

4. When the Student was in *** within the District, Student was ***. Student suffered ***.[4]

5. At the time of the ***, the Student was already eligible for special education as Other Health Impairment (OHI), Attention Deficit Hyperactivity Disorder (hereinafter ADHD).[5] The additional category of *** was then added to Student's eligibility.[6]

*References to the Due Process Hearing Record throughout this section are as follows: Citations to Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "P" or "R" respectively, followed by the exhibit number or letter and page number. Citations to Joint Exhibits are designated with a notation of "J" and followed by the exhibit number and page number. Citations to the transcript are designated with a notation of "T" followed by the page number.

[1] T. 250; J.1; J.5.
[2] T. 199.
[3] T. 143.
[4] T. 143-145.
[5] T. 143, 266; J.1.
[6] T. 143; J. 1.

6. The District's special education services are provided by the Robertson County Special Services, a Co-op providing such services to five different school districts within the Robertson County area.[7]

7. The District completed a Full and Individual Evaluation of the Student on December ***, 2015, while Student was in the *** grade. ***, educational diagnostician for ***, who has known the Student since Student was ***, conducted the evaluation.[8]

8. At that time, the report demonstrated that the Student was found to be average to above average in all academic areas and Student's cognitive scores fell in the average to below average ranges.[9] Ms. *** also noted that the Student's behavior ranged from average to below average to poor in some areas. Student was also received psychological services from the Licensed Specialist in School Psychology (hereinafter LSSP).[10] The evidence also showed that the Student continued to receive such counseling services from Dr. ***, "Mr. ***" throughout most of Student's time in the District.[11]

9. When the information was gathered during the evaluation, the eligibility of *** and OHI (ADHD) was provided by the Student's physician. It was noted that the form included the impact of those eligibilities as memory and attention issues, and psychological behavior implications.[12] The District then implemented accommodations for the Student that were consistent with addressing those difficulties.[13]

10. The accommodations for the Student included a number of strategies that address behavioral needs such noncompliance, failure to accept responsibility, distraction, disorganization, and attention deficits. These included approaches such as positive reinforcers, reminders, repetition, visual aids and an instructional aide.[14]

11. The same academic year, several months after the FIE, the District also completed a Functional Behavioral Assessment (FBA) for the Student. The date of the report is May ***, 2016.[15] Based on that evaluation, the District then crafted a Behavior Intervention Plan (BIP) that provided specific goals and objectives, strategies to prevent inappropriate behaviors when possible, provide interventions, and enact specific consequences for the Student when exhibiting the conduct.[16]

[7] T. 71, 304.
[8] T. 25.
[9] T. 29, 33; J.1.
[10] T. 30; J. 3:3.
[11] T. 127, 264-266.
[12] T. 34, 39; J.1.
[13] T. 41-43; J. 3.
[14] J. 1; 9-10.
[15] T. 31; J.2.
[16] J. 2:9-10.

12. Additionally, the Student's disabilities or areas of eligibility remained the same during Student's entire time within the District.[17]

13. During the Student's ***-grade year, the Student's parent had requested that the District provide assistance with behavior difficulties with the Student in the family home. Testimony established that the District offered in-home services for the parent to assist with the Student's behavior in the home.[18] The services, however, were declined by the parents at that time, noting that they "had tried that and it didn't work."[19]

14. Apparently, at some time after the involvement of ***, while the Student was still at ***, Student was referred by Student's caseworker for a psychological evaluation. The evaluation was completed on August ***, 2020 by ***. The results demonstrated that the Student was at a *** grade level in reading, *** grade level in Spelling and *** grade level in math computation.[20]

15. The summary provided that the Student would benefit from *** and listed a number of classroom strategies to address Student's ADHD. These suggestions were taken from a publication by the U.S. Office of Special Education Programs, on teaching students with ADHD.[21]

16. These grade levels in the *** report are below other educational assessments of the Student done both before and after this evaluation. Credible testimony noted that it is likely that the discrepancy between the educational assessments done by both *** and *** (where Student is currently enrolled) and the *** evaluation can be attributed to the Student not actively participating. In this instance, it is noted in the evaluation itself that the Student was irritable during testing, responded impulsively, and gave up easily. [22]

17. When the Student began the 2020-2021 school year, the IEP in place was dated March ***, 2020, and had been agreed to during the Student's annual Admission, Review and Dismissal (ARD) meeting on that same date.[23]

18. ***, currently Director of Student Services for FISD and former principal at *** for several years when the Student attended, testified that the Student was not 'given grades' and that Student, as do other students, was given the opportunity to correct and complete work. She also testified that the District was sure to consider all of the information in crafting the Student's IEP, and that it was both appropriate and individualized.[24]

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[17] T. 158; J. 1, J. 5, J. 8.
[18] T. 261-263.
[19] T. 305-306.
[20] J.4.
[21] J. 4:7.
[22] T. 47, 49, 51, 82; J. 4:3.
[23] J. 3.
[24] T. 123-124, 127-128.

19. According to the IEP, the Student was placed in all general education classes, and received specified minutes of special education inclusion support for Student's classes each week. In addition, Student was given accommodations, including access to reset areas, calculation aids, extra time, structured reminders and supplemental aids. Student also received direct psychological counseling services as well as *** services.[25]

20. The Student's BIP at that time provided for strategies for addressing the difficulties Student had with maintaining attention and taking responsibility for Student's conduct.[26]

21. There was no evidence presented that the IEP and BIP were not implemented during the 2020-2021 school year.

22. The Student's ARD committee met on three occasions during the 2020-2021 academic year, those being September ***, 2020, January ***, 2021, and March ***, 2021.[27]

23. The primary purpose of the September 2020 meeting was so that the parent could inform the committee of the family's work with *** and *** in obtaining a *** setting for the Student. A representative from *** attended the September ARD with the Student's parent.[28] At that time, the ARD Committee also added an accommodation, a reset location for the Student to 'cool off' when needed.[29]

24. The January ***, 2021 ARD was held to address a failure review. Some of the Student's supplemental aids were removed as the Student was not using them. It was also noted that the Student does better in school when Student is ***. Student's parent verbally agreed with the plan for going forward.[30]

25. An Annual ARD was held on March ***, 2021, to address the Student's annual IEP. At that time a Review of Existing Evaluation Data (REED) was also completed. The evidence also shows that the *** assessment had been completed at that time. [31]

26. During the *** grade, the Student was administered the *** assessment by the District. The results showed that Student was interested in ***. The District then considered classes for the Student for the following year that were aligned with Student's interests[32] This

[25] J.3.
[26] T. 78; J. 3:19; J.7:24.
[27] J.5, J.6, J.7.
[28] T. 295; J.5: 8, 10.
[29] J. 5:10-11.
[30] T. 69, 72, 75; J.6:6-7.
[31] J.8:2.
[32] T. 306-307.

appears to be consistent with Student's reported interests on the *** test, stating that Student was interested in ***.[33]

27. The Student's parent attended this annual ARD by telephone and verbally agreed with the IEP. She also informed the committee that the Student would not be attending school in *** the following academic year since Student was ***.[34]

28. Testimony and evidence also indicated that during the last ARD, held on March ***, 2021, that the entire ARD committee, including the parents, were in agreement with the IEP. [35]

29. ***, the current principal of *** and who was the principal during the Student's ***-grade year, testified about the Student's behavior, consequences that had been put into place, and the improvements made during the year.[36]

30. Evidence also demonstrated that during the 2020-2021 school year, there were fewer disciplinary referrals for the Student during the spring semester as compared to the fall, and records demonstrate that the Student appeared to be doing better.[37] Additional testimony showed that during this year, the Student was also making progress on Student's goals.[38]

31. The Student's parent also testified that Student was doing better during Student's ***-grade year. She noted that Student was held accountable and that Student's behavior improved. She did, however, note that Student still struggled academically.[39]

32. No evidence was presented that any teacher, or other person, completed the Student's work for Student. Further, no evidence was offered to show that the Student was 'given' grades or merely passed without merit.

33. Testimony also established that the IEP was appropriate for this Student, that Student passed all of Student's classes in the *** grade, and received an educational benefit.[40]

34. The parents attended most, if not all of the Student's ARDs throughout Student's time in the District and were consistently in agreement with the IEPs. At the last ARD in May of 2021, it was noted that the parents actually thanked the District for all of the assistance that had been provided.[41]

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[33] J. 4:3, 6-7.
[34] T. 178-179, 295.
[35] J. 7.
[36] T. 283.
[37] T.298; J. 13.
[38] T. 72-73.
[39] T. 175.
[40] T.287, 308.
[41] T. 284, 295.

35. Testimony also established that at some point after the spring semester was over, the Student was then ***.[42] Records show that for most of the 2021-2022 school year Student remained ***.[43] Student was *** – not a *** – and attended public schools.[44] It was further noted that during the time that the Student was *** that the parents may have no longer had educational decision-making authority.[45]

36. Another evaluation, dated March ***, 2022, was then completed when the Student was ***, and enrolled at ***. It showed that Student often disregarded assessment instructions, and some of the cognitive ability scores were a result of Student's behavior.[46]

37. Additional evidence showed that the IEPs at the other districts were similar to that at ***, as Student was in the general education classroom with inclusion support. Further, Student had a number of disciplinary referrals at the *** Student attended.[47]

38. Subsequent testing, as recent as completed by *** ISD, the Student's current district, also found that Student's cognitive abilities were similar to those that were found at ***.[48]

39. During the time the Student was ***, where Student's parent went for assistance, the evidence shows that Student's behaviors remained consistent with those during Student's time in ***.[49]

40. Another evaluation was completed by the ***, a psychiatric and brain imaging clinic, in December 2022 and provided to the Student's new school district, the *** Independent School District.[50]

41. The evaluation at the *** consisted of a history reporting by the Student and the Student's parents. No independent educational or psychological assessment was done, and it was noted that a section of the test, the Symptom Checklist, was not completed by the Student.[51]

42. Another portion of the test demonstrated characteristics of inattentiveness, ADHD, and impulsivity on the part of the Student.[52]

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[42] T. 212-213.
[43] P.14:3.
[44] R. 1, R. 2.
[45] T. 213-216.
[46] P. 15.
[47] R. 1A, D. F; R. 2A, C.
[48] T. 83; R. 3D.
[49] R. 1D, F; R. 2C.
[50] T.266-268. P. 14.
[51] P. 14:6-7.
[52] P.14:7.

43. The *** completed a detailed ***, which demonstrated some ***, along with different levels of activity. Some abnormal activity was also demonstrated in the other *** as well. The resulting diagnosis included ADHD as noted in the past.[53]

44. Specifically, the diagnosis and recommendations made by the *** were consistent with difficulties noted at *** such as ADHD, short attention span, impulsivity, anxiety, low motivation, disorganization and distractibility.[54]

45. The report made the following recommendations for strategies that could assist with the diagnosis. These included psychological counseling, ADHD coaching, ***.[55]

46. Further, there was no evidence that the ***. In fact, evidence from this evaluation clearly shows the ***, although at a diminished volume. It was also noted from the *** that ***, was present.[56]

47. Other than the *** report as noted, no medical or other type of evidence regarding the contentions of Petitioner concerning the impact of the *** was presented.

48. No evidence was presented that the Student's parents presented any information or documentation related to the Student's two disabilities other that the physician's diagnoses of ADHD and ***. No evidence was submitted regarding any request for additional evaluation or medical diagnosis during the time the Student was enrolled in Franklin ISD.

49. The Student's last day attending school in the District was May ***, 2021.[57]

50. The testimony and exhibits clearly demonstrated that the Student received FAPE during Student's time at Franklin ISD during the 2020-2021 academic year.

V. Discussion

The following discussion reviews the legal standards that govern the considerations and issues brought forward in this case.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. In essence, the burden of persuasion or proof falls upon the party seeking relief.

[53] P.14:7-9.
[54] P.14:8-9.
[55] P. 14:9-15.
[56] P.14: 8-9.
[57] T. 273-274, 350; J. 6.

Schaffer v. Weast, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). No distinction has been established 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).

In terms of application of this approach, the Fifth Circuit went on to establish that a presumption exists "in favor of a school system's educational plan, placing the burden of proof on the party challenging it". *White ex Rel. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 377 (5th Cir. 2003). Accordingly, in this instance, Petitioner bears the burden of demonstrating that the District failed to provide the Student FAPE.

B. Duty to Provide FAPE

A primary purpose of the IDEA is to ensure that all children with disabilities have available a free, appropriate public education (FAPE) as well as related services. Further, it is essential that the educational and related services are designed to meet the unique needs of that particular student. 34 C.F.R. § 300.39 (b)(3). Under the IDEA, school districts have a duty to provide a FAPE to all children with disabilities between the ages of three and twenty-one who reside within the jurisdictional boundaries of the district. 34 C.F.R. §300.101(a).

Additionally, the United States Supreme Court has provided guidance as to the determination of whether a school district provided FAPE to a student, with both substantive and procedural considerations. Specifically, the district must: comply with the procedural requirements of IDEA; and further, design and implement a program that is reasonably calculated to enable the student to receive an educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176 (1982). In addition, 'educational benefit' has been defined as that which is meaningful and provides a basic floor of opportunity or access to specialized instruction and related services individually designed to provide educational benefit. *Id*.

Only certain students, however, are eligible for special education, and hence FAPE under the IDEA. In order to fall within the scope of the IDEA, or qualify for services, a student must have both a qualifying disability, and also, by reason of that disability, be in need of special education and related services. *Alvin Indep. v. A.D. ex rel*, 503 F.3d 378, 382 (5th Cir. 2007).

In order to meet its substantive obligation under the IDEA, the school district must offer an individualized education plan (IEP) that is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. The adequacy and appropriateness of a given IEP turns on unique circumstances of the students for whom it was created . *Endrew F v. Douglas Cnty. Sch. Dist.,* 137 S. Ct. 988 (2017).

The Fifth Circuit has established the standard or benchmark for the determination of FAPE, consisting of four elements. These four factors must be assessed in order to determine whether the IEP in issue, and as developed and implemented by the district, was reasonably calculated to provide students with necessary educational benefit under the IDEA. These factors are as follows:

- 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 (LRE);
- Whether the services are provided in a coordinated and collaborative manner by key stakeholders; and
- Whether positive academic and nonacademic benefits are demonstrated as a result.

Cyprus – Fairbanks Indep. Sch. Dist. v. Michael F., 118 F3d 245,253 (5th Cir. 1997). There is no requirement that these four factors are considered in any particular order or that weights be given each in any particular way. *Richardson Ind. Sch. Dist. v. Michael Z.,* 580 F. 3d 286, 293 (5th Cir. 2009). Further, in a subsequent case, that of *E.R. v. Spring Branch ISD,* 73 IDELR 112 (5th Cir. 2018), the court made it clear that under *Endrew F.,* a subsequent case, the four factor test as noted above, is still valid and not in conflict.

C. Procedural Considerations

With regard to issues of the failure to provide FAPE as a result of procedural violations of the IDEA, the law holds that a hearing officer may find that a child did not receive FAPE in limited circumstances. Specifically, if the procedural violations rise to the level of impeding a child's access to FAPE, significantly denying parents the opportunity or ability to participate in the child's

education, or causing a deprivation of educational benefit, then those violations could be considered a denial of FAPE. 34 C.F.R. §300.513(a)(2); *Rowley*. However, Petitioner only raised procedural violations in the closing brief, and then only with regard to the IEP, which comes within the substantive violation claim.

VI. Analysis

In this case, Petitioner brings forth issues alleging that the District did not provide FAPE to the Student, during the time in question, that being from December ***, 2020 until May ***, 2021. In this examination, that is, the substantive consideration of the provision of FAPE, each of the four factors of the *Michael F.* analysis are considered in determining whether the school district's program meets the requirements for FAPE.

Factor I: Was the Program Individualized Based on Student's Assessments and Performance?

In providing 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, but rather also 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, 300.320, 300.323(a). A district, when developing a student's IEP, is to consider a variety of matters including the student's strengths, the parents' concerns for enhancing education, results of the most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1)(i). While the IEP need not be the best possible one nor must it be designed to maximize potential, the school district must nevertheless provide the 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), citing *Michael F.,supra*.

In this instance, the student had been enrolled in the District from *** through Student's ***-grade year. Appropriate evaluations were completed, and the IEP developed considering

the evaluations, along with teacher and parent input, observations, Student's behavior, academic performance and needs, and additional data. During that time, the Student's parents consistently attended and participated in the ARDs. At no time, including the time in question in this case, were additional evaluations requested or concerns voiced. In fact, all of the ARD committee meetings ended in agreement.

With regard to the specific IEP at issue in this matter, the annual ARD committee meeting establishing that IEP was held March ***, 2020. At that time, the record shows that all attendees, including the parents, were in agreement with its contents. The student was in all general education classes, with additional special education inclusion support provided. The Student also received several accommodations, consistent with Student's disabilities. Further, the Student received counseling services throughout the ***-grade year, along with *** services. At times, however, based on Student's conduct at school, Student *** as a positive reinforcer for good behavior. In addition, a *** assessment was completed during Student's ***-grade year, and was part of the IEP for the following school year.

As the burden is on Petitioner to overcome the presumption of the appropriateness of the District's plan (the IEP), see *White, supra*, Petitioner has failed to meet such burden.

Petitioner seems to contend that the IEP was not individualized because it did not distinguish in terms of the provided accommodations and services between those related or derivative of the ADHD, and those related to the ***. No evidence was put forth to establish that the needs of the student or the actual disabilities could be distinguished. In fact, evidence showed that they were very similar. In subsequent testing, including a detailed ***, the difficulties or concerns with behavior remained the same as many of those considered by the district. It is Petitioner's own evidence that demonstrated that the consequences of Student's *** included ADHD, distractibility, memory issues, low motivation, disorganization, distractibility, mood instability and memory issues. These are many of the same behaviors that the Student's IEP and BIP were addressing. In other words, the evidence was clear that the IEP in question, the Student's placement, accommodations, and services were appropriate, given the individual student and Student's strengths and other unique and individual considerations.

1. Academics

The evidence clearly demonstrated that the Student continued to make academic progress. The difficulty though, is with evaluations and assessments. The record is replete with examples of testing or evaluation situations, as well as teacher reports, that demonstrate that the Student is quite capable of doing grade level work and attaining high scores. The issue, however, is that Student was either non-responsive, rushed through the task, or merely chose random answers. It was noted that those factors contributed significantly to Student's lower scores in many instances. Yes, when Student was focused and completed Student's work, Student did well. Additionally, when the Student was provided additional opportunities to make up or correct Student's work, Student did so, and passed all of Student's classes.

2. Related Services

The District had been providing psychological counseling services to the Student for some time, and the District LSSP served as the Student's counselor for a number of years. It was established that they had a good rapport throughout the time, and that toward the end of the *** grade, the Student no longer was interested in direct counseling services, and the services were then changed to indirect, but remained part of Student's IEP. An additional related service included ***; however, during the ***-grade year, as part of positive reinforcement tools used for Student's behavioral concerns, a reward of *** was implemented. While no specific statistics were provided, testimony did show that on many occasions the Student was able to ***. The services offered in the IEP are sufficient related services, and were designed to, and did, provide the Student with benefit.

3. Behavioral Progress

The record is clear that this Student had some behavioral challenges, and the BIP is an important component of the IEP. In this instance, the Student's behavior was the focus of the efforts, in assisting Student with staying on track, maintaining focus, lessen disruptions, and completing Student's work. Further, all of the evidence demonstrated that the Student made positive progress regarding Student's behavior goals during the time in question. Evidence also

showed that disciplinary referrals decreased during that same time. In essence then, all of the evidence presented clearly showed that the Student made progress with improving Student's behavior.

In this case, and in light of the circumstances and the Student's unique needs, the individualized IEP and BIP assisted this Student in making progress.

Factor II: Was the Program Delivered in the Least Restrictive Environment?

Both statutory and case law clearly require that a student's IEP be administered in the least restrictive environment (LRE). This means that the District is required to educate Student with others who are not disabled, Student's non-disabled peers, to the maximum extent that is appropriate. 34 C.F.R. §300.114 (a)(2). That students be integrated into the regular classroom has been emphasized by the courts. *Endrew F.* at 1000. The LRE requirement is a key component of an appropriate placement under the IDEA. In this case, evidence showed that this Student's placement was the general education classroom with special education services provided as inclusion. This, of course, is the least restrictive environment. The Student was also with general education students for ***. Ironically, one of the contentions in the case was that the student needed *** placement, which of course is nearly the most restrictive environment. No evidence was presented, however, in support of such claim. The district delivered and administered Student's program in the least restrictive environment

Factor III: Were the Services Developed and Provided in a Coordinated and Collaborative Manner by Key Stakeholders?

This factor requires that the educational program be developed by the key stakeholders and done so in a coordinated and collaborative fashion. No evidence was provided demonstrating that the development of the students IEP was not done in a coordinated and collaborative manner. All stakeholders were involved, attended all of the ARDs, and in fact were in agreement at all of the ARD committee meetings. The Student's parents were very involved in the process.

Evidence also showed that the Student's teachers, counselor, administrators, and other support staff all worked together in the implementation of the students IEP.

Factor IV. Did the Student Demonstrate Positive Academic and Non-academic Benefits?

The weight of the evidence clearly demonstrates that the Student made academic and non-academic progress during the time at issue in this case. The Student passed all of Student's courses in the *** grade, and passed one STAAR test. The evidence established that the Student also made non-academic progress during that time. Student's behavior improved. The IEP and BIP developed and implemented by the District for the school year 2020-2021. along with any amendments, were reasonably calculated to provide Student a meaningful educational benefit under the IDEA, and the Student demonstrated such progress. At all times at issue in this matter, the Respondent District provided the Student a FAPE. Thus, in this case, the Petitioner did not meet the burden to establish that the program developed and implemented by the District did not provide FAPE to the Student.

VII. Conclusions of Law

1. The Franklin Independent School District (FISD) is responsible for properly identifying, evaluating, and serving students under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.

2. Respondent District provided Student a 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; Endrew F., 137 S. Ct. at 999.

3. Petitioner failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984).

4. Petitioner did not meet the burden of proof on the claims asserted against the District in this case, as the burden is on the party seeking relief. *Schaffer v. Weast,* 546 U.S. 49 (2005).

ORDERS

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims of Petitioner are DISMISSED WITH PREJUDICE.

All other relief not specifically stated herein is DENIED.

Signed this the 28th day of September 2023.

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Kimberlee Kovach

Special Education Hearing Officer for the State of Texas

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)(g).