

**SOAH DOCKET NO. 701-23-09431.IDEA
TEA DOCKE NO. 140-SE-0123B**

STUDENT, B/N/F PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
v.	§	
	§	HEARING OFFICER FOR
TEXAS LEADERSHIP PUBLIC SCHOOLS, Respondent	§	
	§	
	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brings this action against the Texas Leadership Public Schools (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 issues in this case are whether Respondent provided Student a Free Appropriate Public Education (FAPE) in Student’s least restrictive environment (LRE) and whether Respondent conducted an appropriate reevaluation of Student. The Hearing Officer concludes that Respondent provided Student a FAPE at all relevant times in Student’s LRE, conducted an appropriate evaluation in compliance with the IDEA, and does not owe Student any compensation.

II. PROCEDURAL HISTORY

A. Legal Representation

Petitioner was represented throughout this litigation by their authorized non-attorney representative, Carolyn Morris with Parent-to-Parent Connection Advocacy. Respondent was

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represented throughout this litigation by its legal counsel, Christopher Schulz with Schulman, Lopez, Hoffer & Adelstein, LLP.

III. DUE PROCESS HEARING

The due process hearing was conducted on March 10, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Carolyn Morris. Parent also attended the due process hearing. Respondent continued to be represented by Christopher Schulz, who was assisted by co-counsel, Maia Levenson. In addition, Dr. ***, Assistant Superintendent for the District, attended the hearing as the party representative. Both parties were given the opportunity to file written closing briefs by April 7, 2023. Respondent filed a written closing brief on April 4, 2023. Petitioner elected not to file a written closing brief. The Decision in this case is due April 21, 2023.

IV. ISSUES

A. Petitioner's Issues

In TEA Docket No. 140-SE-0123A, the Hearing Officer determined the District's decision to expel Student for excessive unexcused absences during a Manifestation Determination Review (MDR) on November ***, 2022, did not violate the IDEA. In this companion case involving the same parties, the Hearing Officer will examine issues under the IDEA unrelated to appealing the District's MDR decision. Petitioner raised the following IDEA issues for decision in this case:

1. Whether the District's Full Individual Evaluation (FIE or reevaluation) complied with the IDEA.

2. Whether the District provided Student a FAPE in Student's LRE with appropriate related services and behavior intervention services.
3. Whether the District implemented Student's Individualized Education Plan (IEP) with fidelity.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requested the following items of relief:

1. Order the District to place Student in a general education setting.
2. Order the District to provide an IEP with appropriate mental health, behavioral, and related services.
3. Order the District to develop an appropriate Behavior Intervention Plan (BIP).
4. Order the District to provide an Independent Educational Evaluation (IEE) at District expense.

VI. FINDINGS OF FACT

Background Information

1. Student is a ***-year-old, *** grade student who attended school at the *** campus in the District at the beginning of the 2022-23 school year. Student has not attended school anywhere since September ***, 2022. Student receives special education and related services as a student with Emotional Disturbance and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). Until this school year, Student

also qualified as a student with a speech impairment, but the District's reevaluation found Student no longer meets eligibility criteria for a speech or language impairment.¹

2. During the 2018-19 school year, Student attended school in the ***** Independent School District (***** ISD), where Student resided at the time and still resides today. At the end of the 2018-19 school year, Student was placed in homebound services. After Student finished homebound services, Student was to be placed in a self-contained special education classroom with a partial day schedule of a maximum of four hours per day to integrate back into Student's setting.²
3. During the 2019-20, 2020-21, and 2021-22 school years, Student was homeschooled by Parent. Student enrolled in the District at the beginning of the 2022-23 school year in August 2022.³
4. Student attended class for the last time on September ***, 2022, and Student did not return to school. On November ***, 2022, following an MDR at which the District determined Student's unexcused absences were not related to Student's disability, the District expelled Student. Despite *** ISD being willing and legally obligated to serve Student, Parent chose not to enroll Student in *** ISD after Student was expelled from the District.⁴

The District's evaluation of Student

5. Student enrolled in the District in August 2022 with an out-of-date evaluation due to Student's having been homeschooled for the previous three school years. The first day of the 2022- 23 school year was August ***, 2022. The District had a brief Admission, Review, and Dismissal (ARD) Committee meeting on August ***, 2022, to discuss Student's services as Student transferred into the District. During this meeting, the ARD Committee explained to Parent that it wished to reevaluate Student. The District said it would complete the reevaluation by September ***, 2022. The District sent Parent a Notice to Evaluate on August ***, 2022. Parent signed consent for the evaluation on August ***, 2022. The District, led by a Licensed Specialist in school Psychology (LSSP) and a diagnostician,

¹ Joint Exhibit 7, pages 1-2, 4, 30 (JL at _); J11, at 30.

² J3; J5, at 17-18, 22; J7, at 4-9.

³ J3; J5, at 17-18, 22; J7, at 4-9.

⁴ TR 62-63, 92-93, 113, 127-28, 130.

completed the evaluation on September ***, 2022, as it had agreed to do during the August ***, 2022 ARD Committee meeting.⁵

6. In conducting the evaluation, the evaluators administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4); the Revised Children's Manifest Anxiety Scales – 2nd Edition (RCMAS-2); the Children's Inventory of Anger (ChIA); the Children's Depression Inventory – 2nd Edition (CDI-2); the Behavior Assessment System for Children – 3rd Edition (BASC-3); and the Scales for Assessing Emotional Disturbance – 2nd Edition (SAED). Additionally, the evaluators interviewed Parent and conducted in-person observations of Student in three sessions in two different environments.⁶
7. A speech therapist also performed several speech and language evaluations as part of the reevaluation. The Comprehensive Assessment of Spoken Language-2 is designed to measure a student's receptive and expressive language skills. Student's scores on this assessment all fell in the average range. The Goldman-Fristoe Test of Articulation 3 tested Student's speech sound abilities. Student scored in the *** percentile, again falling within the average range. In addition to those formal tests, evaluators also observed several aspects of Student's speech through direct observation, including observing Student's greetings, requesting ability, conversational ability, and ability to maintain a topic. All were in the average range.⁷
8. To qualify for special education and related services as a student with a speech impairment, a student's scores must fall more than 1.5 standard deviations below the mean *and* there must be a direct educational impact on Student as a result of the speech disability. Student's vocal resonance, pitch, quality, and intensity were all judged to be age and gender appropriate and fall in the average range. There was no direct educational impact from any speech deficits because there were no speech deficits. Therefore, Student no longer qualifies for special education and related services as a student with a speech impairment.⁸
9. According to the September 2022 FIE, Student struggles with paying attention and staying on task. Student fidgets in Student's seat, gets out of Student's seat without permission, and is easily

⁵ TR 72-73, 142; J6, at 22; J8, at 1.

⁶ J11, at 2-4.

⁷ J11, at 4-6; TR 156.

⁸ J11, at 6; TR 156.

distracted. The function of Student's behavior is escaping tasks. Nothing in the District's evaluation indicated Student could not attend school.⁹

10. As part of the evaluation, evaluators interviewed Parent. Parent indicated Student does not exhibit depressive behaviors or anxiety more often than other children Student's age but noted Student can "at times" be withdrawn or sad. She also did not think Student was more aggressive or hyperactive than other children Student's age but reported Student acts without thinking at times and Student is in constant motion. Parent did not mention anything about Student's inability to attend school.¹⁰
11. Student met eligibility criteria as a student with an emotional disturbance in three areas: "the student exhibits inappropriate types of behavior or feelings under normal circumstances," "the student exhibits a general pervasive mood of unhappiness or depression," and "the student exhibits a tendency to develop physical symptoms or fears associated with personal or school problems." Student is also under a physician's care for ADHD and thus qualifies for special education under OHI as a student with ADHD.¹¹
12. The FIE made several recommendations for developing Student's IEP, including providing ***.¹²

Student's brief experience in the District

13. Student began school in the District on August ***, 2022. On August ***, 2022, the District formally adopted Student's schedule of services from *** ISD. The District, consistent with Student's program in *** ISD, offered all of the same related services and a partial day schedule in a *** classroom—a type of special education setting.¹³
14. On August ***, 2022, Student had an incident in which Student ***. The District conducted an MDR on September ***, 2022, and Student's ARD Committee unanimously agreed that the behavior was a manifestation of Student's disability. The District thus did not

⁹ J11, at 22-24.

¹⁰ *Id.*

¹¹ *Id.*, at 30.

¹² J11, at 30.

¹³ J6, at 19; TR 29.

remove or expel Student. Instead, the District conducted a Functional Behavioral Assessment (FBA) and developed a Behavior Intervention Plan (BIP).¹⁴

15. Based on the FBA, the BIP addressed four behavioral areas of concern: getting out of Student's seat without permission, becoming easily distracted and not staying on task, fidgeting in Student's seat and distracting others, and verbal/physical aggression. The FBA and BIP did not address Student's inability to attend school because that was not a behavior Student had demonstrated. The District also provided Student a one-on-one paraprofessional to help manage Student's behavior.¹⁵
16. On September ***, 2022, Student ***. Student was ***. The *** paperwork indicated that Student could attend school in the District with no restrictions. However, after September ***, 2022, Parent kept Student from attending school.¹⁶
17. On September ***, 2022, the District received a five-line letter from a *** who claimed to be Student's ***. The letter stated that, as of September ***, 2022, Student could no longer attend school. The letter recommended homebound services. Student had attended school from September ***, 2022, in direct contradiction to the ***'s letter. The ***'s letter also contradicted the *** instructions the *** had sent to the District, which stated Student could attend school without restrictions. Further, Student told District personnel Student enjoyed school, which seemingly contradicted the ***'s assertion that Student was incapable of attending school.¹⁷
18. Given the contradictory recommendations, the District reached out to the *** and to the *** for further clarification about Student's ability to attend school. *** personnel spoke with the District and confirmed, as written in the *** paperwork, that Student could attend school with no restrictions. Despite several attempts, the District could not reach the ***. When told the District could not get in touch with the ***, Parent told the District she would not help them connect with the *** or gather any more *** information.¹⁸

¹⁴ J10.

¹⁵ J20, at 26-28; J10; J6, at 19.

¹⁶ TR 34; J13; R12, at 20-21.

¹⁷ J15; J20, at 20; TR 39.

¹⁸ J21.

19. In contradiction to the ***'s letter, both of Petitioner's experts in this case testified during the due process hearing that there was no need for Student to miss school other than during the brief period of Student's ***. On the contrary, they testified that Student needed to be in school. The decision to keep Student from school had a negative impact on Student. Student needed to meet the demands of daily life, but instead was sheltered from those demands by Parent without a disability-related reason. Student needs the social skills that come from attending school regularly. According to Petitioner's own experts, Student was denied that opportunity without a good cause by being kept from school after September ***, 2022. Student's disability does not prohibit Student from attending school.¹⁹
20. In addition to recommending Parent enroll Student in school immediately, Petitioner's experts made several recommendations for ensuring Student's success. The experts recommended small class sizes, a behavior intervention plan, *** training, and additional time for taking tests. The District's IEP provided each of those to Student. Student's *** did not testify or provide any reports or evidence of Student's need for homebound services during this due process hearing.²⁰
21. After the District completed the FIE on September ***, 2022, the District attempted to work with Parent to schedule an ARD Committee meeting to discuss serving Student. It scheduled and sent notice for an ARD Committee meeting for September ***, 2022, but Parent cancelled the meeting. The District attempted to schedule an ARD Committee meeting in October, but Parent told the District the earliest she could attend a meeting would be November ***, 2022. The parties finally agreed to a meeting on that date. The meeting would also serve as an MDR to determine if Student's unexcused absences were caused by or directly and substantially related to Student's disabilities. The District sent Parent notice of the meeting on October ***, 2022. It then confirmed with Parent via email on November ***, 2022, and sent an iCalendar invitation also. Without notifying the District she would be absent, Parent did not attend the ARD Committee meeting.²¹
22. The November ***, 2022 meeting proceeded without Parent and served as both an MDR and an annual ARD Committee meeting. The District developed an IEP for Student during the meeting based on the new FIE and the limited time District personnel had worked with Student before Student stopped attending school. The newly developed IEP contained five measurable and individualized IEP goals based on Student's Present Levels

¹⁹ TR 89-92, 100, 113.

²⁰ TR 89-90, 101-02, 118.

²¹ J17, J18, J19, J20, TR 76.

of Academic Achievement and Functional Performance (PLAAFPs) in r***. There were three specific adaptive behavior goals designed to help Student manage Student's *** and impulsive behavior.²²

23. The IEP contained a number of accommodations specifically designed to help Student, including extra time on tests and assignments, frequent and immediate feedback, and frequent breaks. Because Student had not attended school since September ***, 2022, the District continued Student's partial day schedule with the goal of integrating Student into a full day schedule. All of Student's classes were provided in the *** classroom to accommodate the small setting recommended in Student's FIE and reiterated during the due process hearing by Student's testifying experts as an important element of the IEP. Because of Student's shortened school day, Student's only classes were ***. Student also received direct *** training 45 minutes per day.²³

VII. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a 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). Respondent 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.

Respondent 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.*

²² J20, at 5-8.

²³ J20, at 10, 13, 16, 20, 30; TR 132.

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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.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.²⁴ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). 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. *Schaffer*, 546 U.S. at 49; *Endrew F.*, 137 S. Ct. at 999.

C. FAPE

A hearing officer must apply a four-factor test to determine whether a Texas school district’s program meets IDEA requirements. 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 LRE;
- Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
- Whether positive academic and non-academic benefits are demonstrated.

²⁴ 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).

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).²⁵

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 Indep. 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, 300.320, 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 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 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. §

²⁵ 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. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

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300.324(a)(1). For Student, whose behavior impedes Student’s learning and that of others, the 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. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir. 2012).

The District developed an appropriate IEP with positive behavioral supports based on assessment and performance of Student. When Student transferred, the District implemented services comparable to those Student had received in Student’s prior school district as it was obligated to do. 34 C.F.R. § 300.323(e). At the same time, it obtained consent and completed a reevaluation within a month of enrollment. It also completed an FBA and developed a BIP after Student exhibited difficulty with behavior.

When the District conducted an ARD Committee meeting on November ***, 2022, it developed an IEP that offered Student a FAPE. The IEP had measurable, individualized goals. It had a BIP based on an FBA and targeted Student’s most problematic behaviors. *See* 34 C.F.R. § 300.324(a)(2)(i). It had *** training and a small setting with minimal distraction.

The IEP contained the elements—such as *** training, extra time for tests, and an individualized BIP—that Student’s two testifying experts recommended during the due process hearing to allow Student the best opportunity to be successful. The IEP was never implemented due to Parent’s refusal to send Student to school without any disability-related reason for keeping Student from receiving the education and social interaction Student needs. The IEP did, however, provide Student with an individualized program based on observation and assessment.

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 to 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(c).

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 District placed Student in a *** setting with one-on-one paraprofessional support to accommodate Student's behavioral issues and need for a small setting. Student attended school for such a short time that there is no way to know how appropriate the placement was. However, it was a comparable placement to the one in which Student was educated in Student's previous school district. Petitioner did not present evidence that Student needed a less restrictive placement.

The District also implemented a shortened school day for Student. The District was obligated to do this when Student transferred to offer comparable services to those Student had received in Student's previous school district. 34 C.F.R. § 300.323(e). Based on the fact Student had not attended school during the fall, the District recommended a shortened school day again at the November ***, 2022 ARD Committee meeting to help Student reintegrate into a regular schedule. The District's stated goal was for Student to attend a full school day schedule as quickly as possible.

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.*, Civil Action No. 4:16-CV-0058, 2017 WL 3017282, at *27 (S.D. Tex. June 15, 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

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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 tried to offer services in a collaborative manner. The District attempted to schedule several ARD Committee meetings during the fall of 2022, but Parent cancelled or did not attend the meetings. When Parent submitted a brief ***'s letter stating Student needed homebound services, Parent refused to provide any additional information. The letter was riddled with inaccuracies and contradicted the *** recommendation for Student to integrate into school immediately without restrictions. Parent refused to help the District verify the letter's recommendations.

The District did interview Parent as part of its reevaluation and attempted to include her in planning Student's education. Petitioner did not present evidence that the District could have done anything else to ensure Parent's participation in developing Student's IEP.

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, 813-14 (5th Cir. 2012). However, in this case, Student did not attend school long enough to observe any benefit to Student. As explained above, the IEP was

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individualized and designed to confer academic benefit on Student. Whether it would have effectively done so cannot be determined due to Parent's refusal to send Student to school.

5. FAPE Conclusion

When a parent pulls a student from school based on one letter from a *** and refuses to provide any additional information when requested, a school district cannot be held liable for failure to provide that student a FAPE. *Renee J. as next friend of C.J. v. Houston Indep. Sch. Dist.*, 913 F.3d 523, 532 (5th Cir. 2019). As in *Renee J.*, Parent in the instant case refused to provide information excusing Student from school, kept Student from school, and then claimed the District did not fulfill its obligations under the IDEA. The *** in which Student had *** said Student should return to school immediately with no restrictions. Both of Petitioner's witnesses testified during the due process hearing that Student needed to be in school and never should have been kept from it. Parent provided no information either to the District or during the due process hearing itself indicating Student could not attend school and required homebound services.

Parent made the decision to keep Student from school. The District cannot be held responsible for any lack of educational services Student received as a result of that decision. *Id.* Because there was no disability-related reason for Student to stop attending school, there was nothing the District could have implemented or put in the IEP to encourage that attendance. The IEP is designed to address unique issues caused by a Student's disability. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 346 (5th Cir. 2000). Student's IEP addressed Student's disability-related issues. It included accommodations, services, and the elements Student's experts testified would be necessary for Student's success in school. Parent's decision to keep Student from school was unrelated to Student's disability. The IEP could not have addressed Parent's refusal to send Student to

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school. Therefore, Petitioner did not meet their burden to show the District failed to provide Student a FAPE.

D. Evaluation

Petitioner contests the FIE the District completed on September ***, 2022, the same day on which Student last attended school in the District. An FIE must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, to determine whether the child qualifies for special education and the content of the child's IEP. 34 C.F.R. § 300.304(b)(1). It should use technically sound instruments of evaluation to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b)(3). It must also be sufficiently comprehensive to identify the child's special education and related service needs, whether they are commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6). Before conducting a reevaluation, a school district must obtain parental consent. 34 C.F.R. § 300.300(c).

The District began the FIE by obtaining parental consent. The FIE in this case included a review of existing evaluation data as required. It also relied on a variety of testing methods, including multiple standard educational testing tools, parent input, teacher input, in-person observations, and an interview with Student. The District assessed Student in all areas related to the suspected disabilities, including health, vision, hearing, social and emotional status, speech, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4). In short, the District conducted an appropriate reevaluation under the IDEA.

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Petitioner contests the reevaluation's finding that Student no longer qualified as a student with a speech impairment. A speech impairment is a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. 34 C.F.R. § 300.8(c)(11). The District had a qualified speech therapist conduct a thorough speech evaluation using multiple instruments as part of the team conducting the reevaluation. The evaluator concluded Student fell in the average range in every area. Where a student who previously qualified as a student with a speech impairment falls in the average range on multiple speech evaluation instruments, it is reasonable to conclude the student no longer has a speech impairment. *O.P. by Perez v. Weslaco Indep. Sch. Dist.*, Civil Action No. 7:21-cv-00352, 2022 WL 3651967, *12 (S.D. Tex. Aug. 24, 2022).

Student never again attended school after completion of the reevaluation. Thus, it is difficult to fully assess its efficacy. Petitioner did not present evidence that there were specific areas of the FIE, including the speech and language evaluation, that were conducted incorrectly or drew incorrect conclusions about Student. The evaluation complied with the IDEA.

E. Implementation of the IEP

Petitioner also claimed the District did not appropriately implement Student's IEP. To prevail on a claim under the IDEA, the party challenging implementation of the IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. This approach affords school districts some flexibility in implementing IEPs while also holding them accountable for material failures and for providing each student with a disability a FAPE. *Bobby R.*, 200 F. 3d at 349. Failure to implement a material portion of an IEP violates the

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IDEA, but failure to execute an IEP perfectly does not amount to denial of FAPE. *See Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. T.H.*, 642 F.3d 478, 484 (4th Cir. 2011).

In this case, the District implemented the IEP appropriately. The District implemented comparable services when Student transferred into the District at the beginning of the 2022-23 school year. It then implemented all aspects of the IEP when Student attended school. Student did not attend school after September ***, 2022. Thus, the District did not have an opportunity at that point to implement the IEP effectively. Petitioner did not present evidence that the District failed to implement any portion of the IEP when Student attended school.

VIII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Respondent 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; *Andrew F.*, 137 S. Ct. at 999.
3. Respondent conducted an appropriate reevaluation of Student that complied with the IDEA. 34 C.F.R. § 300.304(b).
4. Respondent implemented Student's IEP appropriately and with fidelity. *Bobby R.*, 200 F.3d at 349.

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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 April 20, 2023.



Ian Spechler
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. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).