

SOAH Docket No. 701-23-08677
TEA Docket No. 130-SE-1222

**Before the
State Office of Administrative
Hearings**

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

v.

**McAllen Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friends *** and *** (Parents or, collectively, Petitioner), brings this action against the McAllen Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. The main issues in this case are whether the District provided

Student with a free, appropriate public education (FAPE) and whether it conducted appropriate evaluations. The Hearing Officer concludes the District provided Student a FAPE at all relevant times and conducted appropriate evaluations. Petitioner is not entitled to any relief.

II. PROCEDURAL HISTORY

Petitioner was represented throughout this litigation by Petitioner's legal counsel, Sonja Kerr with Conner Michael Kerr, LLP. Respondent was represented throughout this litigation by its legal counsel Cynthia Buechler with Buechler and Associates.

III. DUE PROCESS HEARING

The due process hearing was conducted in the District August 21–25, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Sonja Kerr. Dorene Philpot, appearing remotely, served as Petitioner's co-counsel. Parents also attended the due process hearing.

Respondent continued to be represented by Cynthia Buechler. In addition, ***, the Executive Director of Special Education for the District, attended the hearing as the party representative.

After the hearing on October 23, 2023, Sonja Kerr withdrew as Petitioner's counsel. Ms. Philpot became Petitioner's sole counsel at that point. Both parties timely filed written closing briefs. The Decision in this case is due January 3, 2024.

IV. ISSUES

A. Petitioner's Issues

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

1. Whether the District provided Student a FAPE with an individualized program designed to meet Student's unique needs and reasonably calculated to allow Student to make meaningful progress.
2. Whether the District provided Student an education in Student's least restrictive environment.
3. Whether the District appropriately collaborated with Parents and other key stakeholders and allowed Parents' meaningful participation in developing Student's educational plan.
4. Whether the District failed to provide Student Extended School Year (ESY) services when such services were necessary for Student to obtain a FAPE.
5. Whether the District's 2022 full and individualized evaluation (FIE) complied with the requirements of the IDEA and effectively evaluated Student in all areas of suspected disability and adequately addressed all of Student's needs.
6. Whether the District committed any procedural violations of the IDEA.

B. Respondent's Legal Position and Additional Issues

Respondent generally and specifically denies the factual allegations stated in Student's Complaint. The School District contends it provided Student with a FAPE during the relevant time period, can continue to do so, and that Petitioner is not entitled to any of the requested relief. Respondent offered a plea to the

jurisdiction over issues and requests for relief arising under statutes other than the IDEA. Those issues and requests for relief were formally dismissed in Order No. 3 on February 20, 2023.

Respondent also asserted the two-year statute of limitations as an affirmative defense. Petitioner asserted that Parent did not have reason to know there were any violations of the IDEA and therefore the statute of limitations should not apply. The Hearing Officer will address this in the discussion below.

V. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to reimburse Parents for out-of-pocket expenses related to the District's failure to provide Student a FAPE, particularly expenses from sending Student to *** and providing private related services and tutoring services.
2. Order the District to amend Student's individualized education plan (IEP) to provide specific requests.
3. Order the District to provide Student compensatory services.
4. Order the District to provide Student an independent education evaluation (IEE).

VI. FINDINGS OF FACT

Student's Educational and Evaluation History

1. Student is *** years old and in *** grade in the District in the 2023-24 school year. Student has attended school in the District since Student was *** years old. Student comes from a nurturing family with supportive parents. Student resides in a home in the District with Student's parents, ***. Student receives special education and related services as a student with *** and a

speech impairment, the same eligibility categories Student has had since Student entered the District in 2013. Student was diagnosed ***.¹

2. Student was initially evaluated by the District for special education and related services in August 2013. At the time, Student was *** shy of Student's *** birthday. Student had been attending *** at Student's local *** and had been receiving occupational therapy, physical therapy, and speech therapy both at *** and at home. Student began receiving services in the District's *** during the 2013-14 school year as a student with *** and a speech impairment.²
3. Student was reevaluated by the District in December 2019. Student's cognitive abilities were in the "lower extreme" range of abilities in all areas. Student's receptive and expressive language skills and Student's articulation skills were also "severely delayed." Student did not have any issues with behavior and worked as hard as Student could in class, a fact that has not changed throughout Student's time in the District. Student was friendly and well-liked by peers and teachers. Student did exhibit difficulty with paying attention. Student was able to ***. Student performed far below grade-level and was severely delayed in all

¹ Transcript (Tr.) 133; Respondent's Exhibit (R) 10, at 1, 9; R11, at 8; R12; Petitioner's Exhibit (P) 4, at 9.

² R10; P4, at 3.

areas in which Student was tested. The District continued Student's eligibility as a student with *** and a speech impairment.³

4. The District conducted a review of existing evaluation data (REED) in March 2022. Based on that REED, the District decided to conduct further testing. The District completed a new FIE in August 2022. The evaluators included a speech language pathologist, a Licensed Specialist in School Psychology (LSSP), a special education teacher, and an occupational therapist. Evaluators conducted the Adaptive Behavioral Assessment System; Woodcock Johnson Tests of Achievement IV; the Comprehensive Assessment of Spoken Language, Second Edition; the Goldman-Fristoe Test of Articulation; and the Kaufman Assessment Battery for Children, Second Edition. The evaluators also relied on reports from Parents and teachers. They also observed Student both at *** where Student receives tutoring and in the classroom.⁴
5. The evaluation noted that, based on information provided by Parents and Student’s teachers, Student’s primary language is English. The evaluation found Student had a “severe deficit” in expressive and receptive language, which also led to a “severe deficit” in pragmatic language. Student’s strengths included persisting in tasks presented to Student, working hard, engaging with friends, and being an easy student for teachers and staff to work with in the educational setting. Student’s overall cognitive abilities fell in the “Significantly Below Average” range across all areas. Student’s academic abilities fall below the *** percentile in all areas, including reading, math, and writing, when compared with Student’s same-age peers. Student’s overall intellectual functioning, where the average in the population falls between 85-115, is a ***.⁵
6. The August 2022 FIE made a number of recommendations. Among those recommendations, the FIE stated Student would benefit from focused, small-group reading instruction at least 30 minutes per day; integrated reading, writing, math, and oral language instruction across all settings; and repeated

³ R11, at 1-2, 6-7.

⁴ R13, at 1-2, 13-14.

⁵ R13, at 1, 4, 6, 15.

reading to help reading fluency and an opportunity to read new words in smaller chunks before reading them in a larger context.⁶

7. Additionally, the District conducted a separate counseling evaluation in August 2022 at Parents' request. The counselor reviewed Student's educational records; interviewed Parents, teachers, and Student; utilized standardized behavior observation scales; and observed Student. Student does not have behavioral issues. Student is a hard worker and gets along well with Student's peers and teachers. The counseling evaluation did not recommend educational counseling for Student.⁷
8. In preparation for litigation, Petitioner obtained two expert evaluations of Student. The first was an evaluation conducted by Dr. ***. The District granted Parents an IEE in October 2022 after they expressed dissatisfaction with the District's August 2022 FIE. The District gave Parents the District's criteria for IEE providers, which included geographic and financial restrictions and a list of potential evaluators. Parents contacted some of the evaluators, asking if they would be willing to conduct an evaluation and "testify in a hearing," but could not find an evaluator who met the District's criteria and was willing to do an evaluation under the terms Parents provided. Parents ultimately obtained Dr. **. Dr. ** practices in **, Texas, which is in ** and outside the geographic range allowed in the District's criteria. Dr. ** completed her evaluation on July **, 2023, so the evaluation was not considered by an admission, review, and dismissal (ARD) Committee prior to this hearing as school personnel were not on contract yet.⁸
9. Dr. ** noted that, in her opinion, Student has no dominant language between English and ** since neither language is dominant, which contradicts Parents' statement and contradicts the observations and assessments of District personnel that English is Student's dominant language. She also found that, because Student is not dominant in either language, Student therefore should not be found eligible as a student with **.

⁶ R13, at 19-20.

⁷ R13, at 7; R6, at 33-35.

⁸ P3; P4; P135; Tr. 729-30, 1382-92.

***. She recommended eligibility solely as a student with a speech impairment. She noted that Student has made “tremendous” academic progress but attributed that progress to the tutoring services Student was receiving as opposed to the District’s IEP.⁹

10. As part of Dr. ***’s evaluation, she interviewed Student’s Parent, reviewed the District’s August 2022 FIE, and conducted several standardized tests including the Woodcock Johnson IV, Adaptive Behavior Assessment System III, and the Kaufman Assessment Battery for Children (Kaufman). The District had conducted those same assessments in August 2022. Dr. *** did not interview any District personnel. She also did not observe Student in school. She observed Student in June 2023 in Student’s tutoring setting. The scores she obtained on the Woodcock Johnson IV all fell in the “very low” range and were consistent with the scores obtained by the District in its FIE. The scores she obtained on the Kaufman all fell in either the “below average” or “below lower extreme” range. Again, those were consistent with the District’s. The nonverbal index, a means of measuring intelligence where the average score falls in the 85-115 range, revealed a score of ***. This score fell in the lower extreme range and, as Dr. *** confirmed during her testimony, was consistent with the District’s findings. Dr. *** attributed these scores to Student’s not having a dominant language and not being proficient in English. She therefore recommended eligibility solely as a student with a speech impairment and not ***.¹⁰
11. Petitioner also obtained an evaluation from Dr. ***, a neuropsychologist and LSSP based out of ***, Texas, in preparation for litigation. Dr. *** reviewed Student’s records, interviewed Student’s Parent, and reviewed video of Student engaged in tutoring services. She did not interview Student or District personnel and acknowledged she is “not privy to” the lessons Student receives in Student’s school setting. She also did not observe Student in-person or in Student’s school setting. She completed her evaluation after Dr. *** completed hers, so she was able to review Dr. ***’s evaluation. Dr. *** disagreed with Dr. ***’s opinion of Student’s eligibility. Dr. *** believes Student should qualify for special

⁹ P4, at 1-2,

¹⁰ P4, at 6, 10, 12; Tr. 566, 624.

education and related services as a student with *** and a speech impairment.¹¹

12. Like Dr. ***, Dr. *** noted that Student has made “excellent progress over time” and attributed that progress to the tutoring services Student receives. She did not give an opinion on Student’s language proficiency or dominant language in her report or in her testimony.¹²

Student’s IEPs and Educational Services

13. Student had an annual ARD Committee meeting in May 2020 when Student was in the *** grade at ***, the school Student attended until advancing to *** grade in August 2023. Student’s Parent attended the meeting with an outside special education advocate to assist Parent. An administrator, an LSSP who was able to conduct and interpret assessments, a special education teacher, and a general education teacher also attended the meeting. According to information provided during the meeting, Student was able to *** on a *** level despite being in *** grade. Student could *** but could not *** beyond that. Student could also ***.¹³
14. Student received math and reading classes in a special education resource classroom. The remainder of Student’s classes were to be conducted in a general education classroom with support from special education staff. Student received 30 minutes of direct speech therapy five out of every six weeks, 20 minutes of direct occupational therapy every six weeks, and 20 minutes of consultative occupational therapy every six weeks. At the time of the ARD Committee meeting, the District was still trying to understand the impact of the COVID- 19 pandemic and the future of in-person instruction. The parties agreed to table the ARD Committee meeting until a later date.¹⁴

¹¹ P11; P12, at 1-2, 6-7.

¹² P12, at 1-2, 6-7.

¹³ R3, at 5-6, 19.

¹⁴ R3, at 6-7. There were IEP goals in Student’s IEP, but Respondent did not disclose those in a timely manner. The Hearing Officer acknowledges that there were goals but will not list those due to the failure to disclose them at the disclosure deadline.

15. The ARD Committee reconvened for multiple meetings in September and October 2020. Student, like all students in the District, was receiving remote instruction at the time due to the COVID-19 pandemic. Parent requested that Student receive one-on-one reading intervention due to Student's being behind Student's peers. Based on that request, the District provided the special education resource teacher to work one-on-one with Student. The District also provided a reading interventionist to work remotely with Student based on Parents' request. She worked with Student using the *** program. She worked with Student for two to three hours every week. She also collaborated with Student's other teachers to ensure they were using the same reading concepts across settings to support Student's reading best. She also gave Parents manipulatives to work with at home and other exercises they could do at home to support Student's reading. *** allows Students to ***, which helps their comprehension. Student's Parent complimented the reading interventionist on the reading services she provided Student.¹⁵
16. During the 2020-21 school year, all students received remote instruction for the first six weeks due to the pandemic. Thereafter, parents decided whether they wanted remote or in-person instruction. Parents opted for Student to receive remote instruction. Student was participating in general education classes remotely while also receiving one-on-one instruction from multiple special education teachers.¹⁶
17. Student had an annual ARD Committee meeting in May 2021. Student's Parent attended the meeting with an outside special education advocate. An administrator, an LSSP, a special education teacher, and a general education teacher also attended the meeting. By this time, Student was able to ***. Student could also ***. Student could ***, but Student could not yet ***. Student's schedule of services remained the same as did the amount of speech therapy received. Student's

¹⁵ Tr. 930-32, 934-35, 1062, 1270-72, 1274, 1278-79, 1282-83, 1285.

¹⁶ Tr. 700.

occupational therapy services, however, were upgraded from direct services once per six weeks and consult services once per six weeks to three times per six weeks of each. ESY services were considered, but Student did not show regression. The ARD Committee did not recommend ESY services and Parents agreed with that recommendation. However, as compensatory education for remote instruction, Student accessed ESY services during the summer of 2021.¹⁷

18. The District had a number of IEP goals for Student. Student had seven English goals, three math goals, a *** goal, three speech goals, and an occupational therapy goal of helping ***self by manipulating objects when prompted (such as ***). The goals were based on Student's present levels of academic achievement and functional performance (PLAAFPs). The District coordinated with Parents in developing the PLAAFPs and goals. It also provided frequent reports on Student's progress toward those goals. The District was in frequent communication via text message, email, and telephone with Parents. The District was responsive to Parents' requests.¹⁸
19. During the 2021-22 school year, all students in the District were required to go back to school in person. However, if a student provided a medical excuse from a doctor, the student could continue to access remote learning. Student provided such a note, though Parents made it clear that if the District would provide the services Parent requested, Student would return to in-person learning despite the alleged medical need for Student to receive remote services. When the District agreed to Parents' requests, Parent brought Student back to school in person the next day in March 2022. Nevertheless, Student spent the majority of the 2021-22 school year in remote instruction.¹⁹
20. Because so few students were receiving remote instruction during the 2021-22 school year, the District had a District-wide self-contained remote classroom and a District-wide resource classroom. Parent did not want Student to participate in either, so the District provided one-on-one remote

¹⁷ Tr. 1069; R4, at 5-9, 16.

¹⁸ R4, at 21-28; R23; R25; Tr. 1220-22.

¹⁹ Tr. 958.

instruction during time designated for Student to receive services in a special education setting. Student then participated in the District-wide remote general education classes.²⁰

21. The District held an ARD Committee meeting in March 2022. It then held two subsequent ARD Committee meetings in April 2022 as the meetings were being tabled before completion. Student's Parent attended the meetings with an outside special education advocate. An administrator, an LSSP capable of conducting and interpreting assessments, a special education teacher, and a general education teacher also attended the meetings. Student's reading improved significantly during the year since the last ARD Committee meeting. Student was able to ***. Student could ***, and Student could ***. The District maintained Student's related services at the same amount. In addition, the District agreed to provide 35 of Student's 60 minutes in a special education *** class from a reading interventionist. The District also updated Student's goals. While the District did not find Student demonstrated regression (and thus did not qualify for ESY), the District offered compensatory summer school services as it had in the summer of 2021. Parents, however, chose not to send Student to school during the summer of 2022. The parties were able to agree that Student would receive education in the general education classroom, with the exception of the special education resource classroom for reading and math moving forward.²¹
22. In the fall of 2022, the District held several ARD Committee meetings to discuss the August 2022 FIE and make adjustments to Student's IEP. The ARD Committee met on September ***, October ***, and October ***. Student's Parent brought an advocate with Parent to the first two ARD Committee meetings and then an attorney for the third ARD Committee meeting. Student's Parent requested an opportunity for Student to tour the *** into which Student would transition in the 2023-24 school year. The District agreed to provide that. It also agreed to provide *** information at Parent's request. The IEP goals were all reviewed and Student's Parent agreed with them. Parent disagreed with the District's assertion that Student did not

²⁰ Tr. 1069-75.

²¹ R5, at 7, 25-30; R6, at 12; Tr. 1417.

exhibit regression and did not require ESY services. The District agreed to revisit that issue in March 2023.²²

23. Student's Parent requested an IEE for Student. The District agreed to provide the IEE. Parents never obtained the District-funded IEE and eventually contracted independently with Dr. *** to provide her independent evaluation. Student's schedule of services maintained a combination of general education classes with special education resource classes for reading and math. It also included 35 minutes per day of work with a reading interventionist and 40 minutes per day of work with a math interventionist. The District also began breaking up Student's sentences in the fall of 2023. It also maintained Student's related speech and occupational therapy services at the same levels. Student's Parent requested reimbursement for the tutoring services Student received at ***. The District did not provide the reimbursement. The ARD Committee meetings did not end in agreement.²³

24. In addition to the services at school, Parents took Student to *** for tutoring services four days a week beginning in March 2019 for three-hour tutoring sessions. The only interruption in service there occurred at the beginning of the COVID-19 pandemic in March 2020. However, by May 2020, Student was attending tutoring sessions in-person once again even though Student received a medical excuse not to attend school in-person until the spring of 2022. At ***, Student worked in a private, one-on-one setting on Student's reading and math skills. *** also provided work on Student's *** skills. No one teaching Student at *** was a certified teacher or reading specialist. They did all have college degrees. The tutoring services are conducted entirely in English. As Student did at school, Student worked hard and engaged well in Student's services at ***. *** provided a demonstration of the type of services they provide during the due process hearing. The presentation was consistent with the services they provided during their tutoring sessions with

²² R6, at 12-13.

²³ R6, at 6-7, 12-13; R25, at 68.

Student. The *** provided during the demonstration were riddled with typos, lack of punctuation, and mistakes that could negatively impact Student’s ability to learn. These mistakes are typical of what *** provides according to the testimony of a witness from ***. However, in spite of the mistakes and their potential negative impact, *** provided Student positive opportunities to practice reading after school. Like the District, *** also utilized the *** program.²⁴

VII. DISCUSSION

A. Statute of Limitations

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 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), (f)(3)(C); 34 C.F.R. § 300.507(a)(1), (2).

Petitioner alleges Parents did not have reason to know about the action that forms the basis of this Complaint. However, Petitioner received a copy of the procedural safeguards at each annual ARD Committee meeting since May 2020, a date more than two years before the date of filing. Receipt of the procedural safeguards indicates a parent “knew or should have known” of the alleged action that serves as the basis for the request. *El Paso Indep. Sch. Dist. v Richard R.R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008) (“When a local educational agency delivers a copy of

²⁴ Tr. 429-30, 432-34, 440-41, 450, 462-64, 519-20, 536, 971-73.

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”).

Additionally, Petitioner brought a trained advocate to every ARD Committee meeting. That advocate could have told Petitioner about their right to file a request for a due process hearing and their other special education rights. Therefore, the two-year statute of limitations applies in this case. This Decision will address issues arising between December 28, 2020-December 28, 2022.

B. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). 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 District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student’s unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student’s IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry is whether the IEP implemented by the school district “was reasonably calculated to enable a child to make progress appropriate in

light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.²⁵ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case, therefore, 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. *Id.*; *Andrew F.*, 580 U.S. at 399.

D. FAPE

A hearing officer applies a four factor test to determine whether a school district’s program meets the IDEA’s requirements. Those factors are:

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

²⁵ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n.4 (5th Cir. 2009).

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. 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. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, 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 school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582

F.3d 576, 583 (5th Cir. 2009). The District's obligation when developing Student's IEP 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 the District provided Student's instruction based on performance and assessment. The District provided focused reading instruction from a reading interventionist as the evaluation recommended. That reading interventionist then coordinated with Student's other teachers to ensure integrated instruction across settings as the evaluation recommended. The District implemented accommodations recommended in Student's evaluation. The District based Student's services and goals on Student's PLAAFPs, which it updated at various points throughout the relevant time period in consultation with Parents. The District adjusted Student's IEP—including Student's placement, goals, PLAAFPs, and amounts of related services—based on Student's progress and evaluations. The ARD Committee met several times each year during the relevant period to adjust Student's services if needed. The District appropriately based Student's services on Student's individual needs.

Petitioner asserted that the District failed to provide ESY when those services were necessary. However, the District measured Student's regression and concluded that Student did not require ESY services. A school district must make ESY services available if they are necessary to provide Student a FAPE. 34 C.F.R. § 300.106(a)(1). If a student will experience severe regression in the summer such that the educational benefit the child received during the school year will be significantly jeopardized, the student may be entitled to ESY. *Alamo Heights Indep. Sch. Dist. v.*

Tex. Bd. of Educ., 790 F.2d 1153, 1158 (5th Cir. 1986). The District determined Student would not experience such regression based on performance and assessment. Petitioner did not present evidence contradicting the District's determination. The District offered ESY services anyway during the summers of 2021 and 2022 as compensation for the remote instruction Student opted for due to the COVID-19 pandemic.

2. Least Restrictive Environment

The IDEA dictates that a student with a disability must be educated with peers without disabilities to the maximum extent appropriate. A student may be placed in special classes, a separate school, or otherwise removed from the regular education environment 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 or services, a self-contained classroom, nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in

general education settings with the use of supplemental aids and services; and

- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Educ., 874 F. 2d 1036, 1048 (5th Cir. 1989).

In this case, Student's services were provided in Student's least restrictive environment at all relevant times. For the majority of the relevant period, Student received Student's services remotely. However, once Student was on campus, Student received Student's services in the placement Parents requested and with which they agreed. Therefore, the District provided education in the least restrictive environment.

3. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, Civil Action No. 4:16-CV-0058, 2017 WL 3017282, at *27 (S.D. Tex. June 15, 2017), *aff'd*, 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them,

a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

The evidence showed that the District listened to Parents. Parents participated at each ARD Committee meeting and always had a professional advocate or attorney present with them. The District adjusted Student's services based on parental input. For instance, the District provided the reading interventionist to work one-on-one with Student at Parents' request. The District conducted a counseling evaluation because Parents requested it. The District also coordinated with Parent in developing Student's goals and PLAAFPs. It provided progress reports at regular intervals to Parent detailing Student's progress toward Student's IEP goals and was responsive to Parent's concerns via email and phone.

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 did receive a benefit. The parties both agree that Student made substantial progress during the relevant time period. Both of Student's experts asserted that Student made tremendous progress during the relevant period. Petitioner, however, attributes Student's progress to Student's work at ***

*** while the District attributes Student's progress to Student's program at school,

including Student's one-on-one work with special education teachers on Student's reading.

Petitioner did not meet their burden of demonstrating the District's program failed to help Student progress. Student made great progress during the relevant period. How much was due to Student's tutoring services and how much to Student's school services, including Student's one-on-one work at school with a licensed reading interventionist who also worked with Student's other teachers to integrate reading instruction into Student's total curriculum, is not possible to determine. Both *** and the school were teaching from ***. It is likely that the two complemented each other since they were working from the same program and giving Student opportunities to practice the skills Student was learning in both settings. Petitioner did not meet their burden of showing Student's tremendous progress was due solely to Student's work at ***.

Additionally, Student has made friends with other students and is well-liked by everyone. *See Marc V. v. North East Indep. Sch. Dist.*, 455 F.Supp.2d 577, 596 (W.D. Tex. 2006) (noting making friends is a key non-academic benefit). The District provided Student with both academic and non-academic benefits.

5. Conclusion

In conclusion, the District provided Student with a FAPE. The District based Student's IEP on assessment and performance. It then provided that IEP in Student's least restrictive environment. The District collaborated with Parents by holding several ARD Committee meetings each school year, maintaining open

communication with them, coordinating with them in developing Student's PLAAFPs and goals, and implementing several of their suggestions. Finally, Student clearly received benefit. While the parties disagree about the source of that benefit, the parties and experts agree that Student did receive benefit during the relevant period. Thus, the District provided Student a FAPE.

E. The District's Evaluations

Petitioner challenges the District's evaluations of Student. Even though the District offered Parents an IEE in an effort to meet Parents' demands, the District defended its August 2022 FIE as appropriate. Under the IDEA, a school district is required to 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 the school district in assessing the student. A school district should not rely on 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. 34 C.F.R. § 300.304.

The District conducted an FIE in 2019, a REED in 2022, and then a follow up FIE in 2022. It also conducted a counseling assessment in 2022. Each evaluation used a wide variety of assessment tools, included different professionals to conduct the evaluation, and included interviews with Parents, Student, and Student's teachers. It also included in-person observations of Student. Petitioner did not demonstrate Student's eligibility categories, the same ones Student has had since entering the District at age *** in 2013, are inappropriate.

Petitioner's experts disagreed as to the appropriateness of Student's categories of eligibility, with Dr. *** concluding they were appropriate and Dr.

*** concluding Student's low test scores should be attributed to not having a dominant language. Dr. ***'s assertion contradicts the assertions of Parent and District personnel that Student's dominant language is English. *** conducted its tutoring services entirely in English and the District provided instruction in English, because English is Student's dominant language.

The IEE conducted by Dr. *** confirmed that the scores the District obtained painted an accurate picture of Student. Dr. *** disagreed with Dr. ***'s conclusion that Student should not be a student with ***. She agreed with the District's conclusion of Student's eligibility. Petitioner also did not show that Student was receiving inappropriate services based on the FIE. Therefore, Petitioner did not meet their burden.

F. IDEA Procedural Violations

Petitioner asserted that the District committed procedural violations of the IDEA. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Petitioner did not meet their burden of demonstrating any procedural violations of the IDEA. All required personnel were present for each ARD Committee meeting. The evaluations during the relevant time period were timely and involved appropriate notice. Parents received the procedural safeguards at each ARD Committee meeting. To the extent there were any procedural errors committed in

this case, none of those “significantly impeded” Student’s ability to receive a FAPE or Parents’ opportunity to participate. *See Id.*

VIII. CONCLUSIONS OF LAW

1. The burden of proof is on Petitioner, as the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District provided Student a FAPE during the relevant time period, and Student’s IEP was reasonably calculated to address Student’s needs in light of Student’s unique circumstances. *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, 403 (2017).
3. The District’s evaluations complied with the IDEA. 34 C.F.R. § 300.304.
4. The District did not violate Student’s procedural rights under the IDEA. 34 C.F.R. § 300.513(a)(2).

IX. ORDERS

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

SIGNED January 3, 2024.



Ian Spechler
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE PARTIES

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