DOCKET NO. 175-SE-0224

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

FINAL DECISION OF THE HEARING OFFICER

Introduction

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing federal and state regulations. Petitioner Student brings this case against the Respondent, Dallas Independent School District (Respondent, the District, or Dallas ISD), and generally alleges that the District failed to comply with its Child Find obligations under the IDEA and also failed to provide student a free, appropriate public education (FAPE).

Procedural History

Student filed student Complaint or Request for Due Process Hearing on February 8, 2024. Student later filed a First Amended Complaint on May 13, 2024. The parties sought and received two continuances for good cause. A hearing on the merits took place on August ***, 2024. At the close of Student's case, the District moved for judgment as a matter of law, which motion was denied.

Throughout the proceedings in this case, Janelle Davis represented Student. Rebecca Bradley, with Abernathy, Roeder, Boyd, Hullett, P.C., represented the District. ***, Deputy General Counsel for the District, also appeared for the District.

Issues from the Pleadings

Student's amended complaint raises the following legal issues before the Hearing Officer:

1. Whether the District violated its Child Find obligations by failing to conduct timely and full evaluations of Student in all areas of known or suspected disabilities, despite requests from Student's Parent to do so;
2. Whether the District failed to create an appropriate Individualized Education Program (IEP) for Student;
3. Whether the District failed to appropriately implement Student's IEP;
4. Whether the District denied Student's parent meaningful participation in the placement decisions for Student;
5. Whether the District insisted on a placement for Student that is not appropriate for student needs or in the least restrictive environment.

Student also alleges that the two-year statute of limitations does not apply in this case due to misrepresentations by District officials relating to evaluations for Student. In student amended complaint, Student seeks the following relief:

1. Find that the statute of limitations does not apply due to the District's specific misrepresentations to Student's Parent;
2. Find that the Student's rights to a FAPE have been violated;
3. Find that the District violated its Child Find obligations;

4. Find that the recommended placement is not appropriate or the Least Restrictive Environment;
5. Order compensatory education and related services specific to student's academic and other progress, including but not limited to ABA therapy;
6. Order that the District pay compensatory damages to Petitioner for its failures that have led to a denial of FAPE, including but not limited to private counseling services for the Student to address the trauma that student endured because of the District's failures and damages to compensate for the ***;
7. Reimbursement of any out-of-pocket expenses parent has incurred for private services or therapies or fees related to such services and therapies, including counseling needed for the Student;
8. Reimbursement of all costs and reasonable attorneys' fees for the filing of this due process complaint; and
9. Any and all other remedies that Student may be entitled to under the law.

The District generally and specifically denies the allegations in Student's amended complaint. In addition, the District raises the affirmative defense of the statute of limitations applying in this case, due to Student's alleged failure to properly plead exceptions to the statute.

The District also raised a plea to the jurisdiction, asserting that claims or relief based on matters not covered by the IDEA are outside the Hearing Officer's subject matter jurisdiction. The Hearing Officer agrees and hereby dismisses any claims or request for relief not specifically arising under or otherwise available under the IDEA.

Findings of Fact[1]

Student's *** and ***

1. Student is a ***year-old student residing within the boundaries of the Dallas ISD. *(Tr. at 10, 256-257; JX 6 at 1).* Student last attended ***school in the Dallas ISD in the ***during the 2023-2024 school year. *(Id.)* Student is a nice ***, whose teachers describe student as "loving, affectionate, and friendly." *(JX 7 at 4).*
2. Student is eligible for special education services based on autism and a speech impairment. *(JX 6 at 20-22).* Student's primary problem is behavioral, specifically student ***. Both student parents and staff at student school note that Student frequently ***. Student also often refuses ***. *(Tr. at 266; JX 6 at 1).* This behavior ramped up in the latter part of *** during the 2022-2023 school year. *(Tr. at 113).*
3. According to Student's Parent, when Student was enrolled in in ***at *** in the 2020-2021 school year, Parent began noticing concerns with Student that led parent ask the District for "help," although the specific reasons for parent wanting help were not clear. *(Tr. at 257).*
4. In October 2020, the District provided Student's Parent with a consent form for mental health services. Parent checked various boxes on the form and returned it to the District. *(JX 1).*
5. Later, before the District took any action in response to the consent form, Student's Parent withdrew student from the District, primarily because this period was during the Covid pandemic and Student could not tolerate wearing mandatory face masks at school. *(Tr. at 257-61).*
6. Student attended a private *** until student Parent re-enrolled student for ***during the 2022-2023 school year again at***. Near the end of Student's

[1] In this decision, references to the Transcript of the Hearing on August 22-23, 2024 will be "Tr. at _." References to Joint Exhibits will be "JX _ at _"; Petitioner's Exhibits will be "PX _ at _"; and Respondent's Exhibits will be "RX _ at _."

***year, the District advised student Parent that student needed to go to ***.[2] *(Tr. at 261).*

7. While Student was in ***, student Parent twice submitted a consent form Parent previously submitted to the District and again in the***. *(JX 1).* Parent completed the consent form in January ***, 2023. *(JX 1; Tr. at 261-62).* Student's Parent also requested around this time that Student be tested for autism and dyslexia. *(Tr. at 262).* A District official came to Parent's home to get a release to obtain records from ***. *(Tr. at 262-63).*
8. Later, in March 2023, Student's Parent went to school to pick up Student. Typically, the Parent sometimes had to pick up Student when student was having problems such as ***. While there, student Parent also completed paperwork consenting to Student being evaluated. *(Tr. at 52-57; JX 2).*
9. After Student's parents submitted their consent for Student to be evaluated, Assistant Principal ******told Student's Parent that student would not be tested until following school year because the school was too busy and did not have enough staff to do so. *(Tr. at 267-268).* The District offered no other reasons for not evaluating Student sooner.
10. Rather than evaluate Student, the District tried to see if *** had ***. *(Tr. at 268).* Student instead received *** treatment there in the summer after student ***. *(Tr. at 268-69).* While there, Student picked up additional bad behavior besides ***, such as***. *(Tr. at 269-270).* Student also *** and *** *(Id.)*

Student's***– 2023-24 school year

11. *** grade started and Student still needed to be tested. Student's Parent submitted yet another consent to have student tested. *(Tr. at 273-274).* It had

[2] There were a few references to *** during the hearing, but neither party explained exactly what this institution does. I will assume that, as its name implies, this ***.

been well over a year since Parent first inquired with the District about testing for Parent's student. *(Id.)* The District said they could take student to different facility for testing, which Student's Parent agreed to do. *(Id.)*

12. Finally, on or around September ***, 2023, the District provided Student's Parent with notice of a full and individual evaluation (FIE) for Student. Parent signed the consent for an FIE that same date. *(JX 5).* The District completed its FIE for Student on November *** 2023. *(JX 6).*

Student's FIE, initial ARD meeting, and IEP

13. According to the FIE, the reason for the referral and FIE was concern from Student's Parent about student ***, ***and***. Student's teacher reported that Student has average, age-appropriate academic abilities. However, the teacher also noted that Student has difficulty with completing student tasks timely, with student organizational skills, with completing independent activities and completing instructions. Significantly, Student struggles***. *(JX 6 at 1).* Student also has difficulty***. Student teacher also observed student not participating in group activities or not asking for assistance when needed. *(JX 6 at 2-3).*
14. Regarding Student's emotional and behavioral assessment, the evaluators found student "displays a pattern of differences in the areas of Language and Communication, Sensory Use and Interests, and Social and Emotional Responses that are consistent with characteristics of Autism Spectrum Disorder. The student does exhibit significant emotional, behavioral, or attentional problems." *(JX 6 at 7).*
15. Student's academic achievement, developmental and functional assessment indicated that student performed in the slightly limited range. Student's assessment of student intellectual, adaptive behavior and vocational functioning suggested that student was average or age-appropriate in student intellectual

ability, expressive language development and memory abilities. *(JX 6 at 9-11).* Student's speech and language skills, according to the evaluators, were generally average. *(Id. at 11-16).* However the evaluators also concluded that Student displayed a disconnect generalizing ***to real-time social scenarios or situations, especially with***. *(Id. at 15.)*

16. The FIE evaluators concluded that Student meets disability eligibility criteria as a student with Autism, as well as a student with a Speech Impairment characterized by a ****(JX 6 at 17).* The FIE evaluators made the following recommendations for Student's IEP:

> Recommendations for the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or, for ***children to participate in appropriate activities:
>
> Recommendation(s) for Instruction:
>
> ***Impairment Recommendations:
> Student may benefit from direct and/or indirect consultative services to address: - Improving ***skills by identifying and self-monitoring student use of expected and unexpected behaviors - Improving ***skills by identifying the perspective of others to respond appropriately - Improving ***language skills by independently identifying how spoken language and body language help to convey a larger meaning of what others are saying – Improving ***language skills by maintaining a reciprocal social interaction with another peer/adult by making a relevant comment or asking an appropriate question.
>
> For a student who appears to meet the criteria for autism or emotional disturbance, provide specific recommendations for positive behavioral interventions, supports and other strategies.
>
> Follow routines and give notice before changes occur. Provide a daily visual schedule. Give clear and concrete expectations. Use first/then scenarios. Offer two choices of activities. Give frequent breaks and alternate between structured work and break times. Allow [Student]

to work for an earned reward or activity. Control proximity. Provide a cool down area.

Recommendation(s) for Behavior Intervention:
Extra time
Frequent Reminders
Checks for understanding
Repeated instructions as needed
Water breaks as needed

(JX 6 at 17-18).

17. The District held an Admission, Review and Dismissal (ARD) meeting for Student on November***, 2023. *(JX 7; Tr. at 274).*
18. Before this ARD meeting, Student's Parent spoke to ******about the ******* Class that was an option being considered for Student's placement. Parent raised concerns about ***. Parent also was led to believe that this program was specifically for kids with******. ******never mentioned to the Parent that there were students in this program who were much older than Student and had been physically aggressive to other students. *(Tr. at 274-76).*
19. The ARD committee reviewed Student's present level of academic achievement and functional performance (PLAAFP). The committee found that Student, academically, was generally within age/grade expectations. The committee also found that Student needed supports relating to student***, as well as with student behavioral functioning.
20. The ARD committee developed an IEP for Student. *(JX 7).* Consistent with Student's FIE, Student's IEP included a Behavioral Intervention Plan (BIP). The IEP further provided services for Student that included speech therapy of *** minutes/week and personal social development of *** minutes/week. *(JX 7 at 5).* Significantly, the ARD committee recommended that Student be placed in the *** at a different school, ****(Id. at 33, 28).*

21. Everyone attending this ARD meeting, including Student's Parent, agreed to the IEP except******, who was the special education teacher for ***. *(JX 7 at 36).* Later the same day that the ARD committee had met, Student's Parent had a conversation with******, who called to further explain the *** toParent. *(Tr. at 276-278).*
22. According to Student's Parent, *** advised Student's Parent that the *** was *not* for children with autism and they don't do well there. For example, *** mentioned that students with *** will often copy bad behaviors of the other students in class. *(Tr. at 87).* *** also informed Student's Parent that this program was more for students who are physically aggressive and that based on the ARD meeting, Student didn't qualify for this program. *(Tr. at 118; JX 53).*
23. In fact, the District's *** specifically states under "Eligibility" that the program is for students with "Severe, chronic physically aggressive behaviors that limit full access to the general education curriculum." *(JX 53).* Although there were a couple references in Student's record about student being aggressive, student "aggression" was overstated. *(Tr. at 301-302).* As a whole, Student generally was *not* considered an aggressive child and never received any disciplinary referrals. *(Tr. at 302).*
24. *** also explained that *** at ****(Tr. at 277-78).* Student's Parent expressed concern about Student's traveling alone on a bus in a different area with a busy road near the new school. *(Tr. at 275, 278-279, 284, 302-303).* Parent wanted a bus monitor who would assist Student from the bus into student school but this issue was not addressed. (*Tr. at 278-279, 316, 330-331).*
25. At the hearing, however, *** denied making most of the statements that Student's Parent said *** made during their call. *(Tr. at 97-103).*
26. After parent conversation with ***, Student's Parent informed the District that Parent did not want Student placed in ****(Tr. at 281).* Parent and Student's Parent

later met with several staff at ***and requested that their student be placed instead back to that school. *(Id. at 281-283).* Student's parents also expressed to District staff that ***is located near a ***. *(Id.)* By contrast, ***is in a neighborhood near their home, where student would be ***. *(Id. at 283-284).*

27. After the initial ARD meeting, Student's parents both met with District and ***staff to discuss potential next steps for Student. According to Student's Parent, District staff acknowledged parents' concerns, said they were understandable, and said that they had not tried any accommodations at school like they normally did. *(Tr. at 281-282).* District staff agreed to switch Student's placement back to***, where accommodations would be made. *(Id.)* Parent said Assistant Principal ******was upset, stating they didn't have resources at school or training to help Student. However, District staff responded that they would provide the school what it needed. *(Id.)*
28. The District agreed to conduct another ARD meeting, which took place on December***, 2023. *(JX 9).* Student's Parent explained to the ARD committee that

> parent main concern is that Student ***. Parent input was noted and the meeting continued.

(JX 9 at 37).

29. Noteworthy, Student's Parent reiterated in this ARD meeting deliberations that Student "is not a physically aggressive student." *(JX 9 at 38).* The committee ended in disagreement, with Student's Parent continuing to reject Student's placement in ****(Id.)*
30. The ARD committee concluded its meeting in December, which only produced a draft IEP that essentially was fairly identical to the initial IEP from the previous month. *(Id.)* Sometime after the December ARD meeting, the District later

offered a different campus that also had a ***, but Student's Parent declined that campus as well. *(Tr. at 284, 319-320, 447-448).*

31. After the December ARD meeting, Student's Parent suggested to the District that they try accommodating Student by providing student a one-on-one aide. *(Tr. at 323).* The District provided an aide, ******, for Student in early January 2024. *(Tr. at 196).* The aide, however, was minimally trained for assignment to Student. *(Tr. at 192-196).*

32. ***, Manager for Dallas ISD Instruction Supports and Compliance, contacted Student's Parent to inform parent that Student was doing much better since receiving the aide's support. *(Tr. at 121-122, 286 298-299).* As Student's Parent testified:

> ***contacted me and said that Student was coming in and student was doing work half the day with Ms. -- well, actually, I had a couple of conversations. ******contacted daily for an update. Parent said Student was doing much better.
>
> Student was doing good with ******That student actually was doing work. The only concern was student wasn't going to into the main classroom. They were putting student in a separate area like -- well, like what's listed in the IEP if student's having trouble they were going to have a calm down area for student.
>
> So there was an empty portable that they were using. And Student was working on class work in there. Student had missed a lot of school so I knew it was going to be an adjustment maybe take a few weeks before student would go into the regular classroom for the full day.
>
> But student made a lot of good progress that student was actually going in and doing work for half the day according to parent. And Parent said student did good with******

(Tr. at 298-299).

Student's *** incident in January 2024

33. On January ***, 2024, Student had a significant ***, ***. Student aide ******observed student ***. When student ***then *** updated Assistant Principal *** on the *** as Parent came driving to Student's home. *(Tr. at 202-204).*
34. After this *** by Student, student Parent withdrew student from the District and *** student since January ***, 2024. *(Tr. at 288-289).*
35. In addition to the witnesses identified above, other witnesses testified at the hearing and highlights from their testimony are summarized below.
36. As referenced above, Assistant Principal *** testified having conversations with Student's Parent during student ***school year. *** explained that around April 2023, Student's more frequent ***suggested student might need additional interventions or special education services. *(Tr. at 127-128).* Before then, however, Student generally did not exhibit specific behaviors suggesting student needed special education services. *(Tr. at 133).* Student also was making adequate academic progress during student ***year. *(Tr. at 133-134).*
37. The District also put in place a "Safety Plan" for Student that included behavioral supports, verbal redirection, rewards, and a personalized schedule. *(Tr. at 134).*
38. ***the District's school psychologist, testified that in her evaluation of Student, Parent found that student had a strong reaction to changes in student routine. *(Tr. at 365-66).* Parent also testified that Student could have a "strong aversion" to new places, such as a new school. *(Tr. at 382).*
39. ***the District's Manager for Region 2 Instruction Supports and Compliance, helps implement Student's IEP. *(Tr. at 417-418).* Regarding the teacher's aide that Student receive in January 2024, ***explained that this TA was offered as a temporary support. There is a more formal process to provide a TA for more long-term support. *(Tr. at 430).*

Discussion

Burden of proof

There is no distinction between the burden of proof in an administrative hearing such as this case or a district court proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). In a due process hearing under the IDEA, the burden of proof rests upon the party challenging a proposed IEP and placement or seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993).

Child Find

Under the IDEA, a school district's Child Find obligations impose an affirmative duty to locate and timely evaluate students with suspected disabilities within its jurisdiction "who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade." 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.8(a)(1), 300.111(a), (c)(1). This obligation is "triggered when the local educational agency has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability." *El Paso Indep. Sch. Dist. v. Richard R.R.,* 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008). Thus, it is clear that the suspicion must be of both the disability and the need for special education services.

Educational need of special education services is not strictly limited to academics, but also can include behavioral progress and development of appropriate social skills. *E.g., Venus Indep. School Dist. v. Daniel S.,* 2002 WL 550455 at *11 (N.D. Tex., April 11, 2002). But not every student who struggles in school requires an evaluation for special education. 34 C.F.R. § 300.111(a). Mixed academic performance and some behavior issues do not automatically suggest a student has a disability. *Leigh Ann H. v. Riesel Indep. Sch. Dist.,* 18 F.4th 788, 797 (5th Cir. 2021).

Once a potential Child Find violation has been triggered – i.e., a finding that the District suspects or has notice of a disability *and* that the student needs special

education – the next consideration is that of timing. This inquiry examines the "reasonableness" of time from the date of suspicion until the referral for evaluation. *Dallas Indep. Sch. Dist. v. Woody,* 865 F.3d 303, 320 (5th Cir. 2017); *Krawietz v. Galveston Indep. Sch. Dist.,* 900 F.3d 673 (5th Cir. 2018); *Spring Branch Indep. Sch. Dist. v. O.W. ex rel Hannah W.,* 961 F.3d 781, 790-791 (5th Cir. 2020).

There are three relevant inquiries in assessing whether there has been a Child Find violation: (1) the date the Child Find requirement was triggered; (2) the date the Child Find duty was satisfied; and (3) the reasonableness of the delay between these two dates. *Krawietz, supra, at 677; O.W., supra, at 793*. The courts have also indicated that the reasonableness of a delay is not defined by its length in weeks or months, but rather by the steps taken by a district during the relevant period. *Krawietz at* 677*; O.W. at* 793*.*

In the present case, the record shows that Student's Parent requested that student be screened for mental health services as early as October 2020 and again in January 2023. *(JX 1).* It was not until the second half of the 2022-2023 school year, however, that Student's behavior became a significant and recurring problem. Academically, from 2020 to the present, Student for the most part was progressing normally.

Noteworthy, on January ***, 2023, Student's Parent requested that Student be tested specifically for autism anddyslexia. This fact, coupled with Student's escalating ***, show that as early as January ***2023 and certainly by April ***2023 (when parents signed yet another request for evaluation), the District had sufficient knowledge to suspect Student had a disability and might need special education services. Student meltdowns and *** by that time became a serious problem requiring frequent teacher interventions and several calls to student parents to come pick student up. Significantly, that is when the District approached the parents for consent to evaluate Student. So from January to April 2023, not only had Student's parents both requested that student

be evaluated, specifically for autism, but the District had previously sought and obtained parents' permission (albeit not a "formal" IDEA consent) to test Student. *(JX 2).*

Troublesome to the evaluation issue was the District's statements to Student's Parent around April 2023 that Student would not be tested until following school year because the school was too busy and did not have enough staff to do so. Parent did not receive the formal notice of an FIE for Student and a consent to sign until September ***, 2023. The FIE was completed on November***, 2023 and an ARD meeting held November***, 2024.

On this record, I find the District violated its Child Find obligations. The trigger date for Child Find was January ***, 2023. At that point, the District was obliged to either respond to the request or deny it within 15 school days. Tex. Admin. Code § 89.1011(b). It did neither. It was not until eight months later in September 2023 that the District revisited the issue of evaluating Student, producing an FIE two months later. While the time between the "formal" written consent for an FIE and its completion was timely for this initial FIE, *see* 34 C.F.R. §300.301(c), the delay from January 2023 was not reasonable. There was a delay between the trigger date for Child Find and the completion of the evaluation of approximately 10 months.

As noted above, the test for reasonableness of a delay between the time the District had notice of a need for evaluation in this case and its completion is not defined by its length in weeks or months, but rather by the steps taken by a district during the relevant period. Here, there was very little if any explanation as to what remedial steps the District took with Student; regardless, whatever steps the District may have taken ultimately proved ineffective and thus failed to satisfy Child Find obligations. *O.W., supra, at 795.* In fact, the District in April 2023 told Student's Parent that it was too busy and lacking staff resources at the end of the 2022-2023 school year to evaluate Student.

These reasons offer no safe harbor to the District under Child Find. Accordingly, I conclude that the District violated its Child Find duties.

Student also raises a statute of limitations argument presumably relating to Child Find issues based on the parents' October 2020 request for mental health services. Even assuming the District was on notice of a possible disability and need for special education services back then, the record fails to show that the District misrepresented any material facts to Student's parents sufficient to overcome the two-year statute of limitations.

FAPE issues

The next issue in this case involves whether the District denied Student a FAPE. The Supreme Court has held that to determine whether a school has provided FAPE to a student, the school must both comply with IDEA's procedural requirements and develop an individualized program reasonably calculated to enable the student to receive an educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, 206-207, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982). The Court also explained that an "educational benefit" under IDEA means one which is meaningful and provides a basic floor of opportunity or access to specialized instruction and related services individually designed to provide educational benefit. *Id.*, 458 U.S. at 201. Shedding additional light on IDEA and its FAPE requirements, the Court later made clear that the Act does not guarantee any particular educational outcome but rather only requires an educational program be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1,* 580 U.S. 386, 137 S. Ct. 988, 993, 197 L.Ed.2d 335 (2017).

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

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

2. Whether the program is administered in the least restrictive environment;

3. Whether the services are provided in a coordinated and collaborative manner by the key stakeholders; and

4. Whether both positive academic and nonacademic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 253 (5th Cir. 1997). When reviewing these factors, courts have found there is no particular manner to consider or weigh them. Rather, the caselaw holds these factors are "indicators" of an IEP's appropriateness and intended to guide the fact-intensive inquiry for evaluating whether an IEP provided an educational benefit. *Michael Z.*, *supra*, 580 F.3d at 293-294. Here, an examination of these various factors shows the District in this case fell short of providing Student with a FAPE.

1. Individualized IEP based on assessment and performance

The IEP at issue was Student's initial IEP, and the ARD committee based its contents on an IDEA-compliant FIE, as well as a review of Student's PLAAFP and a functional behavior assessment (FBA). The ARD committee also prepared a behavior intervention plan for Student. The problem with the IEP, however, was the proposed placement of Student in the *** was not individualized for several reasons.

First, the teacher for the *** expressly advised Student's Parent that this placement was *not* appropriate for Student. In fact, student could suffer adverse consequences – both physical harm and picking up bad behaviors in this environment. Second, the District's own description of this placement states *** which was not the nature of Student's behaviors. Third, the IEP failed to account for an aide to assist Student with student bus rides to/from a different campus and to assist student

transitioning from the bus into the school. Fourth, Student's ***. Finally, in a significant admission after Student's Parent told several school staff that Parent rejected the IEP, District Staff informed Parent that parent concern was understandable and that "they hadn't tried any accommodations at the school like they normally would."

Any of these reasons undercuts the individualized nature of the IEP. Collectively, they strongly suggest the IEP was not individualized as required by IDEA's regulations. 34 C.F.R. §§ 300.22, 300.320, 300.323(a).

2. Least restrictive environment

On this factor the District missed the mark, much for the same reasons above. Removing Student from student home school and placing student in a program whose teacher expressly said was not appropriate for student is not the least restrictive environment.

The Fifth Circuit in *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989), created a two-part test for determining whether a school district is educating a student with a disability in the LRE:

- 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.

Id. at 1048.

The District's conclusion that Student is best served by a placement in a *** in a different school than student home school is contrary to the facts and to IDEA's regulations, thus violating the first part of the test in *Daniel R.R.* Addressing the issue of least restrictive environment, IDEA's regulations provide that "[t]student child's

placement is…as close as possible to the child's home" and "[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that student or Parent would attend if nondisabled." 34 C.F.R. § 116(b)(3), (c).[3]

While these regulations suggest a preference for a home school placement for Student, the more convincing facts in this case came from the teacher in charge of the *** where the District wanted to place Student. That teacher called Student's Parent after the initial ARD meeting to express student opinions and concerns about this placement. ***.

When the teacher in charge of the **** has such strong reservations about Student's placement in this type of class, it is no surprise that Student's Parent had second thoughts about this placement. Further compounding these reservations, both possible alternative school campuses *** could result in serious injuries to Student.

In addition, there is a question whether the more stringent placement in the *** was necessary, and thus not the least restrictive environment, based on the District's using a one-on-one aide earlier in January 2024. Parent and the District both stated that Student had performed much better when student had the benefit of an aide to monitor student *** and other behavior. The District also noted that it has a "formal process" to consider whether an aide is an appropriate service for a student. That process was never considered for Student. In addition, the District further admitted that it had not tried other accommodations at Student's home school after student Parent rejected the initial IEP. Thus, between the admissions of the District's own staff and

[3] The IDEA does not necessarily mandate that students be placed in their home school. *E.g., White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373, 380-382 (5th Cir. 2003). IDEA's regulations on their face, however, certainly create a preference for a home school placement. And the District's own teacher responsible for the ******* Class at a different school expressly told Student's Parent that this placement was not appropriate for Student.

observations of Student's Parent, the *** was not an appropriate placement and did not have Student in the least restrictive environment.

3. Provision of services in a coordinated and collaborative manner

The next *Michael F.* factor examines assessing whether special education services have been provided in a coordinated and collaborative manner. *Michael F.,* 118 F.3d at 253. The process of developing an IEP is holistic, requiring the input and collaboration of various persons, including the student's parents, special and regular education teachers, therapists, and often the child student. 34 C.F.R. §§ 300.321, .322, .324; 19 Tex. Admin. Code 89 § 1050(c). To the extent possible, the decision of the ARD committee should be by mutual agreement. 19 Tex. Admin. Code 89 § 1050(g).

The record evidence shows that properly composed ARD committee met to develop an initial IEP for Student in November 2023. The committee included Student's Parent, special and regular education teachers, District staff, and other necessary participants. The ARD committee created detailed goals and objectives for Student's IEP. The committee initially agreed to the IEP, although *** who was not an official committee attendee, did not agree with the placement in the ***. After talking with *** later, Student's Parent rescinded parent agreement to the IEP. The ARD committee met again in December 2023 and created a draft IEP. Parent did not agree with that draft IEP either.

To be sure, the right of a parent or guardian to meaningful input in this process does not amount to "veto power" over the school district's decisions. *White, supra,* 343 F.3d at 380. And absent bad faith exclusion of a parent or guardian or refusal to listen to them in the IEP process, which did not occur here, a school district must be deemed to have met the IDEA's requirements of a coordinated and collaborative process. *Id.* So

while the IEP's specific, proposed placement decision was flawed, the process in getting there nevertheless comported with the IDEA.

4. Academic and nonacademic benefit

The last *Michael F.* factor for reviewing the sufficiency of FAPE – i.e., whether the student received academic and nonacademic benefit – is one of the most critical in the overall analysis. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813-814 (5th Cir. 2012). It is not necessary for a student to improve in every area of student IEP to obtain an academic benefit that satisfies the IDEA. *Houston Indep. Sch. Dist. v. Bobby R.,* 200 F.3d 341, 350 (5th Cir. 2000).

The problem with analysis of this factor is that due to the rejection of the IEP by Student's Parent, the District never really implemented the initial IEP. Instead, Student's Parent continued to send Student to student home school through December 2023 and into early January 2024. In January, the District provided a one-on-one aide to Student, and this arrangement resulted in marked improvement to Student, as noted by both the District and Student's Parent. Unfortunately, barely a week into this arrangement with the aide, Student ***. ***, Student's Parent decided to withdraw Student from school and student has been home-schooled since then. Student did receive *some* academic and nonacademic benefits while still at student home campus for the period student initial IEP arguably was in effect, albeit student was not attending the ******* Class at the campus identified in the IEP. The District therefore met this *Michael F.* factor in the overall FAPE analysis.

Conclusion

The Hearing Officer finds that the District violated the IDEA in two respects based on the record evidence and applicable law. First, the District violated its Child Find obligations when it failed to timely evaluate Student to determine if student had an educational disability and needed special education services. Second, the District failed

to provide FAPE to Student because the IEP's proposed placement of Student in the *** was not appropriate, individualized, or in the least restrictive environment for Student.

Conclusions of Law

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

1. Petitioner Student is eligible for special education services under the IDEA and its implementing regulations, 20 U.S.C. § 1400 *et seq.*; 34 C.F.R. § 300.301; Tex. Admin. Code § 89.1011.
2. Student resides within the Dallas ISD which is subject to the requirements of the IDEA and its regulations.
3. Student proved by a preponderance of the evidence that the District violated IDEA's Child Find obligations by not timely evaluating Student. 20 U.S.C. § 1412(a)(3); 34 CFR §300.111(a).
4. Student proved by a preponderance of the evidence that the District did not provide FAPE to Student when its proposed IEPs for Student required student placement in ***, which was neither appropriate or in the least restrictive environment, and the IEPs were not reasonably calculated to address Student's needs in light of student unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, 188, 203-04 (1982); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1,* 137 S. Ct. 988, 999 (2017); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.,* 118 F.3d 245 (5th Cir. 1997); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989).
5. Student did not meet student burden of proving an exception to the applicable two-year statute of limitations. 19 Tex. Admin. Code § 89.1151(d).

Orders and Relief

Special education hearing officers have broad discretion in providing relief under the IDEA, which must be appropriate. *Sch. Cmte. of Town of Burlington, Mass. v. Dept. of Educ. of Mass.,* 471 U.S. 359, 369 (1985). In this case, I order the following relief:

1. The District shall conduct an ARD meeting with Student's parent(s) within 30 calendar days of this order to accomplish the following:

    a. Discuss and arrange for a one-on-one aide to be assigned to Student within 30 calendar days of the ARD meeting to assist Student with student *** and other behavioral issues that impair or interfere with student ability to learn. The aide shall be trained in dealing with special education students, as well as students with ***.
    b. Within 60 calendar days of this order, conduct another functional behavior analysis (FBA) of Student to update student previous FBA to determine whether Student's aide or teachers need to address any additional interventions, supports, or services for Student's behaviors that impair or interfere with student ability to learn. This includes determining whether Student's BIP needs to be modified.
2. The District shall conduct another ARD meeting with Student's parent(s) within 120 calendar days of this order to assess Student's performance – both with student behavior and academically – after the period with student aide's support. This assessment shall be made with the goal to determine whether Student's support with an aide can be reduced, modified, phased out or eliminated.
3. Within 30 days of the date of this order, the District shall physically survey ******* to determine whether any additional security or barriers are needed to discourage or prevent possible student *** opportunities at this campus shall be completed within 75 days of this order.

4. The District shall provide compensatory services to Student as follows for the remainder of the 2024-2025 school year upon Student's return to school:
    a. An additional 30 minutes (60 minutes total) of speech therapy *per week*, allocated at the District's discretion;
    b. An additional 75 minutes (225 minutes total) of personal social development *per week*, which is specifically appropriate for students with *** such as Student, allocated at the District's discretion;
    c. The District shall also offer Student the above compensatory speech therapy and personal social development services, for the amount of time indicated and as allocated at the District's discretion, during the ESY in summer of 2025 if Student's parent(s) consent to student enrollment in ESY. Additional general education classes shall be offered to Student in ESY in the summer of 2025, if parent(s) consent, and as determined by the ARD committee.
5. Based on the above findings of fact and conclusions of law, I grant in part and deny in part Student's requested relief.
6. All other relief not specifically granted above is denied.

Signed: October 14, 2024 **By: _____**

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

Notice to the Parties

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