

SOAH Docket No. 701-24-01866.IDEA  
TEA Docket No. 021-SE-0923

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# **Before the State Office of Administrative Hearings**

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**STUDENT, by next friends PARENT and PARENT,  
Petitioner**

**v.**

**Frisco Independent School District and Prosper  
Independent School District,  
Respondents**

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## **DECISION OF THE HEARING OFFICER**

### **I. STATEMENT OF THE CASE**

\*\*\*, (Student), by next friend \*\*\* and \*\*\*, (Parents and, collectively, Petitioner), brings this action against the Frisco Independent School District (Frisco ISD) and Prosper Independent School District (Prosper ISD) (collectively Respondents or the Districts) 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 Districts provided Student with a free, appropriate public education (FAPE). The Hearing Officer concludes the Districts provided Student with a FAPE and a program reasonably calculated to enable Student to make progress in light of Student's unique circumstances.

## **II. DUE PROCESS HEARING**

The due process hearing was conducted on March 25 – 27, 2024, via the Zoom videoconferencing platform. Petitioner was represented throughout this litigation by legal counsel, Janelle Davis with Janelle L. Davis Law PLLC. Jordan McKnight, with the Law Office of Jordan McKnight, appeared as co-counsel at hearing. Parents also attended the hearing. Respondents were represented throughout this litigation by legal counsel Jennifer Carroll, Meredith Walker, and Lindy French with Walsh, Gallegos, Kyle, Robinson & Roalson, P.C. \*\*\*, Assistant General Counsel for Frisco Independent School District was co-counsel for Frisco ISD throughout the litigation. In addition, \*\*\*, the Managing Director of Special Education for Frisco ISD, and \*\*\*, the Director of Special Education for Prosper ISD, attended the hearing as the party representatives.

The parties offered joint and separately disclosed exhibits. Petitioner offered 22 exhibits, and all or portions of those exhibits were admitted. Petitioner offered testimony of Student's private tutor, Student's \*\*\* grade general education teacher,

Student's \*\*\* grade general education teacher, Student's special education teacher, Student's Parent, and Student's Parent.

Respondents offered 8 exhibits, and all or portions of those were admitted. Respondent offered testimony of a Frisco ISD Licensed Specialist in School Psychology (LSSP), Prosper ISD's Director of Special Education, \*\*\* School principal, and Frisco ISD's Managing Director of Special Education. The hearing was recorded and transcribed by a certified court reporter. All parties timely filed closing briefs. The Decision in this case is due May 24, 2024.

### **III. ISSUES**

#### **A. PETITIONER'S ISSUES**

Petitioner raised the following issues under the IDEA for decision in this case. Petitioner alleges both exceptions to the statute of limitations against Frisco ISD.

#### Issues for hearing against both Respondents:

##### FAPE:

1. Whether the Districts failed to provide Student with a FAPE for the relevant time period.
2. Whether the Districts failed to develop appropriate individualized education programs (IEPs) for Student, including appropriate related services.
3. Whether the Districts failed to properly implement Student's IEPs.

4. Whether the Districts impeded the Parents' opportunity to participate in the educational decision-making process regarding the provision of a FAPE.
5. Whether the Districts failed to educate Student in the least restrictive environment (LRE).

**Identification**

Whether the Districts failed to timely and appropriately identify Student for special education and related services in all areas of disability.

**Evaluation**

Whether the Districts failed to timely and appropriately evaluate Student for special education and related services in all areas of suspected disability.

**Issue for hearing against Frisco ISD:**

Whether the District failed to provide compensatory relief as required by Covid 19 Special Education Recovery Act (SB89).

**Issue for hearing against Prosper ISD:**

Whether the District failed to have appropriate personnel present at admission, review, and dismissal (ARD) committee meetings.

**B. RESPONDENTS' LEGAL POSITION AND ADDITIONAL ISSUES**

The Districts generally and specifically deny Petitioner's issues and deny responsibility for providing any of Petitioner's requested relief. Frisco ISD plead a counterclaim for the hearing officer to determine its evaluations were appropriate.

**IV. REQUESTED RELIEF**

**A. PETITIONER'S REQUESTED RELIEF**

Petitioner seeks the following items of relief:

Relief requested from both Districts:

1. Order the Districts conduct functional behavioral assessments (FBAs) and develop an appropriate behavior intervention plan (BIP).
2. Order the Districts provide compensatory education and related services specific to Student's academic progress tutoring, speech therapy, and direct occupational therapy.

Requested relief from Frisco ISD:

1. Order the District provide an independent educational evaluation (IEE) in all areas of known or suspected disabilities.

Requested relief from Prosper ISD:

1. Order the District provide a duly constituted admission, review, and dismissal (ARD) committee meeting with required members of IEP team to include related services personnel.
2. Order the District place student back at Student's home campus in Prosper ISD in the LRE with appropriate supports.
3. Order the District provide \*\*\* in Student's notebook for use at home and school.

**B. RESPONDENTS' REQUESTED RELIEF**

Respondent Frisco ISD seeks the following items of relief:

1. A finding that the evaluation is appropriate, and Petitioner is not entitled to any IEEs.

## **V. FINDINGS OF FACT**

1. Student lives at home with Student's Parents \*\*\*. Student was \*\*\*. Student was well liked by the staff at Frisco ISD, Student is very social, and Student enjoys time with Student's peers.<sup>1</sup>
2. Student \*\*\*. Student \*\*\*. Student's \*\*\* has an impact on Student's speech, cognitive, and achievement development and performance.<sup>2</sup>
3. On October \*\*\*, 2019, Parents received prior written notice of a full initial and individual evaluation (FIIE) and notice of procedural safeguards. Frisco ISD conducted the FIIE on December \*\*\*, 2019. The evaluation included family information, teacher information, review of school records, and review of prior evaluations. Student met the eligibility criteria for \*\*\* and speech impairment. Student enrolled in Frisco ISD as a \*\*\* in the Spring of 2020. Parents again received notice of procedural safeguards in January 2020, with notice of Student's initial ARD Committee meeting.<sup>3</sup>

### **\*\*\* grade 2020-2021 school year at Frisco ISD**

4. Student's ARD Committee met on January \*\*\*, 2021. Parents were in attendance. Student's placement was the \*\*\* room for more than 21% of the day and less than 50%. Student's IEP included goals for reading, writing, math, \*\*\*, speech therapy, and functional as well as multiple accommodations. Student received the following related services:

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<sup>1</sup> Joint Exhibit (JE) 2 at 2; Transcript (TR) I at 69, 77, 87, 133-34, 147, 151, 160; TR II at 405-06, 415, 434; TR III at 510, 517-18, 557-58.

<sup>2</sup> JE 13 at 12-13.

<sup>3</sup> Joint Stipulations of Fact (JSF) at 1; JE 1 at 1-2, 18; Petitioner's Exhibit (PE) 3 at 27.

speech and language therapy, indirect assistive technology, and direct and indirect occupational therapy (OT). The meeting ended in agreement.<sup>4</sup>

5. Between January 2021 and May 2021, Student made progress on all Student's IEP goals. Parents made the decision to \*\*\*.<sup>5</sup>

**\*\*\* Grade 2021 – 2022 school year at Frisco ISD**

6. Student had a one-on-one paraprofessional with Student at all times in Student's 2021- 2022 \*\*\*-grade general education classroom. Student's peers in class helped Student and "took care of Student."<sup>6</sup>
7. Student's ARD Committee convened for Student's annual meeting on December \*\*\*, 2021. Parents attended the meeting. The Committee discussed Student's present levels for each academic subject, social skills, and speech. Parents inquired if it would be beneficial to remove some of Student's inclusion support from general education and see how Student does. Additionally, they notified the Committee they required Student to \*\*\* at home. Frisco ISD informed Parents the current level of prompting was needed to make the goals achievable for Student because the criteria for the goals was increased to make them more rigorous. At this time, Student could independently initiate and complete preferred tasks, but struggled to do so with non-preferred tasks. The Committee agreed to utilize the expectation of \*\*\* at school.<sup>7</sup>
8. During the ARD Committee meeting, Parents asked if Student's behavior was typical of Student's peers. The ARD Committee informed them that Student needed more prompting and guidance than Student's peers to be successful. Frisco ISD agreed to video Student in Student's general education setting so Parents could gain some insight into Student's current instruction and level of support. The Committee addressed the COVID-19 Special Education Recovery Act and compensatory

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<sup>4</sup> JE 3.

<sup>5</sup> JE 4; Respondent's Exhibit (RE) 9 at 6; TR I at 75.

<sup>6</sup> TR I at 63, 77.

<sup>7</sup> JE 5.

services were not recommended. The meeting ended due to time constraints with an agreement to reconvene.<sup>8</sup>

9. By December 2021, Student had made progress on or mastered all Student's annual IEP goals. On January \*\*\*, 2022, Student's ARD Committee reconvened. Parents were given an opportunity to watch the video of Student in general education prior to the meeting. Parents asked if over the next 90 days Student's augmentative and alternative communication (AAC) device and Student's aide for specials could be removed to see how Student progressed without that level of support and the Committee agreed. The meeting ended in agreement.<sup>9</sup>
10. On January \*\*\*, 2022, Student's principal emailed Parents and offered for them to visit a Frisco ISD \*\*\* classroom or \*\*\* (\*\*\*) classroom.<sup>10</sup>
11. A revision ARD Committee met on February \*\*\*, 2022. The purpose of the meeting was to discuss adding transportation services to Student's IEP. Student's communication had declined since the last meeting; however, that may have been attributed to Student's absences. The Committee agreed Parents would receive regular updates regarding Student's progress and needs. The meeting ended in agreement.<sup>11</sup>
12. In March of 2022, Frisco ISD staff developed a daily snapshot sheet to provide data to Student's Parents about Student's day. Between January 2022 and March 2022, Student made progress on 10 out of 13 IEP goals.<sup>12</sup>
13. Student's ARD Committee reconvened on March \*\*\*, 2022, to discuss if assistive technology services should be removed from Student's IEP, the addition of ESY services, and the appropriateness of prompt levels due to work refusal for non-preferred tasks. Parents were in attendance and received

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<sup>8</sup> JE 5 at 1, 28-29, 31.

<sup>9</sup> JE 4; JE 5 at 29; RE 9 at 21.

<sup>10</sup> RE 9 at 20.

<sup>11</sup> JE 6 at 1-2

<sup>12</sup> JE 7; RE 9 at 13.



the Notice of Procedural Safeguards with the ARD notice. Student's current reading level was a developmental reading assessment (DRA) level \*\*\* for comprehension and level \*\*\* for fluency; the expectation for \*\*\* graders is a DRA level \*\*. Parents shared Student would receive applied behavior analysis (ABA) therapy over the summer to help target Student's "behavioral skills." Student's communication skills declined without access to Student's AAC device, and Student needed the device to supplement Student's oral communication. Parents asked for the IEP goal to state Student would first attempt to speak orally, then use the device if needed. The Committee agreed and the meeting ended in agreement.<sup>13</sup>

14. Student's daily schedule for the 2021-2022 school year was the following: \*\*\* minutes of academic instruction in the special education setting, \*\*\* minutes in general education for non-instruction time (\*\*\*), \*\*\* minutes of academic instruction in general education setting without inclusion support, and \*\*\* minutes in the general education setting with inclusion support.<sup>14</sup>
15. During the school year Parents and multiple Frisco ISD staff emailed regularly about Student regarding Student's progress, sharing information about Student's day, and scheduling ARD Committee meetings. Student progressed socially during Student's \*\*\*-grade year. Student's general education teacher implemented Student's IEP with fidelity. By May 2022, Student made progress on all Student's IEP goals.<sup>15</sup>

**\*\*\* Grade 2022 - 2023 school year at Frisco ISD**

16. On September \*\*\*, 2022, a revision ARD Committee meeting was held. Parents attended the meeting. The Committee conducted a review of existing evaluation data (REED), which included Student's private autism evaluation and the Committee proposed additional assessments. Parents provided consent for the evaluations. Parents requested more communication about Student's daily activities at school, more support with spelling words, and

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<sup>13</sup> JE 8.

<sup>14</sup> RE 9 at 11.

<sup>15</sup> JE 9; RE 6 at 1-49; JE 9; TR I at 68, 76-77, 81.

strategies to reduce Student \*\*\*. Frisco ISD agreed to continue to develop an effective communication system with Parents including sending spelling words to them and notified them Student’s \*\*\* behavior. The meeting ended in agreement.<sup>16</sup>

17. Parents had Student privately evaluated by Student’s pediatrician for autism on April \*\*\*, 2022, and provided the evaluation to Frisco ISD on September \*\*\*, 2022. The evaluation used the autism diagnostic observation schedule (ADOS-2). Student was observed to not integrate eye contact, facial expressions, verbal language, or gestures for the purpose of communicating with the examiner or Student’s Parent in a manner consistent with Student’s developmental level. Student showed sensory behavior such as \*\*\*. The evaluator relied on parental input and reviewed the 2019 Frisco ISD FIIE. The evaluator used the DSM-5 to diagnose Student with autism spectrum disorder and recommended the following: speech therapy; OT; physical therapy; ABA therapy; a special education IEP; ample opportunity to socialize with peers such as “role playing” and “social stories”; formal social skills training; and referred Parents to several resources.<sup>17</sup>
18. In October 2022, Student’s \*\*\* teacher emailed Parents and notified them of Student’s issues over the past few weeks \*\*\*, needing additional time during transitions, shortened attention span, longer breaks to motivate Student to continue working, some \*\*\* behavior, ignoring teacher requests, and not progressing at the same rate Student had in the past. Student needed a teacher or paraprofessional to support Student for all activities and would not work independently. At this time, Student showed progress on or had mastered 11 of Student’s 15 annual IEP goals.<sup>18</sup>
19. On November \*\*\*, 2022, Student’s \*\*\* grade general education teacher emailed Parents and provided Student’s progress for them to discuss at the upcoming parent/teacher conference. The email detailed what level \*\*\* graders in Student’s class were working on for math, reading, and writing and informed Parents how different it was from Student’s current level.  
For

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<sup>16</sup> JE 10; JE 12; JSF at 2.

<sup>17</sup> RE 6 at 98, 101, 106-107.

<sup>18</sup> JE 14; RE 9 at 77, 84-85, 87; TR I at 133-34, 164.

example, in math \*\*\* graders were working on \*\*\* and Student was working on \*\*\*. Student was working on prerequisite skills for the academic tasks the other students were working on.<sup>19</sup>

20. Additionally, the teacher notified Parents that Student \*\*\*, would \*\*\* when working on an academic task and would only work independently when the teacher was next to Student with one-on-one guidance. Student required prompting, redirection, and motivators to complete unpreferred tasks. As the academic rigor increased, Student's progress slowed. While \*\*\* were not new behaviors, they increased during this time. Teachers had to give Student more prompts, more work breaks, and shorten Student's work time.<sup>20</sup>
21. Sometime in October or November, the principal called Parent to discuss possibly recommending the \*\*\* classroom for Student. In November, Student's special education teacher emailed with Parents to observe a \*\*\* classroom in Frisco ISD.<sup>21</sup>
22. Frisco ISD completed a reevaluation on November \*\*\*, 2022. The reevaluation included teacher input, parent input, a review of previous testing, observation of Student, and new formal testing. Student demonstrated a significant receptive and expressive language disorder. Student continued to meet the eligibility criteria for special education as a student with a speech impairment in the areas of receptive, expressive, and pragmatic language.<sup>22</sup>
23. A Frisco ISD LSSP conducted the Social Responsiveness Scale, Second Edition (SRS-2), which is used to determine the likelihood that a young person meets the criteria for being identified with autism spectrum disorder. Student's Parents rated Student as "moderate" for all areas and teachers rated Student as "severe." Student demonstrated difficulty picking up on social cues and does not consistently use communication for the purpose of maintaining social

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<sup>19</sup> RE 9 at 104; TR I at 138.

<sup>20</sup> RE 9 at 104-05; TR I at 91-93, 128, 191.

<sup>21</sup> JE 9 at 107-108; TR I at 229.

<sup>22</sup> JE 13 at 1, 11.

interaction. Student tended to display stereotypical behaviors or highly restrictive interests.<sup>23</sup> The stereotypical behaviors or highly restrictive interests were not described in the evaluation or at hearing.

24. An important differentiation between \*\*\* and autism is \*\*\*. During observations, Student demonstrated \*\*\* by \*\*\* and working cooperatively with male and female peers in the classroom setting. The LSSP observed Student to have the desire and ability to interact socially with peers and adults. The evaluator determined Student's ability to communicate verbally and nonverbally, as well as Student's level of social and interpersonal skills appear better explained by Student's current eligibility of \*\*\* and are not indicative of autism spectrum disorder.<sup>24</sup>
25. The reevaluation used the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) to assess Student's intellectual functioning. Student's full scale intelligence quotient was a \*\*\*, which indicates Student's overall cognitive abilities are in the extremely low range compared to same aged peers. The evaluation concluded Student's global cognitive ability falls more than two standard deviations below the mean. Student's adaptive behavior is significantly below age expectations and appears to be commensurate with Student's identified cognitive level.<sup>25</sup>
26. At the time of the reevaluation in November 2022, Student received instruction in the general education setting. The curriculum had to be modified to such an extent that it was unrecognizable compared to Student's grade level peers. Student was at a beginning of the year \*\*\* level for a majority of Student's academic skills. Student did not interact with Student's peers during general education instruction time.<sup>26</sup>
27. In December 2022, 8 of Student's 15 IEP goals were discontinued or modified

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<sup>23</sup> JE 13 at 17-18.

<sup>24</sup> JE 13 at 18; TR II at 415.

<sup>25</sup> JE 13 at 20-21, 27.

<sup>26</sup> JE 13 at 28; TR III at 549-50; TR III at 550.

to be rewritten with different mastery criteria due to lack of progress or working on the same goals for years. Student made progress on Student's other seven goals, including being more expressive and communicative with teachers and classmates, \*\*\*, and carrying classroom materials and Student's water bottle independently to and from the \*\*\* classroom.<sup>27</sup>

28. During the Fall of 2022, Student had 120 minutes of academic instruction in the special education setting and 90 minutes of academic instruction in the general education classroom with inclusion support. Student was also in the general education setting for \*\*\*.<sup>28</sup>
29. On December \*\*\*, 2022, Student's ARD Committee met for Student's annual ARD. Parents attended the meeting. Student's IEP goals and accommodations were updated. The Committee reviewed the reevaluation from November 2022 and the private autism evaluation. Student's educational placement changed to self-contained more than 60% and the location was the \*\*\* classroom. Student's schedule included general education with inclusion supports for: transitioning to and from \*\*\*. Student did not need inclusion support in general education for \*\*\*. Assistive technology, OT, and transportation services were continued. The meeting ended in agreement.<sup>29</sup>
30. The ARD Committee recommended the \*\*\* classroom because Student's progress had slowed and the gaps in performance between other \*\*\* graders and Student was growing. Student spent all Student's instruction time one-on-one, which Student did not enjoy because Student is a social child. Additionally, Student's independence was not growing, Student was allowing other students to do things for Student even when it was a skill Student could do independently. In the \*\*\* classroom, Student would be with peers also working on alternative curriculum.<sup>30</sup>

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<sup>27</sup> JE 14; RE 9 at 104-105; TR I at 137, 166; TR III at 527-28.

<sup>28</sup> JE 5 at 25; RE 2 at 7-8.

<sup>29</sup> JE 15.

<sup>30</sup> TR I at 151-152.

31. On January \*\*\*, 2023, Student started in the \*\*\* classroom, which was across the hall from Student's former general education classroom and the same room Student previously used as a \*\*\* classroom.<sup>31</sup>
32. In February 2023, Student was reading at a DRA level \*\*\* and average \*\*\* grade students read at a DRA level \*\*\* to \*\*\*. Student was able to \*\*\* but struggled with comprehension. Student was unable to \*\*\*. Due to this deficit, typing on a keyboard would not be conducive to Student's learning and would be an ineffective way Student to show Student's work at this level.<sup>32</sup>
33. Throughout the year, Frisco ISD staff and Parents emailed about Student's progress, to share positive information from Student's day, and to generally share information about Student.<sup>33</sup>
34. During the Spring 2023 semester, Student spent the majority of Student's day in the \*\*\* classroom and only had general education time for \*\*\*. Student did not receive academic instruction in the general education setting. Student enjoyed Student's time in the \*\*\* classroom and Student's defiance diminished. Student had reading partners and was able to practice Student's functional goals with peers. At times, Student did not want to leave the \*\*\* classroom for Student's general education time.<sup>34</sup>
35. In May 2023, Student's progress report showed Student made progress on all Student's 18 IEP goals. Student received all As and Bs on Student's report card. Student missed \*\*\* days of school.<sup>35</sup>

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<sup>31</sup> TR I at 116.

<sup>32</sup> TR III at 512-14.

<sup>33</sup> RE 9 at 50-151.

<sup>34</sup> TR I at 117, 158-60.

<sup>35</sup> JE 17; JE 32 at 1.

**\*\*\* Grade 2023 – 2024 school year at Prosper ISD**

36. Student enrolled in Prosper ISD on June \*\*\*, 2023. Student’s neighborhood campus was \*\*\*. Prosper ISD emailed Parents on July \*\*\*, 2023, and requested Student’s current IEP. Parents replied with the IEP and requested a “full evaluation.” On July \*\*\*, 2023, Prosper ISD emailed Parents and notified them Student would attend \*\*\* in the centralized \*\*\* classroom.<sup>36</sup>
37. On August \*\*\*, 2023, Parents sent an email to Prosper ISD that indicated they revoked consent for Student’s special education services because Student made significant progress on Student’s IEP, the accommodations and services needed to be revised, requested an FIE, and notified Prosper ISD that Student would start \*\*\* grade in general education classes at Student’s neighborhood \*\*\* school.<sup>37</sup>
38. The next day, Prosper ISD responded and requested a time to meet with Parents to discuss their email. A meeting between Parents and Prosper ISD staff took place on August \*\*\*, 2023. At the meeting Prosper staff informed Parents revocation of consent meant if Student attended \*\*\* on Student’s first day of school it would be in general education without special education services and Parents continued to revoke consent for special education services. Prosper ISD did not send prior written notice after Parents’ revocation and did not propose convening an ARD Committee meeting prior to the first day of school.<sup>38</sup>
39. On August \*\*\*, 2023, Student attended the first day of school at \*\*\* in the general education setting with no supports. On the same day, Parents requested an emergency ARD Committee meeting.<sup>39</sup>

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<sup>36</sup> RE 9 at 162-63, 166; TR I at 234.

<sup>37</sup> JE 18 at 3; RE 9 at 169.

<sup>38</sup> JE 21 at 12; RE 9 at 169; JSF at 3; TR II at 451-52, 454.

<sup>39</sup> RE 9 at 176, 178; TR II at 455.



40. On August \*\*\*, 2023, Prosper ISD's Director of Special Education had a phone call with mom to discuss Student attending the first day of school with no services. Parents agreed to an ARD Committee meeting.<sup>40</sup>
41. On August \*\*\*, 2023, Prosper ISD held a transfer ARD committee meeting. Parents attended the meeting with a private ABA therapist and family friend. District staff included the principal from \*\*\*, a diagnostician, a general education teacher, a special education teacher, and two special education coordinators. Parents wanted Student placed in general education with inclusion support at \*\*\* while Prosper ISD collected data. They expressed the following concerns with placement in the centralized \*\*\* classroom at \*\*\*: the location requires bussing which would interfere with Student's daily routine, Student would be \*\*\*, the building was 16 years old as opposed to the 2-year-old building in Frisco ISD, and the general education classroom was on the other side of the school and not across the hall like at Frisco ISD. Prosper ISD offered to place Student in the centralized \*\*\* classroom at \*\*\* School, collect data, and reconvene to review Student's progress. Prosper ISD acknowledged its mistake of not providing prior written notice when Parents revoked consent for special education services. The meeting ended in disagreement with a plan to reconvene.<sup>41</sup>
42. Student's ARD Committee reconvened on August 21, 2023, with Parents in attendance with an advocate. Parents' advocate questioned why Student's disability of Down Syndrome was not included as an other health impairment (OHI) in Student's IEP. Prosper ISD offered an additional evaluation. Parents continued to want Student in general education with inclusion supports. Parents stated they only agreed to the \*\*\* classroom in Frisco ISD because they believed it was not implemented as written and Student received more time in the general education setting than the IEP stated. Prosper ISD continued to rely on the current IEP which indicated Student needed the \*\*\* classroom and they informed Parents they had no new data to support a placement change. Student's private ABA therapist attended the meeting, but could not speak to Student's academic performance. Prosper ISD decided to

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<sup>40</sup> JSF at 3; TR II at 456-58.

<sup>41</sup> JE 21 at 9, 11-12; PE 26; TR II at 318-19.



table the ARD committee meeting to gather more information from Frisco ISD about how much time Student spent with non-disabled peers and how much one-on-one time Student needed. On the same day, Prosper ISD sent Parents a Notice of Consent to Evaluate and never received a response from Parents.<sup>42</sup>

43. Parents emailed both Districts on August \*\*\*, 2023, and requested to revert to Student's IEP from December \*\*\*, 2021, and invoke stay put. On August \*\*\*, 2023, Prosper ISD received an OHI form signed by Student's physician, which indicated Student's impairments were \*\*\*, autism spectrum disorder, and \*\*\*.<sup>43</sup>
44. Student's ARD committee reconvened on August \*\*\*, 2023. Prosper ISD had visited Student's prior campus in Frisco ISD and verified with previous staff that Student's IEP was implemented as written in December 2022. Parents and their advocate continued to want Student placed at Student's home campus, in general education with inclusion supports while data was gathered. Prosper ISD continued to offer placement in the centralized \*\*\* classroom while they gathered data to determine if any changes to the IEP were necessary. Parents wanted this meeting documented as Student's annual ARD Committee meeting. Prosper ISD refused due to the absence of new data. Parents and the advocate left, and the meeting ended in disagreement.<sup>44</sup>
45. On August \*\*\*, 2023, Prosper ISD's Director of Special Education emailed Parents to reconvene Student's ARD Committee meeting to discuss Student's OHI form. The Director of Special Education sent Parents another email on October \*\*\*, 2023, to reconvene Student's ARD Committee and a revised consent for reevaluation to include a functional behavior assessment per Parents' request.<sup>45</sup>

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<sup>42</sup> JE 21 at 12-13, JE 22; PE 27, PE 28, PE 29, PE 30; TR II at 467.

<sup>43</sup> JE 24 at 6; JE 26.

<sup>44</sup> JE 21 at 14; PE 31, 32, 33, 34.

<sup>45</sup> JE 27 at 1; JE 28 at 1.

46. Student never returned to Prosper ISD after August \*\*\*, 2024. Student currently receives instruction from a private tutor for math and reading for one hour, two times per week. The tutor has public school and special education experience. Student is working on \*\*\*.<sup>46</sup>
47. During this hearing, Student's Parent acknowledged that Parent and Student's Parent did not fully understand the IEP process and believed Student continued to spend the majority of Student's school day in the general education setting after Student's placement changed to the \*\*\* classroom in December 2022. Student's Parent admitted Parent and Student's Parent never looked at the complete language written in the IEPs. In August 2023, when Parents started disagreeing with Prosper ISD is when they realized Student spent most Student's time in the \*\*\* classroom and not in the general education setting. Student's Parent acknowledged no one told Parent Student was receiving the same amount of time in general education after January 2023 as before, and Parent had made an assumption.<sup>47</sup>

## **VI. DISCUSSION**

### **A. BURDEN OF PROOF**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing and 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 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.

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<sup>46</sup> PE 23; TR I at 26-27, 30, 33; TR II at 468.

<sup>47</sup> TR I at 201-202, 238; TR II at 260, 264, 386-87.

at 62; *Andrew F., ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

**B. DUTY TO PROVIDE A 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). The district has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C. F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

The Districts are 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.* 580 U.S. at 399.

**C. STATUTE OF LIMITATIONS**

Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the

complaint. 20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a)(1-2). The limitations period begins to run when a party knows, or has reason to know, of an injury. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995).

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

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

20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f); 19 Tex. Admin. Code § 89.1151(d). Parents bear the burden of establishing an exception to the limitations period. *G.I. v. Lewisville Indep. Sch. Dist.*, No. 4:12-cv-385, 2013 WL 4523581, \*8 (E.D. Tex. Aug. 23, 2013).

Petitioner filed this due process hearing on September 25, 2023, and asserted both exceptions to the two-year statute of limitations. Both Districts filed answers on October 6, 2023, and asserted neither exception applied to this case.

The evidence showed Petitioner knew or should have known about the alleged actions forming the basis of this complaint in August 2023, when Parents disagreed with Prosper ISD's plan to implement Student's IEP as written in December 2022. Petitioner never disagreed with Frisco ISD's IEP during the time Student was enrolled in that District. Petitioner timely filed its due process complaint within the two-year statute of limitations period.

The evidence showed Parents attended all ARD Committee meetings and received the prior written notice and notice of procedural safeguards from Frisco ISD multiple times beginning on October \*\*\*, 2019. Receipt of the procedural safeguards indicates the parent “knew or should have known” of the alleged action that serves as the basis for the request. *El Paso Independent School Dist. v Richard R.R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008) (“When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statute of limitations for IDEA violations commences without disturbance....that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA”).

While it is undisputed that Prosper ISD failed to provide prior written notice after Parents withdrew consent for special education services on August \*\*\*, 2023, Student only enrolled in that District in June 2023 and Prosper ISD did not owe Student a FAPE before that time. Therefore, the withholding exception does not apply to either District.

Additionally, no staff or personnel from either District ever indicated to Parents that the allegations that form the basis of this complaint were resolved. Frisco ISD continued to update Student’s IEP annually or more, continued progress monitoring, and even changed Student’s placement in December 2022 to the \*\*\* classroom in an effort to provide Student with an appropriate program. Prosper ISD met with Parents for three ARD Committee meetings in an effort to provide Student with an appropriate program by offering to educate Student in a centralized \*\*\* classroom while collecting data to potentially revise Student’s IEP based on that data. The misrepresentation

exception does not apply to either District. The relevant time period for the case is within the two-year statute of limitations.

**D. EVALUATION UNDER THE IDEA**

In conducting an evaluation under the IDEA, a school district must (1) 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, that may assist in determining whether the child is a child with a disability and the content of the child's IEP; (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b). The student must also be assessed in all areas of suspected disability. 34 C.F.R. § 300.304(c)(4).

Petitioner argues Frisco ISD should have completed a reevaluation on or before December \*\*\*, 2022, and that Frisco ISD's autism evaluation was not appropriate. Parents provided Frisco ISD with a private autism evaluation and then Frisco ISD conducted a REED on September \*\*\*, 2022, which included input from Parents and teachers and determined a reevaluation was needed to determine any changes to Student's programming. Frisco ISD completed the reevaluation on November \*\*\*, 2022, which included teacher input, parent input, multiple cognitive assessments, hearing and vision screening, a developmental profile, an audiologist

report, and an autism assessment. Additionally, the reevaluation was within the three-year reevaluation time period required by the IDEA. The reevaluation complied with IDEA evaluation requirements.

Student's private evaluator diagnosed Student with autism spectrum disorder based on a medical diagnosis using the DSM-5 and not the criteria for special education eligibility. The private evaluator did not observe Student in the classroom and did not have teacher input but relied on Frisco ISD's FIIE from 2019. Additionally, the private evaluator did not testify at hearing, so it is difficult to determine the credibility or specifics of the findings. It is clear Student demonstrates some characteristics of autism spectrum disorder, as indicated from Parent and teacher input, such as difficulty picking up on social cues and stereotypical behaviors. However, the credible evidence shows that Student craves social interaction with peers and adults and Student's difficulties with interpersonal skills are better explained by Student's \*\*\* and not autism spectrum disorder.

Based upon the credible evidence presented, Petitioner did not prove the District failed to conduct timely evaluations in all areas of suspected disability or that Frisco ISD's evaluation was not appropriate.

#### **E. IDENTIFICATION/ELIGIBILITY**

Petitioner alleges that the District failed to identify Student as eligible for special education under the IDEA under the eligibility classification of autism and OHI \*\*\*. Questions of eligibility and identification as a student with

a disability are resolved on the basis of whether an evaluation shows the student meets the criteria of one or more of the enumerated disability classifications and demonstrates a need for special education. *See* 34 C.F.R. § 300.8(a), (c)(1-13). To be eligible for special education services, a student must both have a qualifying disability and be in need of special education services to address the disability, not simply be likely to benefit from special education services. *Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 382 (5th Cir. 2007).

Student was previously identified as a Student with a disability and in need of special education services in 2019. Therefore, the issue is not if Student has a disability, but rather under which classification Student is eligible for special education services. Petitioner argues because of Student's \*\*\*, Student must be eligible as a Student with OHI \*\*\*. The IDEA does not require classifying a student in a particular category, but only the provision of an appropriate education. *Lauren C. by & through Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 370 (5th Cir. 2018). As long as a school district evaluates a student to target specific issues a student is experiencing, it need not identify and diagnose every possible disability a child has. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3rd Cir. 2012).

The evidence showed Student's IEP was tailored to Student's specific needs for Student's disabilities. What label the Districts used for Student's special education classification is immaterial as long as Student received a FAPE. *Lauren C.*, 904 F.3d at 371 (5th Cir. 2018). As the FAPE analysis below sets forth, the Districts provided Student a FAPE.



Petitioner failed to meet the burden of establishing that the District failed to properly include the eligibility classification of autism or OHI \*\*\* in Student's IEP.

**F. FAPE**

A hearing officer applies 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 Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F. 3d 245, 253 (5th Cir. 1997). *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

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. *Michael Z.*, 580 F. 3d at 294.

**1. Individualized on the Basis of Assessment and Performance**

In meeting the obligation to provide a FAPE, the 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 Districts 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 Districts’ obligation when developing Student’s IEP is to consider Student’s strengths, Student’s parent’s concerns for enhancing Student’s education, results of the most recent evaluation data, and Student’s academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1).

The evidence showed that Frisco ISD developed and Prosper ISD offered an IEP based on assessment and performance. Student’s IEP included annual academic goals, related services, descriptions of related services, and accommodations based on Student’s present levels. Frisco ISD updated Student’s IEP multiple times as needed based on Student’s performance, parental input, ARD Committee deliberations, and evaluations/assessments. All ARD Committee meetings in Frisco ISD ended in agreement. Additionally, many of the recommendations from

Student's private autism evaluation, such as OT, speech therapy, a special education IEP, and time to socialize with peers, were already included in Student's IEP. The first time Parents disagreed with the IEP was when Student enrolled in Prosper ISD and the reason for the disagreement was due to Parents' misunderstanding of how Student's program had been implemented in Frisco ISD.

Parents contend Student's IEP should have included autism and OHI \*\*\*, but as discussed above, Student had an IEP based on Student's disabilities and needs without those specific classifications. The only accommodation Parents suggested based on Student's \*\*\* was allowing Student to type instead of writing \*\*. The credible evidence showed that including typing for Student at this time would not be beneficial due to Student's inability to \*\*. Additionally, Student's \*\*\* attributed to Student's \*\*\* was addressed by the breaks incorporated into Student's program.

## **2. Least Restrictive Environment**

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

1. Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
2. 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:

1. a school district's efforts to provide the student with supplemental aids and services in the general education setting;
2. a school district's efforts to modify the general education curriculum to meet the student's individual needs;
3. the educational benefit a student is receiving while placed in the general education setting; and
4. 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 evidence showed Student was educated in Student's LRE. When Student enrolled in Frisco ISD, Student's placement was the \*\*\* room at least 21% and less than 50% of Student's time. Student split Student's time between the general education classroom with inclusion support and the \*\*\* room. When Student was in the general education classroom, Student received one-on-one instruction. During the fall of 2022, Student began to need more prompting to complete Student's work, more breaks, and displayed more work refusal. This led Frisco ISD to change Student's placement to the \*\*\* classroom. In December 2022, Student's placement changed to the \*\*\* classroom based on Student's lack of progress and the widening gap between Student's curriculum and Student's peers' curriculum. The IDEA does not require a school district to create an alternative curriculum or offer a "classroom within a classroom" in order to comply with the IDEA's LRE requirement. *Brillon v. Klein Indep. Sch. Dist.*, 100 Fed. App'x. 309, 313 (5th Cir. 2004). Frisco ISD tried to educate Student in general education with Student's non-disabled peers, but they had to modify Student's curriculum to a point it was unrecognizable from other \*\*\* grade work. Student did not benefit from Student's peers academically, only socially, and Student allowed Student's nondisabled peers to perform tasks for Student. Parents stressed they wanted Student in general education to mirror and learn from Student's nondisabled peers; however, the credible evidence showed Student did not gain insight from Student's nondisabled peers academically, but rather enjoyed and learned from them socially.

Once Student was placed in the \*\*\* classroom, the refusal behaviors decreased, Student made academic progress, and Student enjoyed the class to a point

that at times Student did not want to leave for Student's general education time. However, Student still had time with Student's nondisabled peers for social interactions in \*\*\*.

Prosper ISD continued Student's previous IEP and the centralized \*\*\* classroom. Parents disagreed with the \*\*\* classroom at \*\*\* School because it was a sixteen-year-old building, the age of the children in the classroom, and the location of the general education classroom on the opposite side of the building.

Petitioner in this case conflates "educational placement" with "site selection." Educational placement does not refer to a particular school building or classroom, but to the educational setting and the educational program for the student. *E. R.*, 909 F.3d at 770; *White ex rel. White v. Ascension Parish School District*, 343 F.3d 373, 379-80 (5th Cir. 2003). Parents must be involved in determining educational placement, but do not have to be involved in the site selection. *E. R.*, 909 F.3d at 770. Additionally, Petitioner is misinformed that location of a Student's placement is an ARD Committee decision. Prosper ISD has the discretion to determine the site location to implement Student's IEP.

### **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.*, 909 F.3d at 754. 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*, 343 F.3d at 380. 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. Parents attended all ARD Committee meetings and with an advocate for two of the meetings in Prosper ISD. Parents had meaningful input in ARD Committee meetings which resulted in changes to Student’s IEP and how Student’s progress was reported to Parents. While at Frisco ISD, teachers, administration, and Parents talked frequently via email and face-to-face conversations about Student’s program, Student’s needs, and Student’s progress or lack thereof.

Petitioner’s collaboration argument is focused on Prosper ISD’s position to implement the IEP as written from Frisco ISD while they collected data and Parents desire for placement in general education with inclusion support during data collection. Because Student transferred into Prosper ISD with an IEP, Prosper ISD was required to offer comparable services to Frisco ISD’s IEP until it adopted the IEP or developed a new IEP. 34 C.F.R. § 300.323(e). Parents incorrectly assumed Student spent the same amount of time in general education after Student’s placement changed to the \*\*\* classroom in Frisco ISD.

Prosper ISD held three ARD Committee meetings in an effort to come to a consensus about Student’s placement and include everyone Petitioner wanted at the

meetings. Parents were upset Prosper ISD wanted to get more information from Frisco ISD instead of taking their word on how Student's program was implemented. Prosper ISD was merely trying to get a full picture of Student's program. In fact, getting more information from Frisco ISD was necessary, because Parents did not provide accurate information about what Student's program looked like in Frisco ISD due to their misunderstanding.

Petitioner failed to establish that the Districts excluded Parents in bad faith or refused to listen to them.

#### **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).

The evidence showed Student made academic and non-academic progress. During Student's time at Frisco ISD, Student made progress on Student's IEP goals and when Student's progress slowed and Student's curriculum was modified to an extreme extent, Student was moved to the \*\*\* classroom. In the \*\*\* classroom, Student made progress on all Student's IEP goals and made As and Bs on Student's report card. It is undisputed that Student made social or non-academic progress based on Student's increase of expressiveness and communication with teachers and classmates.



## **5. FAPE CONCLUSION**

The Districts developed programs for Student that were reasonably calculated to provide Student an educational benefit based upon Student's unique needs. *Andrew F.*, 580 U.S. at 399, 403. Student's IEP and program were developed using Frisco ISD evaluations and placed Student in Student's LRE. Parents, as well as key stakeholders from the Districts, provided input to develop Student's program and Student made progress. A review of the overall educational program shows Student was provided a FAPE and made progress with the program as it was developed and implemented. *Michael F.*, 118 F.3d at 253; *Hovem*, 690 F. 3d at 391.

### **G. IEP Implementation**

When a parent brings a claim based on a school district's failure to implement an IEP, the *Michael F.* first factor (whether the program is individualized) and second factor (whether the program is administered in the LRE) are generally "not at issue." *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hanna W.*, 961 F. 3d 781, 795-96 (5th Cir. 2020) (citing *Bobby R.*, 200 F.3d 341). Rather, a court or hearing officer 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.*, 200 F.3d at 349).

Petitioner alleged in the complaint that the Districts failed to implement Student's IEP, but Petitioner did not present evidence of any specific portions of the

IEP the Districts failed to implement. The credible evidence shows the Districts implemented Student's IEP with fidelity and Student demonstrated progress in academics and social interactions. To prevail on an implementation claim under the IDEA, Petitioner must show more than a *de minimis* failure to implement all elements of that IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Bobby R.*, 200 F.3d at 349. Petitioner did not meet its burden to prove the Districts failed to implement substantial or significant portions of Student's IEP.

#### **H. COVID-19 Special Education Recovery Act (SB89)**

In 2021, the Texas legislature amended Chapter 29 of the Texas Education Code to require school districts to consider the impact of COVID-19 school closures on students with disabilities. Tex. Educ. Code § 29.0052 (expired). In relevant part, ARD Committees were required to consider whether special education and related services to students under their IEPs during the 2019-2020 or 2020-2021 school year were interrupted, reduced, delayed, suspended, or discontinued; and whether compensatory educational services are appropriate for the student. *Id.*

Petitioner alleged this issue in the complaint; however, no evidence was presented at hearing regarding this issue or that Student did not receive services during the COVID-19 Pandemic. The evidence showed that Frisco ISD addressed the COVID-19 Special Education Recovery Act in the ARD Committee meetings as noted in the Committee deliberations. Petitioner did not meet the burden of proving Frisco ISD failed to provide compensatory relief as required by the COVID-19 Special

Education Recovery Act (SB 89).

**I. Procedural Issues**

Petitioner alleges a procedural violation of the IDEA, claiming Prosper ISD failed to have appropriate people at the ARD Committee meetings. Liability for a procedural violation only arises if the procedural deficiency impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2). The required members of the ARD Committee include the parents of a student; one general education teacher; one special education teacher; and a district representative who 1) is qualified to provide specifically designed instruction to meet the unique needs of children with disabilities, 2) is knowledgeable about general education curriculum, and 3) is knowledgeable about the district's resources; an individual who can interpret the instructional implications of evaluation results. 34 C.F.R. § 300.321.

The evidence showed the initial Prosper ISD ARD Committee meeting held on August \*\*\*, 2023, met the IDEA requirements by including the principal of \*\*\* School as the District's representative, a general education teacher, a special education teacher, and Parents. Additionally, the ARD Committee included two special education coordinators, a diagnostician, a second administrator, Student's private ABA therapist, and a family friend. Petitioner argues that the ARD Committee meetings on August \*\*\* and \*\*\* failed to include a speech therapist, an occupational therapist, and a nurse. These individuals are not required members of the ARD Committee but may be included at the discretion of the parent or the school district

pursuant to 34 C.F.R. § 300.321(a)(5); 19 Tex. Admin. Code § 89.1050(c).

Prosper ISD included a school psychologist and a speech language pathologist at the August \*\*\*, 2023, ARD Committee meeting at Parents' request. The evidence showed that Prosper ISD ensured that persons required by statute or regulation were present at Student's ARD Committee meetings.

Prosper ISD did fail to provide prior written notice after Parents revoked consent for special education services. They acknowledged this mistake during the initial ARD Committee meeting on August \*\*\*, 2023. Based on Parents' disagreement with the proposed IEP and placement of Student in the centralized \*\*\* classroom at \*\*\* School, the multiple ARD Committee meetings, and the fact Student never returned to campus in the District, the failure to provide the prior written notice does not rise to a denial of a FAPE. Prosper ISD offered Student an appropriate program designed to provide Student with a FAPE. Petitioner failed to meet its burden on this claim.

## VII. CONCLUSIONS OF LAW

1. The burden of proof in this case is on Petitioner, as the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The Districts 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. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).
3. The Districts met the obligation to conduct necessary and timely evaluations of Student. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303.

4. Student continues to be eligible for special education and related services as a student with \*\*\* and speech impairment. 34 C.F.R. § 300.8(a)(6), (11); 19 Tex. Admin. Code § 89.1040(c)(5), (10).
5. Petitioner failed to show Student requires eligibility for special education and related services as a student with \*\*\* or autism. 34 C.F.R. § 300.8 (c)(1)(i), (9); 19 Tex. Admin. Code § 89.1040 (c)(1), (8).
6. Petitioner failed to show Student required COVID-19 compensatory services. Tex. Educ. Code § 29.0052.
7. Petitioner failed to show the ARD Committee meetings did not include required members. 34 C.F.R. § 300.321.

**ORDERS**

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

**Signed May 24, 2024.**

FILED  
701-24-01866  
5/24/2024 11:27 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

ALJ Signature:



Kasey White

Presiding Administrative Law Judge

ACCEPTED  
701-24-01866  
5/24/2024 11:32:38 am  
STATE OFFICE  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

**NOTICE TO THE PARTIES**

The Decision of the Hearing Officer in this case 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).