

SOAH Docket No. 701-23-10258.IDEA  
TEA Docket No. 148-SE-0123

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

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**STUDENT., BY NEXT FRIEND PARENT.,  
Petitioner**

**v.**

**AUSTIN INDEPENDENT SCHOOL DISTRICT,  
Respondent**

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## **FINAL DECISION**

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

Student. (Student), by next friend Parent. (Parent and, collectively, Petitioner), brings this action against the Austin 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 issue in this case is whether the District denied Student a free appropriate public education (FAPE).

The Judge concludes the District denied Student a FAPE and failed to develop a program for Student that was reasonably calculated to provide Student educational benefit based upon Student unique needs.

## **II. DUE PROCESS HEARING**

The due process hearing was conducted October \*\*\* and \*\*\*, 2024. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by Yvonnilda Muñiz with the Law Office of Yvonnilda Muñiz. Parent also attended the due process hearing.

Respondent was represented by J. Erik Nichols and Matthew Acosta of Spalding, Nichols, Lamp and Langlois. In addition, \*\*\*, director of compliance, operations, and reporting for the District, attended the hearing as the party representative.

The parties offered 24 joint exhibits, which were all admitted. Petitioner offered 28 exhibits, of which 21 were admitted over any objection and 7 were excluded. Respondent offered 23 exhibits, all of which were admitted over any objection.

Petitioner called as witnesses \*\*\*, a District autism coordinator; \*\*\*, a District special education teacher; \*\*\*, licensed psychologist and board certified clinical neuropsychologist; \*\*\*, District director of evaluations for special education; \*\*\*, District \*\*\* coordinator for the department

of special education;\*\*\*, a District college and career counselor;\*\*\*, a District occupational therapist; Parent;\*\*\*, a District special education teacher;\*\*\*, a District special education teacher; and\*\*\*, a District \*\*\* teacher. Respondent called no separate witnesses.

Both parties timely filed written closing briefs, and the Decision is due December 20, 2024.

### **III. ISSUES**

The relevant time period for this case is the 2020-21, 2021-22, and 2022-23 school years. Petitioner raised the following IDEA issues for decision:

#### **FAPE**

1. Whether the District denied Student a FAPE during the relevant time period;
2. Whether the District denied Student a FAPE by failing to provide an appropriate individualized education program (IEP) and appropriate services;
3. Whether the District denied Student a FAPE by failing to provide appropriate social skills services;
4. Whether the District denied Student a FAPE by failing to provide appropriate \*\*\* services;

5. Whether the District failed to provide Student necessary assistive technology;

Evaluation

6. Whether the District failed to timely evaluate Student in all areas of suspected disability and need; and

Procedural

7. Whether the District failed to convene timely admission, review and dismissal (ARD) committee meetings.

**IV. REQUESTED RELIEF**

Petitioner requested the following items of relief:

1. Reimbursement for private evaluations of Student;
2. A vocational independent educational evaluation (IEE);
3. Compensatory \*\*\* services;
4. An independent \*\*\* program;
5. Independent social skills training;
6. Compensatory tutoring in the areas of English, written expression, and math;
7. An IEE in the areas of speech, occupational therapy, and assistive technology;
8. Counseling and therapy services related to Student's anxiety; and
9. Any other appropriate remedies.

**V. FINDINGS OF FACT**

1. Student is \*\*\* years old and lives with Parent in\*\*\*. Student previously attended school in the District, \*\*\*at the end of the 2022- 23 school year.<sup>1</sup>
2. Student was eligible for special education in the categories of \*\*\*, other health impairment (OHI) for\*\*\*, and specific learning disability in the areas of math calculation and math problem-solving. Student struggles with concentration and attention related to Student\*\*\*, which effects Student listening comprehension at times. Student has difficulty interacting with others, poor social skills, and difficulty calming down appropriately when frustrated. Student attention span, organizational skills, and ability to complete assignments are below average.<sup>2</sup>
3. Student has a below average full scale IQ and has a pattern of cognitive strengths and weaknesses consistent with a learning disability. Student has weaknesses in fluid reasoning, short-term memory, auditory processing, and processing speed. These weaknesses can impact Student ability to spell; take notes; produce quality writing assignments; read math word problems; draw inferences; determine main idea from texts; internalize processes for solving math problems; compare and contrast ideas; read words quickly; know math facts; complete tests and assignments in the normal time constraints; read slowly; follow orally administered directions; follow along in a lecture; and comprehend when reading.<sup>3</sup>
4. Student has moderate to severe \*\*\*characterized by \*\*\*.<sup>4</sup>

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<sup>1</sup> Joint Exhibit (JE) 22; JE 24.

<sup>2</sup> JE 1 at 1, 4, 12.

<sup>3</sup> JE 1 at 7-9.

<sup>4</sup> JE 1 at 11.

5. The District completed a comprehensive full individual evaluation (FIE) of Student on April \*\*\*, 2019.<sup>5</sup>

2020-21 School Year

6. On November \*\*\*2020, the District convened Student's ARD committee for Student annual meeting. Parent and Student participated in the meeting and agreed with the IEP and services proposed. The District provided prior written notice of the decisions and considerations in the IEP.<sup>6</sup>
7. The ARD committee continued Student's eligibility in the categories of \*\*\*specific learning disability in the areas of math calculation and math problem solving, and OHI for \*\*\*. The committee also reviewed Student's present levels of academic achievement and functional performance (present levels). In math, Student demonstrated strengths in analyzing segments and distance, and in reading and written expression, Student strengths included giving good responses. Student present levels indicated Student benefitted from added supports and accommodations. The committee adopted a math goal for \*\*\* and an English goal related to reading comprehension.<sup>7</sup>
8. As for Student's social and emotional present levels, Student was noted to be a great contributor in class and to work well in groups. Student accommodations included no penalty for late work, \*\*\* for tests, retake and make corrections on failed assignments, \*\*\*, extra time, word processing with spell check, and access to the \*\*\* room. Student was placed in special education resource for math, placed in general education for Student other core academic courses and \*\*\*, and had access to the \*\*\* program.<sup>8</sup>

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<sup>5</sup> JE 1.

<sup>6</sup> JE 3 at 2, 13.

<sup>7</sup> JE 3 at 3-5.

<sup>8</sup> JE 3 at 5, 7, 10.

9. The \*\*\*. Each campus in the District that has a \*\*\* program operates differently, depending on the needs of the campus. No evidence was presented to explain what specific services from this program were provided to Student.<sup>9</sup>
10. The resource math class uses a modified curriculum based on the individual needs of the students and proceeds at a slower pace.<sup>10</sup>
11. On October \*\*\*, 2020, the District completed a \*\*\* assessment for Student and updated the assessment on April \*\*\*, 2021. Student expressed an interest in a career path involving \*\*\* and indicated Student needed to work on managing Student time and understanding the available \*\*\* resources. As a backup to \*\*\*, Student expressed an interest in \*\*\*.<sup>11</sup>
12. On April \*\*\*2021, the District convened Student's ARD committee to review Student \*\*\* plan. Student and Parent attended the meeting and agreed with the IEP and services. The District provided prior written notice of the committee's decisions and considerations.<sup>12</sup>
13. The ARD committee continued Student's present levels and Student math and English IEP goals from the November 2020 annual meeting. The committee added a goal related to time management and using a calendar to track assignments. No changes were made to Student's placement or accommodations.<sup>13</sup>
14. The ARD committee completed a \*\*\* plan which identified Student's interest in \*\*\* and Student need to work on time management and accessing available resources. The committee addressed Student \*\*\* needs through a single time management goal.

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<sup>9</sup> Transcript (TR) at 38.

<sup>10</sup> TR at 258-260.

<sup>11</sup> JE 2; JE 7.

<sup>12</sup> JE 6 at 2, 13-14, 19.

<sup>13</sup> JE 6 at 4-6.

The plan noted that Student would work on independent living objectives by working with family to learn how to do laundry and care for clothes. The plan indicated that Student would \*\*\*. The only \*\*\* services identified were courses in creative writing, \*\*\*, and study skills for Student to take.<sup>14</sup>

15. Student passed all of Student courses in the 2020-21 school year, earning five \*\*\*'s and three \*\*\*'s.<sup>15</sup>

### 2021-22 School Year

16. On November\*\*\*, 2021, the District convened Student's ARD committee for Student annual meeting. Parent and Student participated in the meeting and agreed with the IEP and services. The District provided prior written notice for the services and determinations.<sup>16</sup>
17. The ARD committee continued Student eligibility in the categories of\*\*\*, specific learning disability in math calculation and math problem solving, and \*\*\*for\*\*\*. The committee reviewed Student present levels, noting that: in math, Student was able to solve multiple step equations; in reading, Student cared about school and tried hard; in written expression, Student was expressing Student well; and Student was also organized, methodical, and hard working. Student benefitted from supports and accommodations. The committee adopted a writing goal \*\*\* and a math goal for \*\*\*.<sup>17</sup>
18. As for Student's emotional present levels, the ARD committee observed that Student was respectful of teachers and peers and that Student had age appropriate adaptive and communication skills but needed to improve Student time management skills. The committee adopted a time management goal requiring Student to create a daily to-do list in Student \*\*\*. The committee

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<sup>14</sup> JE 6 at 14-18.

<sup>15</sup> JE 22; JE 24.

<sup>16</sup> JE 8 at 2, 20.

<sup>17</sup> JE 8 at 3-4, 6-7.



continued Student accommodations from Student prior IEP. Student was placed in resource special education for math, general education for Student other core academic subjects \*\*\*, and had the support of the \*\*\* program.<sup>18</sup>

19. The ARD committee reviewed Student's \*\*\* plan, having updated Student \*\*\* evaluation on November\*\*\*, 2021. Student was interested in a career in \*\*\*, and needed to work on time management and accessing resources. The plan identified Student time management goal as the \*\*\* objective that Student needed to accomplish. The plan indicated Student would \*\*\*, will have a career as a \*\*\*, and live independently.<sup>19</sup>
20. Student passed all of Student courses in the 2021-22 school year, earning four \*\*\* and \*\*\*<sup>20</sup>

### 2022-23 School Year

21. On November \*\*\* 2022, the District convened Student's ARD committee for Student annual meeting. Parent and Student participated in the meeting and voiced concerns about Student's \*\*\*. Parent and Student agreed with the IEP and proposed services. The District issued prior written notice detailing the services and determinations.<sup>21</sup>
22. The ARD committee noted that Student's then present social and emotional functioning levels were age appropriate; Student had a tendency to be overwhelmed by large projects; Student English, math, science, and social studies skills fell within grade level expectations; and Student functional skills were also age appropriate. The accommodations from Student previous IEP were continued for the current year.<sup>22</sup>

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<sup>18</sup> JE 8 at 8-9, 17.

<sup>19</sup> JE 8 at 22-25.

<sup>20</sup> JE 22; JE 24.

<sup>21</sup> JE 11 at 35-38.

<sup>22</sup> JE 11 at 8-12.

23. The ARD committee adopted an English writing goal related to editing and adding clarity to assignments; a writing goal related to fully developing ideas and adding details to paragraphs; a \*\*\* goal related to identifying \*\*\*; and a \*\*\* goal related to identifying \*\*\*. The committee updated the \*\*\* plan, noting Student is a great student who keeps up with all of Student assignments; Student is interested in learning how to manage Student\*\*\*; the District will connect Student with the\*\*\*; and Student will \*\*\* \*\*\*.<sup>23</sup>
24. The ARD committee placed Student in special education resource for math, and general education for Student other core academic courses \*\*\*. The committee determined Student was on schedule to \*\*\*\* under the \*\*\*program \*\*\*.<sup>24</sup>
25. As part of the ARD committee meeting, the District completed a review of existing evaluation data. Student's teachers reported that Student did well keeping up with Student assignments, needed to work on adding detail to Student writing, took the extra time provided to complete Student work, had good \*\*\* writing, and could apply the concepts from Student \*\*\*class to assignments. Student fine motor skills are below average with an unusual pencil grip and poor handwriting. Student was able to access classroom materials, access the general education curriculum, use technology typically available in the regular education setting, and not need assistive technology. Student personal independence and social responsibility were within normal limits.<sup>25</sup>
26. On November \*\*\*, 2022, \*\*\*completed a neuropsychological assessment of Student to inform \*\*\* planning. \*\*\*assessed Student to have an \*\*\*without an intellectual impairment or language impairment. Student has persistent deficits in social communication and social interactions across multiple contexts, including difficulty with nonverbal communicative behaviors used for social

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<sup>23</sup> JE 11 at 15-17, 21-25.

<sup>24</sup> JE 11 at 35.

<sup>25</sup> JE 12.

interactions. Student struggles with cognitive rigidity, follows a consistent routine, has trouble with surprises, and is rigid about fairness. She recommended Student participate in a social skills training in the community \*\*\*.<sup>26</sup>

27. \*\*\*assessed Student to have significant difficulties in multiple areas typically associated with an \*\*\*, including difficulty with attention, executive functioning, sensory processing, anxiety, and emotional reactivity. She concluded Student meets the criteria for attention deficit hyperactivity disorder, predominantly inattentive presentation. She also concluded Student meets the criteria for a specific learning disability in the areas of math calculation and written expression. Finally, \*\*\*determined Student meets the criteria for a generalized anxiety disorder. She recommended that Student's behavior, anxiety and mood be closely monitored and treated by a therapist and psychiatrist.<sup>27</sup>
28. To assist with \*\*\*, \*\*\*recommended that Student's program focus on skill acquisition in written expression and math, vocational counseling, and support through a \*\*\* program. In the academic setting, she recommended that someone organize information for Student as Student learns it and emphasize the most important information; use multisensory learning methods; provide social skills support and training during the school day; give Student incentives for double checking Student work to discourage rushing to complete a task; provide extra time for completing tests; offer a testing environment with fewer distractions; break up tests of longer than one hour into multiple testing sessions; allow answer marking on the test booklet instead of recording answers on a separate sheet; allow Student to correct errors on tests and assignments to recoup points; provide Student with outlines of all lecture notes; provide preferential seating away from distractions; allow use of a calculator for math; allow Student to use a computer for completing written assignments; provide formal instruction on

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<sup>26</sup> Petitioner's Exhibit (PE) 1 at 11-12.

<sup>27</sup> PE 1 at 12-13.

\*\*\*; and ensure consistent use of a day planner or homework application.<sup>28</sup>

29. In the area of social skills\*\*\* recommended teaching Student conversation rules and opening comments; explaining metaphors and words with double meanings; pausing between instruction and checking for understanding; teaching Student how to react to social cues; using social stories; video modeling of a target social skill; and role playing of social situations.<sup>29</sup>
30. \*\*\*only testified at the hearing briefly to authenticate her report. She did not testify about whether any of her recommendations had been part of Student's program with the District or about what Student now requires to facilitate Student \*\*\* to adulthood. Parent paid \$\*\*\* for her evaluation.<sup>30</sup>
31. On February \*\*\*, 2023, the District completed an assistive technology evaluation. The evaluators noted that Student's writing, reading, reading comprehension, and math were on grade level. Although Student showed creativity in Student writing, Student struggled with spelling, organizing ideas, elaboration, providing details, revising, and editing. Student also showed difficulty with handwriting, including legibility, slow pace, unusual grip, hand fatigue, and orientation to lines and margins. Student typed proficiently, effectively used Student Chromebook and ear buds, and accessed the assignment calendar for planning Student day. The evaluators recommended that Student have continued access to a calculator and word processing with spell check and grammar checking features.<sup>31</sup>
32. On February \*\*\*, 2023, the District conducted a speech evaluation. Student was assessed to have functional language skills to access the general education curriculum, to be able to express Student, and to understand conventional spoken language. Student demonstrated appropriate use and awareness of social interactions, social cognition, and verbal and nonverbal communication skills. Student was assessed to have appropriate and functional articulation, functional

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<sup>28</sup> PE 1 at 13-15.

<sup>29</sup> PE 1 at 16-17.

<sup>30</sup> PE 21; TR at 83-86.

<sup>31</sup> JE 14.

voice abilities, and functional fluency and rate. Student did not meet the eligibility criteria for a speech impairment.<sup>32</sup>

33. On February \*\*\*, 2023, the District completed an occupational therapy evaluation for Student. Student was able to access and use the materials presented to Student for the evaluation. Student handwriting was consistent and legible. Student could type with good speed on a computer keyboard, preferred using the computer for school work, and was successful producing work with a keyboard and computer. Student was able to interpret visual information accurately and transfer it manually. Throughout the evaluation, Student maintained focus and visual attention towards all tasks asked of Student. The evaluator concluded Student was able to access Student classroom work and functionally participate in Student classes and did not require occupational therapy services.<sup>33</sup>
34. On May \*\*\*, 2023, the District completed a functional vocational evaluation. The evaluator reviewed District evaluations and the independent neuropsychological evaluation, interviewed Parent, had Student complete a \*\*\* inventory, and interviewed Student. Student indicated Student wanted to work in the \*\*\* and \*\*\*and planned to \*\*\* and \*\*\*while doing so. Student indicated Student needed help in identifying specific \*\*\* that meet Student strengths and interests. Student did not believe Student disability would impact Student ability to \*\*\*. The evaluator recommended Student connect with vocational rehabilitation services; access preemployment \*\*\* services; participate in supported employment; participate in vocational counseling and guidance; connect with student support services at the\*\*\*; participate in self-determination and advocacy skills training; and participate with Parent in the District \*\*\* talk series.<sup>34</sup>
35. The District has supported \*\*\* available as part of \*\*\* services. A job coach is assigned to a student to assist with interview

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<sup>32</sup> JE 15.

<sup>33</sup> JE 16; TR at 223-227.

<sup>34</sup> JE 17 at 1-2, 10-11.

preparations, job search, and on-the-\*\*\*. The District did not provide supported employment services to Student.<sup>35</sup>

36. On May\*\*\*, 2023, the District convened Student's ARD committee to review recently completed evaluations and for a \*\*\*meeting. Parent attended the meeting and expressed concerns about Student's handwriting, the lack of \*\*\*-related assistance the District provided, and the strategies Student was taught for compensating for Student social skills deficits. Parent disagreed with all of the evaluations recently completed by the District, requested independent education evaluations in all of these areas, and requested reimbursement for \*\*\*evaluation. Parent also disagreed with the proposals made during the ARD meeting. The District provided prior written notice for the proposed services and the determinations made.<sup>36</sup>
37. The ARD committee reviewed the assistive technology evaluation, \*\*\* plan, and occupational therapy evaluation. The District proposed no changes to Student's IEP and services.<sup>37</sup>The ARD committee determined Student would be \*\*\* \*\*\*Plan, \*\*\*, and having passed the \*\*\*\*Student was exempt from the \*\*\*because of the COVID-19 pandemic.<sup>38</sup>
38. While in\*\*\*, Student applied for several part-time jobs. Student was \*\*\*but was \*\*\*because Student was unable to keep up with the \*\*\*tasks. Parent asked the District to assist Student with obtaining a part-time job, but no assistance was provided.<sup>39</sup>

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<sup>35</sup> TR at 182, 186-187.

<sup>36</sup> JE 18 at 30-31, 34-35.

<sup>37</sup> JE 18 at 6-10.

<sup>38</sup> JE 18 at 31.

<sup>39</sup> TR at 238-241.

39. During the 2022-23 school year, Student completed the application for \*\*\* and began the application for\*\*\*. The District college and career counselor assisted Student with the applications.<sup>40</sup>
40. Student passed all of Student courses in the 2022-23 school year, earning \*\*\*\*\*<sup>41</sup>.
41. On October \*\*\*, 2023, the District notified Parent that IEEs at District's expense had been approved in the areas of speech, occupational therapy, assistive technology, and functional vocational. The District can fund evaluations conducted out of state by providers not holding Texas licenses. Parent has not yet had any of the independent educational evaluations performed and is requesting additional time for these evaluations.<sup>42</sup>

## **VI. DISCUSSION**

### **A. DUTY TO PROVIDE A FAPE**

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). The district has a duty to provide a FAPE to all children with disabilities between the ages 3 and 21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

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<sup>40</sup> TR at 195, 202.

<sup>41</sup> JE 22; JE 24.

<sup>42</sup> JE 19; TR at 133-134, 336.

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 the 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, 403 (2017).

## **B. BURDEN OF PROOF**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Andrew F.*, 580 U.S. at 403.

## **C. APPROPRIATE PROGRAM**

A judge applies a four factor test to determine whether a school district's program meets IDEA requirements. Those factors are:

1. Whether the program is individualized on the basis of the student's assessment and performance;



2. Whether the program is administered in the least restrictive environment;
3. Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
4. Whether positive academic and non-academic benefits are demonstrated.

*Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997); *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765-66 (5th Cir. 2018).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Michael Z.*, 580 F.3d at 294.

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

In this case, Petitioner challenges whether the District appropriately individualized Student's program in light of Student circumstances. In particular, Petitioner alleges the District, through the IEP, failed to address Student's social skills, \*\*\*, and assistive technology needs. The District's obligation when developing Student's IEP was to consider Student strengths, Student parent's concerns for enhancing Student education, results of the most recent evaluation data, and Student academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). 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, .320, .323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the 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).

**a) \*\*\*Services and Social Skills**

Student's primary disability is\*\*\*. The District's FIE identified Student difficulty interacting with others, poor social skills, and difficulty calming down appropriately when frustrated. The November 2022 evaluation from \*\*\*determined Student has persistent deficits in social communication and social interactions across multiple contexts, including difficulty with nonverbal communicative behaviors used for social interactions. However, the social and emotional present levels in Student's IEPs during the relevant time period barely even mentioned Student \*\*\*related social and emotional deficits. The 2021-22 and 2022-23 IEPs even went so far to indicate Student had age appropriate adaptive social and communication skills, which contradicts all of the evaluations of Student.

Moreover, the IEPs are devoid of any goals related to Student's prevalent social and communication deficits. The IEPs do document Student's participation in the SCORES program. However, again, nothing in the IEP indicates the particular services this program provides to Student, the goals to be addressed with

Student in the program, or how the services of the program correlate with Student deficits.

**b) \*\*\* Services**

Beginning at age sixteen, the IDEA requires an IEP to include appropriate measurable postsecondary goals based upon age-appropriate \*\*\* assessments related to training, education, employment, and, where appropriate, independent living skills. 34 C.F.R. § 300.320(b)(1). The IEP must also include “the \*\*\* services . . . needed to assist the child in reaching those goals.” 34 C.F.R.

§ 300.320(b)(2). In Texas, \*\*\* planning begins at age fourteen. Tex. Educ. Code § 29.0111; 19 Tex. Admin. Code § 89.1055(h). Under state law, the ARD committee must consider, and where appropriate, address the following in the student’s IEP:

- appropriate student involvement in the student’s \*\*\* to life outside the public school system;
- if the student is at least 18, appropriate parental involvement in the student’s \*\*\* if the parent is invited to participate by the student or the school district;
- any post-secondary education options;
- a functional vocational evaluation;
- if the student is at least 18, the availability of age-appropriate instructional environments;
- independent living goals and objectives; and
- appropriate circumstances for referring a student or the student’s parents to a governmental agency for services.

Tex. Educ. Code § 29.011; 19 Tex. Admin. Code § 89.1055(h).

Here, the District did have a \*\*\* plan in place for Student during the relevant time period. However, the plan was very bare-bones in terms of both goals and services and was not based upon needed evaluations. The District surveyed Student's post-secondary interests but did not utilize any \*\*\*-related assessment tools or timely complete a functional vocational evaluation. So, the plan was entirely based upon Student's self-identified interests.

Additionally, during the relevant time period, the only \*\*\*-related goal in Student's IEP related to time management. While an important \*\*\*-related skill for Student, this goal alone was not sufficient to address Student's needs in this area. Again, Student was identified to have deficits in social communication and social interactions across multiple contexts. Student also struggles with cognitive rigidity, has trouble with surprises, and is rigid about fairness. These \*\*\*-related deficits were entirely ignored in Student's \*\*\* plan and are likely to be issues for Student outside of the structure and relative safety of a public school with the support of special education services. In fact, Parent indicated to the District on several occasions that Student was struggling to locate and hold a part-time job and that Student social skills deficits appeared to be a barrier in this area.

Likewise, the \*\*\* plan and IEP were deficient in the \*\*\*-related services for Student. The only \*\*\* services identified in the 2020-21 plan were courses in creative\*\*\*, and in 2021-22, time management was the only item Student needed to address. In November of 2022, the District added that it would connect Student with Texas Work Force Solutions.

Strangely, the District waited until just days prior to \*\*\*to complete a functional vocational evaluation. The timing, of course, limited the District's ability to implement the recommendations and Student's ability to benefit from the results. Like\*\*\*, the evaluator recommended vocational counseling and \*\*\* for Student. The District should have provided these services to Student \*\*\*as part of Student \*\*\* plan.

**c) Assistive Technology**

Petitioner also contends the District denied Student a FAPE by failing to include assistive technology in the IEP. Student's ARD committee was required to consider Student need for assistive technology. 34 C.F.R. § 300.324(a)(2)(v). If the ARD committee determined Student required assistive technology as part of Student special education services, then the District was required to provide it to Student. 34 C.F.R.

§ 300.105(a). Petitioner argues that the District failed to meet its obligation to provide assistive technology because Student struggled with handwriting and assistive technology should have been provided to remedy this issue.

The evidence does not support this argument. The District conducted an assistive technology evaluation, which did identify Student challenges with handwriting and associated skills. However, Student is proficient at typing, can efficiently use a computer, effectively uses Student ear buds, and can efficiently access needed computer applications. The computer tools Student needs, such as word processing, spell check, and grammar check, are commonly available on standard computers. As such, Student was able to benefit from special education using the Chromebook computer the District provided to all students and, thus, did not require additional assistive

technology.

In this case, the District failed to provide Student with an IEP likely to produce a meaningful educational benefit when it developed an IEP that was not based upon Student evaluations and did not address Student \*\*\*and \*\*\* needs. *V.P.*, 582 F.3d at 583; 34 C.F.R. § 300.324(a)(1).

## **2. Least Restrictive Environment**

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

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

1. Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
2. If not, whether the school district mainstreamed the student to the maximum extent appropriate.

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

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.*

Here, the District educated Student in Student least restrictive environment. To address Student specific learning disability, the District placed Student in a resource math class. The evaluation data supported this as the best placement for Student to receive Student math instruction. Because of Student\*\*\*, Student also received some services in the \*\*\* room. Student was in mainstream for the remainder of Student classes and was included with Student non-disabled peers for all non-academic activities. The District mainstreamed Student to the maximum extent appropriate and only removed Student from general education classes for a limited portion of Student schedule.

### **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.*

Here, Petitioner presented no evidence to indicate the District acted in bad faith to exclude Parent or refused entirely to listen to her. As a hearing issue, Petitioner contended the District failed to convene necessary ARD committee meetings. However, the evidence presented at hearing does not support this contention. The District convened annual ARD committee meetings each year during the relevant time period. Petitioner points to no instance when circumstances warranted convening a meeting, and the District failed to do so. Parent was an active participant in ARD committee meetings, and the District conducted assistive technology and occupational therapy evaluations at her request. The District did not meet all of Parent requests. However, a district is not required to do so. *White*, 343 F.3d at 380.

#### **4. Academic and Non-Academic Benefits**

Whether a student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813-14 (5th Cir. 2012). The evidence showed Student made passing grades and passed Student \*\*\*exams. These results indicate Student received academic benefit.

The record, however, does not support a similar conclusion with respect to non-academic benefit. As detailed above, the District failed to address Student's



\*\*\*-related and \*\*\* needs. As a result, Student did not learn how to handle novel social interactions or compensate for Student non-verbal communication deficits. Additionally, because Student was not provided vocational counseling or supported employment, Student made limited progress in the areas of \*\*\*, such as identifying jobs that match Student strengths and interest and appropriate on-the-job social skills.

The District failed to develop a program for Student that was reasonably calculated to provide Student educational benefit based upon Student unique needs. *Andrew F.*, 580 U.S. at 399, 403. Student IEP did not address Student \*\*\*-related and \*\*\* needs as identified in the evaluations. As a result, Student did not receive non-academic benefit. A review of the overall educational program shows Student was not provided a FAPE and failed to make progress with the program as it was developed. *Michael F.*, 118 F.3d at 253.

#### **D. EVALUATION AND PROCEDURAL REQUIREMENTS**

In addition to the FAPE claim, Petitioner argues that the District committed a procedural violation of the IDEA by failing to timely comprehensively evaluate Student. Liability for a procedural violation only arises if the procedural deficiency: (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or (iii) caused a deprivation of educational benefits. *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

Petitioner alleges the District was obligated to comprehensively evaluate Student in 2022, and the District failed to do so. The District's obligation was to ensure the reevaluation of Student occurred when it determined Student educational needs warranted such a reevaluation. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R.

§ 300.303(a)(1). A school district must also conduct a reevaluation at least once every three years, unless the school district and the student's parent agree it is unnecessary. 34 C.F.R. § 300.303(b)(2). Under the IDEA and its implementing regulations, each student with a disability must be assessed "in all areas related to the suspected disability." 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4). These areas include, "if appropriate, . . . social and emotional status, . . . academic performance, communicative status, and motor abilities." 34 C.F.R. § 300.304(c)(4). The regulations further require that evaluations must be sufficiently comprehensive to identify all of the child's special education and related services needs" 34 C.F.R. § 300.304(c)(5).

Here, the District completed a comprehensive evaluation of Student on April \*\*\*, 2019. This was the last comprehensive evaluation the District completed for Student. There is no evidence the District considered its obligation to reevaluate Student in April of 2022 or reached out to Parent to discuss waiving the reevaluation. On November \*\*\*, 2022, seven months after a reevaluation was due, the District conducted a review of existing evaluation data. As part of this review, the District determined a comprehensive evaluation was not necessary. Instead, the District only conducted occupational therapy, assistive technology, and speech evaluations.

The evidence presented at hearing showed that, during November of 2022, Parent remained concerned about Student's function and thought additional evaluation data would be helpful to Student program. She expressed concerns about Student's \*\*\*and social skills in a job setting. During this same time, Parent sought out \*\*\*\*to conduct an independent evaluation because Parent believed additional evaluation data was necessary for Student's \*\*\*. This shows that if she had actually been asked, Parent would not have consented to waiving the three year evaluation. Again, strangely, Parent's expressed concern about Student's \*\*\* preparedness did not prompt the District to conduct a functional vocational evaluation at any time during 2022.

The evaluation conducted by \*\*\*not only provided a picture of Student's disability and deficits, but also made recommendations related to Student's \*\*\*. These recommendations included Student participating in social skills training in the community to help Student prepare for the social demands of adulthood, vocational counseling, and support through a \*\*\* program. If the District had included these items in a \*\*\* program for Student, Student would have been better prepared for post-school life. Because the District failed to timely conduct a reevaluation, Parent had to employ \*\*\*\*to do so. The District's failure to timely conduct a reevaluation impeded Student's right to a FAPE and significantly impeded parent's right to participate in the decision-making. *Adam J.*, 328 F.3d at 812.

## **VII. 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 failed to provide Student a FAPE during the relevant time period, and Student IEP was not reasonably calculated to address Student needs in light of Student unique circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE- 1*, 580 U.S. 386, 403 (2017); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997).
3. The District failed to timely comprehensively assess Student in all areas of suspected disability and need. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4), (5).

## **VIII. RELIEF AND ORDERS**

The IDEA's central mechanism for remedying perceived harms is for parents to seek changes to a student's program. *Polera v. Bd. Of Educ. Of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 483 (2d Cir. 2002). Judges in special education proceedings have broad discretion in fashioning relief under the IDEA. Relief must be appropriate and further the purpose of the IDEA to provide a student with a FAPE. *School Comm. of Town of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359, 369 (1985).

Here, Student \*\*\*. Thus, ordering changes to Student program is not an option. Because of these facts, Petitioner requested compensatory \*\*\* services, independent \*\*\*, independent social skills training, and counseling and therapy services.

However, Petitioner failed to present any evidence about these proposed remedies. Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student. *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005) (quoting *G. ex rel. R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 309 (4th Cir. 2003)). The ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid*, 401 F.3d at 524. Petitioner presented no evidence about how much compensatory \*\*\* services, \*\*\*, or social skills training Student requires, or how much any of these services cost. Absent remedial evidence, the Judge is unable to make a reasonable calculation related to the specific amounts and kinds of services Student now requires to remedy the District's failure to address Student \*\*\* and social skills. *Id.* Therefore, the Judge is unable to award any compensatory services.

A judge in a special education proceeding does have the authority to grant all relief deemed necessary to ensure the student receives the requisite educational benefit denied by the school district's failure to comply with the IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991). Here, the District violated the IDEA when it failed to timely reevaluate Student. This violation necessitated Parent obtaining \*\*\*independent evaluation. Therefore, in an exercise of Student broad equitable authority, the Judge, to remedy the District's failure to comply with the IDEA, grants Parent's request for reimbursement for \*\*\*evaluation. *Burlington*, 471 U.S. at 369.

Petitioner has also requested an independent vocational evaluation. The District previously agreed to fund such an evaluation and indicated at the hearing that doing so through an out of state provider not holding a Texas professional license is feasible. Additionally, the District's independent educational evaluation criteria contain no specific qualifications for professionals conducting a functional vocational evaluation. JE 19 at 7. To address Student's continuing \*\*\* needs and remedy the District's failure to address these needs previously, the Judge determines the District is required to fund an independent functional vocational evaluation in \*\*\*

Based upon the foregoing findings of fact and conclusions of law, it is ORDERED that the District will reimburse Parent \$3500 for \*\*\*independent education evaluation;

It is further ORDERED that the District will fund an independent functional vocational evaluation for Student in\*\*\*. The independent evaluator does not need to hold a Texas professional license.

All other relief not specifically stated herein is **DENIED**.

Signed December 20, 2024.

ALJ Signature:

A handwritten signature in black ink that reads "Steve P. Elliot". The signature is written in a cursive style and is positioned above a horizontal line.

**Steve Elliot**  
**Special Education Hearing Officer**  
**For the State of Texas**

### **NOTICE TO THE PARTIES**

The Final Decision of the Judge in this case is a final and appealable order. Any party aggrieved by the findings and decisions made by the Judge 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).