

DOCKET NO. 109-SE-1223

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

FINAL DECISION OF THE HEARING OFFICER

Introduction

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing federal and state regulations. Petitioner Student brings this case against Respondent Silsbee Independent School District (Respondent, the District, or Silsbee ISD), and generally alleges that the District failed to provide Student with a free, appropriate public education (FAPE). The main issue in this case is whether Student is entitled to residential educational placement at public expense.

Procedural History

Student filed Student Complaint or Request for Due Process Hearing on December 7, 2023. Before the response to the Complaint was due, the parties agreed to mediate their dispute. The District later filed a timely response to the Complaint on February 12, 2024. The parties sought and obtained three continuances for good cause.

The Hearing Officer conducted a hearing on the merits in this case on May 21-22 and October 22-24, 2024. The delay between hearings resulted from several missing

documents that were not discovered until the first hearing, which then necessitated a continuance to allow their production and review.

Throughout these proceedings, Mark Whitburn with Whitburn & Pevsner, PLLC, represented Student. Geneva Jones with Geneva Jones & Associates, PLLC, represented the District.

Issues from the Pleadings

Student's Complaint raises the following legal issues:

Whether the Respondent District failed to provide Student a FAPE when it:

- a. Failed to design and implement an appropriate IEP for Student; and
- b. Failed to design and implement an appropriate BIP for Student.

Student seeks the following relief in Student Complaint:

- a. Private placement for the rest of the current school year in the *** and the following school year; and
- b. Any and all further relief the Hearing Officer deems appropriate or which is recommended by Student's experts and private evaluators.

In its response to the Complaint, the District denies Student's allegations and asserts that it has provided Student a FAPE sufficient to meet Student unique educational needs, making a residential placement inappropriate in this instance. The District also contends that Student is not entitled to any relief.

Findings of Fact¹

¹ In this decision, references to the Transcript of the Hearing on May 21-22, 2024 and October 22-24, 2024 will be "Tr. at _." References to Joint Exhibits will be "JX_ at _"; Petitioner's Exhibits will be "PX_ at _"; and Respondent's Exhibits will be "RX_ at _."

1. Student is a ***old *** student currently attending ***School as an grader within the Silsbee Independent School District. *(IX 7 at 1)*. Student has received special education services at schools within the District since 2014. *(IX 9 at 2)*.
2. Student is eligible for special education services based on***, other health impairment ***, and speech impairment. *(Id. at 2)*.
3. Student currently lives with Student Parent, ***, and***. *(Id. at 1)*. Student parents are ***. *(Id.)*

Student's 2021 ARD meeting and IEP

4. Student's ARD Committee met on December *** 2021 for an annual review and to develop Student Individualized Education Program (IEP). *(IX 2)*. At that time, Student was eligible for special education services based on ***and speech impairment. The Committee set several measurable annual goals in reading, language arts, math, science, adaptive behavior, ***, occupational therapy, and speech therapy. *(Id. at 6-12)*. Student received Student classes in a self-contained classroom with some opportunities to participate in nonacademic activities. *(Id. at 19-21)*. The Committee also prepared an appropriate ***for Student in Student IEP to address behavioral issues. *(Id. at 31-36)*. Student's Parent agreed with the IEP. *(Id. at 28)*.

Student's 2022 ARD meeting and IEP

5. Student's ARD Committee met on November ***, 2022 to develop another IEP. *(IX 3)*. Student continued to be eligible for special education services due to ***and speech impairment. *(Id. at 2)*. Student present level of academic achievement and functional performance (PLAAFP) indicated some continued behavioral issues such as ***. The Committee, however, indicated no behavioral

concerns with Student that would interfere with Student academic environment. (*Id. at 25*). Academically, Student grades in math, science, reading/language arts, and social studies were***. The ARD Committee created several measurable annual goals and also prepared an *** to the IEP. (*Id. at 7-11, 27-32*). Student's Parent ***agreed with the IEP. (*Id. at 26*).

Review of existing evaluation data (REED) in February 2023

6. The ARD Committee referred Student in or around February 2023 for a reevaluation to determine if Student had any additional disabilities under the IDEA. (*RX 4*). The review of Student's prior evaluations in the REED indicated the following:

- Student is largely ***. Student speech is not ***. Continued speech therapy is recommended.
- In terms of functional performance in physical/health, Student has adequate gross motor skills but weakness in Student fine motor skills.
- Student currently exhibits some *** behaviors, including *** Student ***Those behaviors were nonexistent or not reported in previous FIEs.
- Student intellectual functioning is consistent with Student adaptive behavior. Student has few appropriate cognitive learning strategies.
- Academically, Student is showing improvement in Student grades year-over-year. On Student ***, Student is also showing progress.

(*RX 4 at Bates pages 2748-2768*).

February 2023 ARD meeting and IEP

7. Student's ARD committee met again on February ***2023. (*JX 4*). The reason for the meeting was to review the IEP because Student's family was concerned that Student was not receiving all the services Student needed. The family stated that they felt Student had been neglected and that school is just a glorified babysitter for Student. (*Id. at 1*).

8. The ARD Committee first noted that,

"[Student] came to us at the beginning of Student *** grade year. This action required Student to transition from the ***campus to the ***campus so Student had to adjust to almost all new people and definitely a new building of unfamiliar rooms and places. **We acclimated Student to Student new surroundings as fast as Student could tolerate then began observing behaviors that might need improvement or modifications.... We have been able to turn several behaviors around from a negative situation to a positive one.** Student has been redirected from ***." ²

(IX 4 at 3) (emphasis added).

9. The Committee went on to create several measurable annual goals in various subjects for Student. *(Id. at 7-11)*. In addition, the Committee discussed and recommended extended school year services (i.e., summer school) for Student. *(Id. at 20)*. The Committee also noted that it would complete an additional evaluation or FIE for Student a couple months later in April. *(Id. at 23)*. And the Committee stated that it would complete a Functional Behavioral Analysis (FBA) by a board certified behavior analyst (BCBA), who would then develop and implement an ***** program for Student. *(Id. at 24)*.

10. Student's Parent and *** expressed an interest in ***** therapy but also stated they would like Student to attend ***, a residential facility. *(Id.)* In-home training assistance for parents was also discussed during this meeting, but parents declined this training. *(Id.)*

11. Based on this ARD meeting, the District proposed the following FAPE for Student:

² The record is unclear why Student entered *** mid-year. The significant the change in Student's environment and routine could have triggered some of the reported inappropriate behaviors, based on his diagnosed ***.

- Updated Assessment - Full Individual Evaluation
- ASA Program Development
- ***** Program Training
- *** with Functional Skills Instruction and appropriate staff-to-student ratio
- Speech Therapy
- Occupational Therapy
- IEP Goals and Objectives
- In-Home Training and Parent Training (declined by the parent)
- *** Services
- ESY Services
- Structured Schedule in the *** classroom
- Positive Behavioral Supports
- Facilitation of services with outside agencies

(Id. at 25).

12. Student's Parent *** agreed with the proposed IEP for Student. *(Id. at 26).*

Student's 2023 full individual evaluation (FIE)

13. Student underwent Student most recent FIE in April 2023. *(IX 9).* A multidisciplinary team conducted the FIE. *(Id. at 32).* Student's PLAAFP at this time indicated the following:

- [Student] will work in Student area and move about Student things (work table and chair, large ball, large bean bag) while performing usual tasks and taking breaks. If something is bothering Student, Student will *** to demonstrate the agitation or confusion that Student feels. Student will go further by ***Student ***, ***Student ***, making ***, ***Student ***and Student ***. Sometimes Student even ***.
- In Math, [Student's] strengths are identified as good with sorting ***.
- In Reading/Language Arts, [Student's] strengths are the ability to complete *** when Student desires to cooperate. Student needs to learn to be less dependent on adult sitting with Student most of the time.

- In Science, [Student] seems to acknowledge the differences between things Student can ***.
- In Social Studies, [Student] can identify ***as soon as Student can see it. Student knows Student ***.
- In Physical Education, [Student] requires the accommodation of close supervision by a paraprofessional and modification of program activities. ***. Student does walk sometimes like they do at the beginning of the period but ***.
- [Student] is seen for speech therapy weekly to address language and communication skills. Student overall participation has improved the past 4 weeks.... It is recommended the SLP consult with the teacher/paras in using the *** in order to allow [Student] to make choices in Student environment throughout the day. All of [Student's] needs are scheduled throughout the day and are anticipated and met by Student caregivers.
- [Student] receives occupational therapy services *** minutes weekly with no services for one week to observe for carryover in skills to address deficits in fine motor skills, visual motor integration skills, perception skills, bilateral coordination skills, executive functioning skills, and sensory integration skills which impact Student ability to participate in classroom activities such as performing handwriting tasks legibly, writing at a reasonable rate, copying from the board or a book at an age-appropriate level. [Student] participates in therapy sessions to the extent of Student ability. Student is prone to put ***. Progress toward goals and objectives in the IEP is limited due to regression suffered from *** activity.

(IX 9 at 4).

14. Student's FIE indicated several deficits and needs. Those included a developmental disability significantly affecting verbal and nonverbal communication and social interaction, primarily due to ***Student also is diagnosed with ***for which Student is under a doctor's care and ***. In addition, Student has an *** based on *** functioning. Finally, Student has a speech impairment that adversely affects Student ability to be understood and to communicate appropriately. This impairment also affects Student ability to express Student wants and needs, formulate questions, ask for assistance and

clarification, understand sequencing and procedures to complete tasks, and follow directions within an educational environment. (*Id. at 25-26*).

15. The FIE evaluators identified and recommended several approaches to addressing Student's educational and behavioral needs. (*JX 9 at 26-29*). The evaluators also made specific recommendations for assistive technology and occupational therapy. And the evaluators continued to recommend in-home training, parent training, and community-based training. (*Id. at 29-31*).

Student's ARD meetings and IEPs throughout 2023

16. Throughout 2023, Student's ARD Committee met several times to develop IEPs for Student. Those meetings and IEPs are discussed below.

May 2023 ARD meeting and IEP

17. Student's ARD Committee met again on May *** 2023 for Student annual ARD. (*JX 5*). This was the first ARD meeting after Student received Student FIE in April 2023. This also was the first ARD meeting in which Student had been determined eligible for special education services based on***, other health impairment-***, *** disability, and speech impairment. (*Id. at 1-2*).

18. Student's PLAAFP noted that Student used an***, referred to as a***," to help Student communicate with others. Most of Student current grades indicate Student scoring in the ***range. Student has received speech and occupational therapy services, which the Committee recommended Student continued. (*Id. at 3-4, 6*).

19. During this meeting, the Committee found that Student's behavior impeded Student learning and recommended a behavior intervention plan (BIP), visual supports, physical or verbal prompts to stop/change Student behavior, coordination of school/home behavior supports, and an ***** program with one-

on-one support. (*Id. at 9, 54-64*). Specifically, the Committee addressed behavioral issues as follows:

Behavioral accommodations, IEP goals, and ***** intervention were reviewed. ***reviewed [Student's] FBA and reviewed drafted behavioral goals. Target behavior to be addressed will be tantrums that include whining, crying, hollering, and self injury. Triggers that are noted are denial, waiting, and change of schedule. No aggressive behavior towards the staff was observed. [Student] does have a low level tolerance for nonpreferred activities. ***will be providing training and consultation to address behaviors and in the provision of ***** therapy. The ARD committee agreed.

(*Id. at 33*).

20. The ARD Committee also developed several measurable annual goals across different subjects. (*Id. at 11-19*). Student's teachers noted that Student was making progress on Student current goals. (*Id. at 32; see also JX 11*).

21. Student's Parent ***disagreed with the IEP from the May *** 2023 ARD meeting, so the Committee reconvened on May ***2023. (*JX 5 at 33*). The Parent ***wanted an *** therapist to work directly with Student, while the District's BCBA ***explained Student would be working with Student's teacher as a supervisor to provide services. (*Id. at 34*).

22. The Committee reconvened again on June ***, 2023. (*Id.*) District members of the Committee explained and clarified in-home/parent training to Student's family. The Committee also discussed and clarified the differences in services Student would receive from special education at school versus residential placement at ***. In addition, the Committee noted that Student was improving in Student use of the ***. The Committee also agreed to send IEP progress reports home every 3 weeks to help the family track Student's progress. The Committee also discussed the *** program developed for Student, noting:

The *** program was discussed. The *** program is specific and individualized to Student. This program is documented in writing and has been provided to the family. The program will be implemented as documented and training will begin this summer, upon completion of the ARD.

(IX 5 at 34).

23. Student's family asked for time to consider the District's proposed FAPE. *(Id.)*

24. The ARD Committee reconvened on June ***2023 to address any additional concerns by the family. At this meeting, the Committee referred Student to a community organization, ***, to ***. ***also had questions about Student's school bus services, which were answered. The District asked the family to give its staff time to implement the IEP before considering residential placement. ***responded that they were not dropping the possibility of such placement and, if Student is not making progress, they would ask the District to send Student to ***. The Committee decided to meet again in October 2023 to review Student progress, make any needed changes to ensure Student needs are met, and to ensure that Student is making progress. *(Id. at 36)*. Family agreed to the IEP and the District's proposed FAPE:

- Individual Education Plan
- Self-Contained Special Education Classroom
- One-to-One support
- Functional Skills Instruction
- Individualized *** Program with monitoring and consultation with a BCBA
- Nonacademic and Extracurricular participation with General Education Peers
- Occupational Therapy Services
- Speech Therapy Services
- Assistive Technology (***)
- In-Home Training/Parent Training
- Special Transportation
- ESY Services

(IX 5 at 30, 416).

August 2023 ARD meeting

25. The ARD Committee reconvened on August ***2023 to review in-home evaluation and discuss proposed goals for the new school year. In-home training was recommended for several sessions. The Committee also drafted several annual goals for Student which were accepted. *(JX 6)*.
26. ***expressed concern about Student's being integrated into the community and getting Student on a wait list for ***. District staff advised that integration will be introduced through in-home training. The ARD Committee explained that *** is not presently being considered for Student due to the District's offer of a FAPE. The Committee also discussed least restrictive environment (LRE) and noted that Student is being education in an LRE, specifically in a self-contained classroom for special education. All members of the ARD Committee agreed to the IEP. *(JX 6 at 11-19, 26-28, 31, 33, 35)*

October 2023 ARD meeting and IEP

27. The ARD Committee held a review meeting on October***, 2023 to review Student's progress in various areas. *(JX 7)*. The Committee noted that Student is being taught using an *** style of teaching and is responding very well. Student data shows that Student is learning the topics we have focused on so far. Student uses Student prior knowledge and carries that on into the new information presented and can soon make the right choices. Like anyone else, Student learns some things easier than others. The data is showing steady increases as [Student] works through learning the tasks. Many of the areas have reached 100% with some that have worked up to 20-40% for the things Student is finding more difficult to grasp. Student is able to understand things as they are presented in this style of learning very well so it appears that the continuation of this methodology will help [Student] attain the knowledge we are working for if given enough time.

Behavior has also been an area of concern in some areas and great improvements in other areas. The data also helps to see that Student

***- episodes occur at minimal times per day. Student wears ***every day so ***. The structure of the learning helps [Student] to have a comfortable level of expectation as to what is next for Student in Student day. The biggest behavioral issue at this time is *** that Student is choosing to use. We are working to help Student learn to control those outbursts and maintain the structure of the *** methods.

(JX 7 at 4).

28. The Committee also updated the annual measurable goals to replace the ones that Student has since mastered. *(Id. at 11-19, 34).* At the end of the meeting, the family was not satisfied with Student's progress, explaining:

The parents are no longer willing to give the district an additional opportunity to serve [Student]. *** referred back to the lack of progress prior to the *** program being put in place. The district was unable to review the committee recommendations, progress monitoring data, or the recommended goals to replace goals mastered as of 10/2023. ***indicated there is no need to continue. The family is done with the district and disagree.

[Student advocate] ***met with the family privately during a break. Upon return, ***stated that the family would like to provide their requests in writing for consideration and suggested that the meeting be recessed. The district agreed to provide the parents with prior written notice to their requests within 15 days of receipt of the parent's written request.

The ARD meeting is recessed.

(JX 7 at 34).

Student's most recent IEP

29. The District held an annual ARD meeting for Student on March***, 2024. *(PX 19).* The ARD Committee reiterated Student's eligibility for special education services based on ***, other health impairment-***, *** disability, and speech impairment. Student's PLAAFP indicates improvement in speech skills with development or mastery of goals. Student also shows improvement with use

of Student *** and is tolerating redirection well overall. In-home and parent training was provided to family. ***reports Student's overall progress and wants this training to continue. *(Id. at 2-4)*.

30. Academically, Student's grades are mixed. Student most recent *** results ***, so Student is receiving accelerated instruction through Student *** program with support and monitoring from a BCBA. *(Id. at 4-6)*. The Committee developed revised, measurable annual goals for Student. *(Id. at 12-19)*. Student's LRE continues to be in a self-contained special education classroom. *(Id. at 29-31)*.

31. During Committee deliberations, Student's teacher described Student recent progress. Student developments at home were also covered by family. Student also is making good progress with the *** program. The meeting was not completed and rescheduled due to time constraints. *(PX 19 at 36-37)*.

32. The ARD Committee reconvened on April *** 2024. Student's family did not attend, so the District agreed to proceed with the meeting but to not implement the IEP without Parent's consent. The Committee discussed *** options, preparing a *** Supplement to the IEP. BCBA *** will continue to implement Student's *** program, as well as review and revise the BIP for Student and develop strategies to address Student's struggles with changes in Student daily routine. *(Id. at 37)*. The Committee agreed to the following program for Student:

- Individual Education Plan
- IEP Progress Reports sent home every 3 weeks
- Self-Contained Special Education Classroom
- One-to-One support
- Functional Skills Instruction
- Individualized *** Program with monitoring and consultation with a BCBA

- Nonacademic and Extracurricular participation with General Education Peers
- Occupational Therapy Services
- Speech Therapy Services
- Assistive Technology (***)
- In-Home Training/Parent Training
- Special Transportation
- ESY Services
- Additional *** Training for Bus Staff (in the event special transportation services are accessed by the family)

(PX 19 at 38, 54-59).

33. On April***, 2024, Student's family did not agree to this IEP, nor did they wish to reconvene the ARD meeting for further discussions. *(PX 19 at 38, 81).*

34. At the hearing, the parties' witnesses offered the testimony below, providing additional context to the parties' exhibits.

35. ***was Student's primary special education teacher in 2022 through late 2023. *(Tr. at 387).* Significantly, ***explained that Student's ARD Committee in November 2022 did not determine that Student needed a BIP at that time because school staff was gathering data for Student transition to ***school and Student ***in the IEP addressed behavioral issues. *(Id. at 388-392).*

36. Student's current and primary teacher, ***stated Student participates in a one-on-one program all day and that Student behaviors are not too severe for the classroom. ***confirmed that *****took several days of training by ***on implementing the *** program Student developed for Student. *(Tr. at 646- 691).* From ***'s perspective, Student receives a FAPE and Student has made progress in several areas, including communication, math sequencing, identifying community helpers, and conducting Student in the school. *(Id. at 697-700).*

37. ***, the District's Director of Special Education, explained that Student is in an *** at school with *** other students and *** adults where Student is educated in a one-to-one ratio. Student also attends P.E. and lunch with typical developing peers. With respect to Student's *** behavior of ***the District purchased ***for Student ***. The District also has provided Student's family with in-home training and parent training through a special education teacher, as well as *** (*Tr. at 45, 62-68*). And according to ***the District does not have any policy against placing students in residential treatment centers and has placed other students in such centers before. (*Id. at 95-96*).
38. In early 2023, the District hired BCBA ***to develop and implement an *** program specifically for Student. ***did so, which included Student observing and assessing Student both at home and in school, developing a program to track behaviors, implementing behavioral interventions as well as a BIP for Student, and training school staff on implementing the *** program. ***also helped draft individualized goals for Student's IEP after May 2023. (*Tr. at 113-188*).
39. ***testified that Student has made "quite noticeable" progress. Student personally observed Student improving with Student transitions, social interactions, communication skills, *** improvement. *** noted that Student's behaviors at school were not severe and did not cause ***concern for Student's well-being or safety. (*Tr. at 192-196*).
40. The parties debated the propriety or validity of the tracking system ***used to track events when Student engaged in ***or other *** behaviors. ***explained that tracking these behaviors required looking at "the frequency rate of a behavior, how often does the problem behavior happen, how long on average does it last for." (*Tr. at 195*).

41. ***, a psychologist and Student's expert witness, believes that*** tracking methodology was flawed and that *** needed more data to properly evaluate Student's progress. *** also stated that *** could not tell from the school documents whether or not Student's behavior was improving. *** did not speak to any school officials about Student as part of *** assessment or opinion for this case. (*Tr. at 554, 558-561, 581-589, 594-595, 598*).
42. By contrast to ***, the District's expert witness and LSSP ***I did not take issue with *** tracking or "tallying" system used to track Student's behaviors at school. (*Tr. at 843-863*). *** explained that ***developed Student tracking system to use a consistent definition of "episode" to ensure everyone was measure the same thing, and that school staff would have been trained on how to track data. (*Id.*)
43. ***explained how Student *** program that Student implemented for Student yielded progress. During Student's May 2024 ARD meeting, ***stated that "[Student] is making good progress in the *** program." (*Tr. at 171*). The basis for this conclusion, according to ***:

Well, as you know from looking at the *** program document, there's more than one component to what would be considered an *** program. The *** strategies are utilized across all sorts of skill development areas -- increase behavior, decrease behavior, refine behavior as I mention initially.

So good progress in general, certainly across skilled area, mastering goals, of making huge strides with the *** system compared to when I first got to know Student, seeing a reduction in the magnitude of the challenging behaviors as well as the duration from when I did the FBA, and you go back and look at how long some of these episodes could last. You know, seeing a reduction in those.

Not only just from observing the staff interact with Student, but again, sir, I'm always hands-on. At least some -- some of the time

while I'm there I want to get in there. And -- and, for example, when I was there last time, I think it was the fifth, you know, I was with -- with Student pairing up with a staff member at all times. **And so I would say I've noticed tremendous progress since I got involved and did that FBA.**

(Tr. at 171-172) (emphasis added).

44. Reflecting an opposite perspective, Student's Parent described Student Student's behavior much differently. Student noted that while at home, Student continues to throw fits^{***}, acts ^{***} while in the community, and is ^{***}. *(Tr. at 713-716)*. Student's most recent medications also have caused Student to gain a lot of weight and to be sleepy. *(Id. at 717-718)*. Parent feels that Student needed to bring Student legal proceeding because ^{***}believes Student is not receiving the needed level of education, has not shown progress, and needed more support and structure. *(Id. at 721-722)*.

45. Both Parent and Student's^{***} believe ^{***}, a residential placement, would be a more appropriate placement for Student. *(Tr. at 722-724, 728-732)*. Student's ^{***}testified that several District officials had spoken favorably about ^{***}, albeit outside of school and not in a formal ARD Committee setting. *(Id.)*

46. On the issue of residential placement, both expert witnesses ^{***}and student's treating psychiatrist ^{***}recommended ^{***} for Student. *(Tr. at 590-591, 631-633)*. However, District officials and witnesses strongly disagreed and explained at the hearing the reasons for not supporting Student's placement at ^{***}:

Q. Are you familiar with ^{***}?

A. I am familiar with ^{***}.

Q. And how are you familiar?

A. I have had students who have been placed at ^{***}. I have visited with ^{***}. I have met with their administrators. I have met their teachers. I've observed their classrooms, and I have observed their homes where the students live.

Q. Does *** have a BCBA like *** to provide *** services to the children?

A. The do not currently employ a BCBA to provide service -- to provide a *** service or training to their staff.

Q. So if Student were to go to ***, would they be able to implement Student IEP which requires the *** services based on the staff that they have?

A. No.

Q. Does *** require *** services?

A. Student current offer of FAPE in order to meet Student specific need does require that support.

Q. Do you have any concerns with *** going to ***?

A. I do.

Q. What are those concerns?

A. I do not believe *** can provide the quality of service that we are providing Student here in the district.

* * *

Q. Have you while paid, employed by the district placed a student from this district into a residential treatment center?

A. Yes.

Q. And what -- generally speaking, what was the difference between placing that student there and why the district is saying they are not going to place Student in a residential center if the district has filled another in those centers?

A. The particular student currently being served in a residential facility has dangerous behavioral needs that the district cannot support or provide for.

Q. Can you provide and support Student in this educational environment?

A. Absolutely.

*(Tr. at 93-96 – ***, Silsbee Director of Special Education).*

Q. Have you ever had a chance to see [Student] with Student ***?

A. Yes.

Q. How have you observed their relationship?

A. [Student] seems to really like [Student***] – [Student***] is very much involved with [Student]. Helping Student with many tasks from what I have picked up from conversations with [Student***].

Q. Does it seem that they have a positive relationship?

A. Very much so.

Q. If [Student] were to be removed from the house and placed in *** basically 100 miles away do you think that would interfere with their relationship?

A. Absolutely.

Q. Would you find that to be detrimental to [Student]?

A. Absolutely.

*(Tr. at 484 –***Silsbee Diagnostician).*

Q. Are you familiar with ***?

A. I am.

Q. And how are you familiar?

A. I have been to *** on numerous occasions. I've evaluated students who are or in the process of being placed there. I have evaluated students who were in that program and I have worked with them on transitioning kids back from the program to their home district.

Q. Can they implement student program at ***, Student current educational program?

A. They cannot implement Student current educational program.

Q. Do they have one-on-one instruction that student is receiving within the district?

A. They do not provide a one-on-one type setting. In my experience the students are in a regular classroom setting. It is smaller. There might be up to *** kids. They are sitting in desks. There is a teacher who presents a lesson and there are attendants -- I would not say paraprofessionals, but there are attendants there to help with maintaining behavior.

But it is a typical classroom setting. While they might help a child one-on-one with an assignment or a skill I have not observed anyone to work one-on-one with the types of methodologies that are being regularly provided by the school district.

Q. Are you aware whether they are using or they have an *** program there?

A. They do not have an *** program there. They provide multiple things. They don't ascribe to one particular methodology.

Q. And does student IEP call for an *** program?

A. It does.

Q. Does it call for discreet trial training?

A. It does.

Q. And does *** use discreet trial training?

A. Not to my knowledge.

(Tr. at 818-819 –***, private LSSP).

Discussion

A. Burden of proof

There is no distinction between the burden of proof in an administrative hearing such as this case or a district court proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). In a due process hearing under the IDEA, the burden of proof rests upon the party challenging a proposed IEP and placement or seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). Further, “a presumption exists in favor of the local public school district’s plan for educating the child, provided it comports with IDEA.” *Teague, supra*, at 132.

B. Student’s FAPE and request for residential placement

The main issue throughout this case is Student’s family’s request for residential placement of Student at ***. Underlying this request are two core legal issues and the bases on which Student challenges the District’s refusal to place Student at ***. Those legal issues now before me are whether the District denied Student a FAPE by:

Failing to design and implement an appropriate IEP for Student; or

Failing to design and implement an appropriate BIP for Student.

Certain well-settled principles guide the analysis in this case. The Supreme Court has held that to determine whether a public school has provided FAPE to a student, the school must both comply with IDEA’s procedural requirements and develop an

individualized program reasonably calculated to enable the student to receive an educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-207 (1982). The Court also explained that an “educational benefit” under IDEA means one which is meaningful and provides a basic floor of opportunity or access to specialized instruction and related services individually designed to provide educational benefit. *Id.* at 201. An educational program or IEP is meaningful if it is reasonably calculated to confer a meaningful educational benefit rather than regression or trivial educational advancement. *Rowley, supra; Houston Indep. Sch. Dist. v. V.P.*, 582 F.3d 576, 583 (5th Cir. 2009)

Shedding further light on IDEA and its FAPE requirements, the Supreme Court later made clear that the Act does not guarantee any particular educational outcome but rather only requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 137 S.Ct. 988, 197 L.Ed.2d 335 (2017).

The Fifth Circuit created a four-part test for determining whether a school district has provided FAPE to a student, using the following factors:

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 and collaborative manner by the key stakeholders; and
4. Whether both positive academic and nonacademic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 253 (5th Cir. 1997). When reviewing these factors, courts have found there is no particular manner to consider or weigh them. Rather, the caselaw holds these factors are “indicators” of an IEP’s

appropriateness and intended to guide the fact-intensive inquiry for evaluating whether an IEP provided an educational benefit. *Michael Z., supra*, 580 F.3d at 293-294. In the present case the record shows that, under the four *Michael F* factors above, Silsbee ISD provided Student an IDEA-compliant benefit during the relevant period.

1. Individualized IEP based on assessment and performance

The IDEA requires school districts to have an IEP in place at the beginning of each school year that is individualized for the student, based on assessment and performance. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). Here, the District had in place an IEP at the beginning of each school year, as well as revised Student's IEPs throughout the school year to account for various developments affecting the Student.

There can be no dispute that the IEPs were individualized for Student. The ARD Committee considered several individual assessments and evaluations of Student in developing Student IEPs. The District also retained an outside BCBA, ***, to create a unique *** program individualized solely to Student.

The District also offered numerous supplemental services for Student and Student family that included in-home training and education, as well as ***. In addition, the ARD Committee modified Student's IEPs to reflect progress in Student performance on various goals, as well as to create new annual goals requiring yet higher performance from Student.

Turning to Student's BIP, the District also developed and implemented an appropriate BIP for Student. Student correctly notes that a *formal* BIP was not in place until mid-2023 (*JX 5 at 9, 20, 62-64*). However, District witness *** explained that before the formal BIP was in place, Student's *** to Student IEP addressed dealing with Student behavioral issues in previous school years. (*Tr. at 473-474*). And it is also clear from the record that Student's behaviors were always discussed and addressed in all relevant ARD

meetings. Thus, that this subject was not addressed under the specific, formal BIP does not mean that the District failed to address Student's behavioral concerns at all. They were indeed addressed.

Another issue in dispute was the validity of the tracking or tallying system ***designed to monitor changes in Student's behavior. While the parties' experts disagreed on the appropriateness or validity of the tracking approach, this argument tends to miss the forest for the trees. The fact remains that the frequency of Student's maladaptive behaviors indisputably decreased over relevant timeframe according to Student's teachers responsible for monitoring and tracking Student behavior. Student's teachers who directly observed improvements Student behavior corroborated this point. Consequently, the ultimate goal of improving Student's behavior was being met, regardless how it was measured.

As a whole, I find the District developed and implemented appropriately individualized IEPs and BIPs for Student on a holistic basis, drawing from numerous resources and aimed toward helping Student progress at school as well as home. Student's IEPs met this first FAPE factor and were "reasonably calculated to enable [Student] to make progress appropriate in light of [Student] circumstances." *Endrew, supra*, 137 S. Ct. at 999.

2. Least restrictive environment

The IDEA requires school districts to educate disabled students in least restrictive environment. 34 C.F.R. § 300.114. The requirement ensures that disabled children are educated to the maximum extent possible with nondisabled children. *Id.* Simply put, IDEA requires schools to mainstream disabled students as much as is appropriate. *Rowley, supra*, 458 U.S. at 202; *Daniel R.R. v State Bd of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989).

In cases such as this where the Student seeks residential placement, this placement (excluding juvenile detention or a state-supported living center) represents the most restrictive educational setting in the continuum of alternative placements. 19 Tex. Admin. Code § 89.1005(c)(10). A residential placement under the IDEA may be appropriate when it is (1) essential for the student with a disability to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the student to obtain an education. *Michael Z., supra*, 58 F.3d at 301.

On the record before me, Student's placement at *** would neither be essential for Student to receive a meaningful educational benefit, nor would it be the least restrictive environment for Student. First, as discussed below, Student has and does receive more than a de minimis educational benefit in Student current placement. School and District staff who work directly with Student uniformly testified that Student is making significant progress, especially with Student behavioral goal. Second, Student is able to associate with Student nondisabled peers in PE and lunch, which fulfills a primary goal of the IDEA to mainstream disabled students to the maximum extent possible. The same result would not be true at ***, which has no nondisabled peers.

While Student is in need of improvement in Student behavior, there are many less restrictive and intermediate steps the ARD Committee might consider to meet Student's needs short of a most restrictive residential placement. *Student v. Galveston ISD*, TEA Docket No. 163-SE-0215 at 18-20 (July 7, 2025). Those alternatives need to be considered, as needed, in future ARD meetings.

In sum, Student has not shown that Student placement at *** would satisfy the least restrictive environment factor under *Micheal F.*, *Michael Z.*, or the IDEA.

3. *Services provided in a coordinated and collaborative manner with key stakeholders*

The process of developing an IEP is holistic, requiring the input and collaboration of various persons, including the student's parents, special and regular education teachers, therapists, and often the student. 34 C.F.R. §§ 300.321-322; 19 Tex. Admin. Code 89 § 1050(c). To the extent possible, the decision of the ARD committee should be by mutual agreement. 19 Tex. Admin. Code §89.1050(g).

In this collaborative process to develop an IEP, a parent's right to meaningful input is not synonymous with veto power over the ARD committee's decisions or the right to dictate the outcome of an IEP. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Rather, absent a school's bad faith exclusion of the parents or refusal to listen to or consider their input, the school is deemed to have complied with the IDEA's requirements for collaboration with the parents. *Id.* And as noted above, the District enjoys a presumption that its IEP favors the school, provided that the IEP comports with the IDEA. *Teague, supra*, 999 F.2d at 132.

Here, the record is overwhelming that the District developed and implemented Student's IEPs and BIPs in a coordinated and collaborative manner. Student's family members were invited to, and attended with one exception, every ARD Committee meeting. Their input was duly considered as shown in the "Deliberation" sections of the IEPs. The District pulled together appropriate and necessary attendees for the ARD Committee meetings. 34 C.F.R. § 300.321. The District coordinated its provision of special education services among all staff who interfaced with Student, as well as used BCBA ***to develop and train staff on implementing Student *** program. The District also regularly sent home progress reports to Student's family detailing Student success toward meeting Student annual goals. Finally, the District also offered, and provided when Student's family accepted, in-home training, as well as respite and caretaker services to help the family work with Student when Student was not in school.

All necessary stakeholders in this case worked collaboratively and in a coordinated manner to provide required special education services to Student. The District complied with this third *Michael F.* factor establishing FAPE.

4. *Academic and non-academic benefits*

This last *Michael F.* factor, whether a student received academic and nonacademic benefits, is one of the most critical factors in determining whether a school has met its obligation to provide FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813-814 (5th Cir. 2012). It is not necessary for a student to improve in every area of Student IEP to obtain an academic benefit that satisfies the IDEA. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 350 (5th Cir. 2000). Instead, as both the Supreme Court and Fifth Circuit have acknowledged, it is sufficient that the program provided to the student "confer *some* educational benefits upon the handicapped child." *Rowley, supra*, 458 U.S. at 198 (emphasis added); *Bobby R., supra*, 200 F.3d at 349-350.

Here, the record shows that the District provided more than just some academic and non-academic benefits to Student. Collectively, District witnesses testified that Student's behavioral problems – i.e., the most troublesome issue in Student education – improved over time, and the frequency of incidents significantly decreased. Academically, Student showed progress in math, matching, identifying and sequencing. Student facility with the *** to assist Student communication also improved, from being able to use a newer version to also using more words to expand communication skills. And this improvement started from using only a rudimentary, low-tech picture board.

From a non-academic perspective, Student showed significant progress. Student ability to associate with Student nondisabled peers improved, as Student now likes going

to P.E. with those peers. And Student also is now able to interact more with those peers at lunch. Student also benefits from ***, from that training.

The assessment of this last *Michael F.* factor requires a court “to review each student’s case in a fact-intensive, individualized, holistic manner....To make this judgment, we must look to [student’s] overall academic success, not whether [student’s] disability has been remediated.” *H.W. v. Comal Indep. Sch. Dist.*, 32 F.4th 454, 468-469 (5th Cir. 2022). From an individualized and holistic point of view, the record evidence convinces me that Student received a meaningful benefit, both academically and non-academically, from the District’s developing and implementing Student IEPs over the relevant period.

Together, all of the four *Michael F.* factors for evaluating whether a school has provided a FAPE weigh in favor of the District. This finding, along with the presumption in favor of a school’s IEP, support the conclusion that the Respondent District provided an IDEA-compliant FAPE to Student, including the BIP component of Student IEP.

Student not surprisingly disagrees, with most of the challenges coming from an outside evaluator or a treating doctor having limited interaction with Student. On this point, I rely in part on the Fifth Circuit’s conclusion that has found no presumption favoring the testimony of the student’s treating doctor, as well as recognizing that teacher observations of the student “are especially instructive as they spend more time with students than do outside evaluators.” *D.L. v. Clear Creek Ind. Sch. Dist.*, 695 Fed. Appx. 733, 737 (5th Cir. 2017).

Based on the overall record, I find that the District provided Student with a FAPE throughout the relevant period. I further find that because Student has received a FAPE and a meaningful benefit from the FAPE, a residential placement in *** is not essential for Student to receive a meaningful educational benefit. *Michael Z., supra*, 58 F.3d at 301.

Student’s family no doubt is frustrated with the nature and extent of Student improvement. And the trials and tribulations they experience with Student when Student

is at home certainly must be difficult to endure. But the District has been more than just a “babysitter” for Student. Student has made genuine, meaningful improvements over the last couple years, and the District has displayed a clear willingness to try new approaches that work best for Student, making a residential placement unnecessary at least for now. I strongly encourage Student’s family to keep working with the District to take advantage of additional services the District offers to the family and to not stop advocating for the Student. Finally, I also encourage Student’s family to explore available Medicaid waivers that may provide them and Student with additional services now or in the future.

Conclusions of Law

Based on the preponderance of the evidence and applicable law, the Hearing Officer makes the following conclusions of law:

1. Respondent Silsbee Independent School District (District) is a local education agency responsible for complying with the IDEA. 20 U.S.C. § 1400 *et seq.*

2. Petitioner Student is a child with a disability eligible for special education services under the IDEA based on the categories of^{***}, other health impairment ^{***}, ^{***}, and speech impairment. 20 U.S.C. § 1401(3)(A); 34 C.F.R. §§ 300.306, .307.

3. In a due process hearing under IDEA, the burden of proof rests upon the party challenging a proposed IEP and placement or seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127 (5th Cir. 1993).

4. Student did not meet Student burden of proof by a preponderance of the evidence to show the District violated the IDEA or denied Student a FAPE by failing to develop and implement an appropriate IEP or BIP. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

5. Student did not meet Student burden of proof by a preponderance of the evidence to show Student was entitled to a residential placement at ^{***} or any other

residential placement at this time. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286 (5th Cir. 2009).

Orders

1. Based on the above findings of fact and conclusions of law, Petitioner's claims and requests for relief are **denied**.
2. All other claims for relief not specifically addressed in this decision are **denied**.
3. Petitioner's Complaint accordingly is dismissed.

Signed: December 30, 2024

By: _____
Christian A. Bourgeacq
Special Education Hearing Officer
for the State of Texas

Notice to the Parties

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. §1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).