

SOAH Docket No. 701-24-18170.IDEA

TEA Docket No. 302-SE-0524B

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

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**Student., by next friend Parent.,  
Petitioner**

**v.**

**School of Science and Technology,  
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 School of Science and Technology (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 failed to provide Student with a free, appropriate public education (FAPE).

The Administrative Law Judge concludes the District provided Student a FAPE until December 4, 2023, and Student's educational program was reasonably

calculated to provide student a FAPE in light of student unique circumstances. The District denied Student a FAPE after student expulsion by not providing services post expulsion as required by the IDEA.

## **II. DUE PROCESS HEARING**

The due process hearing was conducted August 29 – 30, 2024, via the Zoom videoconferencing platform. Student was represented throughout this litigation by student legal counsel, Holly Terrell of the Law Office of Holly Terrell, PLLC. Parent also attended the hearing. The District was represented throughout this litigation by its legal counsel, Chris Schulz and Elizabeth Angelone with Schulman, Lopez, Hoffer & Adelstein, LLP. In addition, \*\*\*, the District's Director of Special Education, attended the hearing as the party representative.

The parties offered joint and separately disclosed exhibits. The parties jointly offered 11 exhibits. Petitioner offered 31 exhibits, and all or portions of 24 of those exhibits were admitted. Petitioner offered testimony of the District's campus special education coordinator, the special education area coordinator for the Houston area, the campus Assistant Principal of Academics, three inclusion special education teaching assistants, Student, and Parent.

Respondent offered 2 exhibits, and both were admitted without objection. The hearing was recorded and transcribed by a certified court reporter. Both parties timely filed written closing briefs. The Decision in this case is due October 21, 2024.

### III. ISSUES

#### A. PETITIONER'S ISSUES

Petitioner identified the relevant timeframe as the two years prior to filing of the original complaint to the present and confirmed the following issues for decision in this case:

##### Free, Appropriate Public Education (FAPE):

1. Whether the District failed to provide Student with a FAPE during the relevant time period.
2. Whether the District failed to develop an appropriate individualized education program (IEP) for Student.
3. Whether the District failed to properly implement Student's IEP.

##### Evaluation

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

##### Procedural

Whether the District significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

##### COVID-19

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

## **B. RESPONDENT'S LEGAL POSITION AND ADDITIONAL ISSUES**

Respondent generally denies the factual allegations stated in the Complaint. The District contends that it provided Student with a FAPE during the relevant time period and that Petitioner is not entitled to any of the requested relief.

## **IV. REQUESTED RELIEF**

### **A. PETITIONER'S REQUESTED RELIEF**

Petitioner seeks the following items of requested relief:

1. Order the District to pay for an Independent Educational Evaluation (IEE).
2. Order the District to create a plan for Student to graduate from the District on time including provision of appropriate supports and services to promote same.
3. Order the District to provide compensatory educational services.
4. Order the District to pay for private therapy for related services (ongoing & compensatory), including social skills training, counseling, and psychological.
5. Order the District to reimburse Parent for amounts spent for private counseling and therapy.
6. Order the District to reimburse Parent for amounts spent for psychiatric services.

## **V. FINDINGS OF FACT**

### **Background Information**

1. Student is \*\*\*years old and was enrolled in the District as a \*\*\*

grader. Student resides with Parent and \*\*\*. Student is eligible for special education services as a student with \*\*\*Before student withdrawal from the District on January \*\*\*, 2024, Student was a \*\*\*\*grader at the School of Science and Technology.<sup>1</sup>

2. The District conducted full and individual evaluation (FIE) in 2018. At the time, Student was eligible for special education services as a student with \*\*\*and speech impairment. Student's cognitive scores were average in comprehension-knowledge, fluid reasoning, short-term working memory, and visual processing, and low average in cognitive processing speed, auditory processing, and long-term retrieval. In the achievement portion of the testing, Student scored in the average range for applied math problems, math calculations, and number matrices; and low average in word identification, word attack, sentence reading fluency, math fact fluency, and sentence writing fluency; and well below average in spelling and passage comprehension.<sup>2</sup>
3. The District conducted a review of existing evaluation data (REED) in February 2021. The evaluation relied on the testing from the 2018 FIE and determined no new evaluations were needed. These results were discussed at an ARD Committee meeting.<sup>3</sup>

### **2021 -2022 school year**

4. On January \*\*\*, 2022, Parent received a letter from the District regarding Student's \*\*\*. The District placed Student in the \*\*\* program. The purpose of the program is to provide intervention prior to a student receiving a referral to \*\*\* and educate parents \*\*\*.<sup>4</sup>
5. Student's admission, review, and dismissal (ARD) committee met on April

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<sup>1</sup> Petitioner's Exhibit (PE) 9, 13; Transcript (Tr.) Volume (Vol.) II at 283.

<sup>2</sup> PE 1.

<sup>3</sup> Joint Exhibit (JE) 8; PE 2.

<sup>4</sup> JE 10.

\*, 2022, for an annual review. Student and Parent attended, and Parent agreed to the IEP. The ARD committee determined Student continued to be eligible for special education as a student with\*\*\*. Student's IEP included present levels of academic achievement and functional performance (PLAAFP); \*\*\* services; and one goal each for reading, math, science, and social studies. Student was educated in the general education setting with inclusion support in a group setting and the following accommodations: teacher check for understanding and reteach/reread materials as indicated, calculation aids – blank multiplication chart, extra time for completing assignments up to 1 day for assignments and same day for assessments, content and language supports for tests, and oral/\*\*\* administration for tests. The IEP also included State of Texas Assessments of Academic Readiness (STAAR) test accommodations.<sup>5</sup>

6. The 2022 IEP indicated Student performed well in student classes. Student engaged in class and asked questions if needed; however, student preferred to work alone instead of a group. Student performed at grade level for measures of academic progress (MAP) testing in math, reading, and science.<sup>6</sup>
7. The ARD committee determined Student did not need a behavior intervention plan (BIP), communication supports, assistive technology, transportation services, or extended school year services. Parent expressed concerns Student was not receiving small group for testing; however, Student requested this accommodation be removed. The committee decided to monitor student progress and add the accommodation again if needed. COVID-19 recovery services were not recommended.<sup>7</sup>
8. At the District, inclusion support services are provided by a teacher or a teacher assistant. The teacher assistants observed students, asked students directly if they need assistance, and checked for understanding of what is being taught and were responsible for implementing Student's IEP accommodations.<sup>8</sup>

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<sup>5</sup> JE 6.

<sup>6</sup> JE 6.

<sup>7</sup> JE 6.

<sup>8</sup> Tr. Vol. I at 25-26, 57.

9. Student made progress on student IEP goals during this school year. In May 2022, Student was at \*% progress on student reading goal, which required 70% accuracy. Student's final grades for the 2021-22 school year were all \*\*\*<sup>9</sup>

### 2022 - 2023 school year

10. Student's ARD committee met on April \*\*\*2023, for an annual review. Parent attended and agreed to the IEP. Parent had no concerns and wanted a \*\*\* to the \*\*\*. Again, Student's IEP included PLAAFPs; transition services; and one goal each for reading and math, which were the same as the 2022 IEP. The date of goals was April \*\*\*, 2022, to April \*\*\*, 2023. The schedule of services had April \*\*\*, 2023, to April \*\*\*, 2024. Based on the dates for the schedule of services, the date for the goals was a typographical error. Student continued to be educated in the general education setting with inclusion supports with the same classroom accommodations and STAAR accommodations.<sup>10</sup>
11. Student's\*\*\* teacher indicated student had an enthusiasm for writing, asked questions when student did not understand, and worked hard. Student \*\*\*teacher noted Student performed on grade level and had no academic deficits. Student effort was what hindered student academic performance. Student's MAP testing in fall 2022 and winter 2023 were at or above grade level for math, reading, and science.<sup>11</sup>
12. The ARD committee determined Student continued to not need any new evaluations, a BIP, communication supports, assistive technology, transportation services, or extended school year services. The committee reviewed the autism supplement and the COVID-19 Special Recovery Act with no recommendation for recovery services.<sup>12</sup>

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<sup>9</sup> PE 30; JE 6 at 3.

<sup>10</sup> JE 7; PE 16.

<sup>11</sup> JE 7 at 5, 7.

<sup>12</sup> JE 7.

13. Between April 2022 and March 2023, Student's IEP service logs for inclusion supports were blank. The logs contain entries from April and May 2023. During the 2022-2023 school year, Student had 8 excused and 12.5 unexcused absences. Student passed the STAAR \*\*\* tests in the Spring of 2023. Based on District assessments and teacher reports, Student was on grade level for all subjects. Student end of year grades were\*\*\*.<sup>13</sup>

### **2023 - 2024 school year**

14. On October \*\*\*, 2023, Parent received letters from the District regarding Student's attendance and student risk of losing credit for all student classes. By the end of the fall 2023 semester, Student had 18.5 excused and 3 unexcused absences.<sup>14</sup>
15. Student was suspended on November \*\*\*, 2023, pending an investigation. Student was expelled on December \*\*\*, 2023, for \*\*\*.<sup>15</sup>
16. On December \*\*\*, 2023, Parent emailed the District to request an extension of time to December \*\*\*, 2023, for Student to complete student work. She was concerned with student having to do 2 weeks of assignments in 2 days. The District's assistant principal sent an email to Student's teachers to send any assignments missed by Student to Parent. Teachers were not to penalize Student for late assignments and were to give student until December \*\*\* to turn in student assignments.<sup>16</sup>
17. During the fall semester of 2023, Student received student inclusion supports in reading, math, science, and social studies. The teacher assistants provided the inclusion support, and their job was to assist student with understanding,

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<sup>13</sup> JE 2; JE 7 at 7; JE 10; PE 12; PE 31; Tr. Vol. I at 55-56, 65-66.

<sup>14</sup> JE 3; PE 11.

<sup>15</sup> PE 29 at 144, 262, 309, 319.



keeping on task, helping student turn in student work, or “anything” student may need during the class time. Student was on-task during classes and doing student work; student did not utilize help from the teaching assistants.<sup>17</sup>

18. Three of the teaching assistants that provided Student with student inclusion supports for the fall of 2023 testified at the hearing indicating they did not know student special education eligibility, had never reviewed student IEP, and they were told to help Student as student needed and make sure student stayed on task.<sup>18</sup>
19. Student asked student teachers for help in student classes and not the teaching assistants. Several teachers allowed Student to turn in student assignments late.<sup>19</sup>
20. The District’s special education coordinator monitored Student’s progress by running bi-weekly grade reports, checking in with teachers, and checking service logs for completion. The District policy was to email progress reports to parents by a student’s special education case manager. No one from the District could testify to who was Student’s case manager.<sup>20</sup>
21. Student was enrolled in\*\*\*, \*\*\*, \*\*\*Student received several zeros or failing grades on some assignments during the fall 2023 semester. The reason for this was not explained during the hearing. Student’s final semester grades for the fall 2023 school year\*\*\*. It is unclear if Student completed student assignments after student expulsion and if this had an impact on student final semester grades.<sup>21</sup>
22. Student participated in\*\*\*\*.<sup>22</sup>

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<sup>17</sup> PE 23; PE 31; Respondent’s Exhibit (RE )1; PE 23; PE 31; Tr. Vol. I at 159-219.

<sup>18</sup> Tr. Vol. I at 159-219.

<sup>19</sup> Tr. Vol. I at 223-24, 234.

<sup>20</sup> Tr. Vol. I at 21-24, 123-26.

<sup>21</sup> JE 3; JE 5; Tr. Vol. I at 67, 69.

<sup>22</sup> Tr. Vol. I at 131.

23. The District held an ARD committee meeting on December \*\*\*2023. The IEP is labeled “annual review.” However, the IEP is identical to the April 2023 IEP except for the date, Student’s grade level, and the campus information.<sup>23</sup>
24. On the same date, the District held a Manifestation Determination Review (MDR) ARD committee meeting. Parent and Student attended with their attorney. The committee determined Student’s conduct was unrelated to student disability of\*\*\*, student IEP was being implemented at the time of the incident, and student did not need an FBA. An expedited due process hearing was held on August 14, 2024, and the expulsion decision was upheld by this Administrative Law Judge.<sup>24</sup>
25. The District’s Board policy states that when conduct is determined not to be a manifestation of a student’s disability, a student must: continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student’s IEP.<sup>25</sup>
26. Student did not receive any instruction from the District after student expulsion. The District’s Regional Special Education coordinator testified the District is not required to have a disciplinary alternative education program (DAEP) and is not required to provide services to students after expulsion because they are no longer enrolled in the District.<sup>26</sup>
27. Student has not attended any school or received any educational services since student expulsion. Parent did not enroll student in the public school district where student resides due to her perceived safety concerns. Due to Student’s expulsion, other charter schools did not allow enrollment.<sup>27</sup>

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<sup>23</sup> PE 9; JE 7.

<sup>24</sup> PE 6; Final decision in SOAH docket no. 701-24-18032 and TEA Docket No. 302-SE-0524A.

<sup>25</sup> PE 19.

<sup>26</sup> Tr. Vol. I at 117-19; Tr. Vol. II at 322-23.

<sup>27</sup> Tr. Vol. I at 254-55; Tr. Vol. II at 313-14, 317-18, 339.

## **VI. DISCUSSION**

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

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 62; *Andrew F., ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

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

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

The District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must

be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.* 580 U.S. at 399.

### **C. EVALUATION UNDER THE IDEA**

Petitioner alleges that the District failed to timely conduct a full re-evaluation. Generally, a school district must re-evaluate a student with a disability when the school district determines it is warranted or when a parent or teacher requests it. 34 C.F.R. § 300.303(a). Reevaluations are required once every three years unless the parent and the school district agree a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2).

Petitioner argues the District should have evaluated Student sooner than the 2024 deadline, but did not dispute the appropriateness of the most recent evaluation. The evidence shows the District timely evaluated Student. Student's FIE was completed in 2018 and a REED was conducted in 2021 within the three-year timeframe for reevaluations. The REED determined Student did not need any additional evaluations. An ARD committee meeting was held after the REED with Parent in attendance and the committee agreed no new evaluations were needed. Parent never asked for an evaluation and Student never showed a need for an evaluation either by behavior or academic struggles.

Based upon the credible evidence presented, Petitioner did not prove the District failed to conduct timely evaluations in all areas of suspected disability.

## **D. FAPE**

### **The Four Factors Test**

The Fifth Circuit has articulated a four-factor test to determine whether a Texas school district's program meets IDEA requirements. Those factors are:

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

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

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

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

In meeting the obligation to provide a FAPE, a school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize a student's potential, a school district must nevertheless provide a student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The District's obligation when developing Student's IEP is to consider student 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).

The evidence showed that the District developed an appropriate IEP based on performance and assessment. Student's IEPs included annual academic goals, related services, transition services, and accommodations based on Student's present levels. Parent agreed with the 2022 and 2023 IEPs. Petitioner asserted that the reading and math goals in the 2023 IEP were scheduled to end in April 2023,

effectively leaving Student without any goals; however, those dates are a typographical error because the schedule of services in the IEP was dated April 2023 to April 2024. It is unclear why Student's reading goal continued after May 2022, when student achieved \*\*\*% accuracy on a goal that required 70% accuracy. Certainly, Student's IEP goals were broad and could have been more artfully drafted; however, they were measurable and student progress on the goals was monitored. Any deficits in the IEP did not impede Student's ability to made educational progress as evidenced by student mastery of content through grades, MAP testing, and STAAR testing.

## **2. Least Restrictive Environment**

The IDEA requires a student with a disability to be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment requirement." 34 C.F.R. § 300.114(a)(2)(i), (ii). State regulations require a school district's continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), non-public day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

The evidence showed that least restrictive environment was not an issue in this case as Student was educated in the general education setting. Petitioner presented no evidence and made no arguments that Student was not educated in student least restrictive environment.

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

The IDEA contemplates a collaborative process between the school district and the parents. *E.R.* 909 F.3d at 766. The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome, because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

The evidence showed services were provided in a coordinated, collaborative manner by key stakeholders. Parent attended all ARD committee meetings and brought an attorney for the ARD committee meetings in December 2023. During the April 2022 ARD committee meeting, Parent had concerns regarding small group testing, but this accommodation was removed at Student's request with the committee agreeing to monitor the situation. Parent's only concern in the April 2023 ARD committee meeting was for Student to have a smooth transition from



\*\*\*. During the hearing, Parent did not mention any instances where Parent felt the ARD committee, or the District did not listen to Parent's requests or concerns. Each ARD committee meeting ended in agreement. Petitioner failed to establish that the District excluded Parent in bad faith or refused to listen to Parent.

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

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813-14 (5th Cir. 2012).

The evidence showed Student made academic and non-academic progress. Petitioner's argument that Student spent hours a day on homework during the fall 2023 semester is unpersuasive as it relates to a lack of progress claim. During \*\*\*grade, Student was in \*\*\* class. It is expected any student would \*\*\*. Student was engaged in class and asked teachers for help when student needed it. While it is true Student had zeros or low grades on assignments during the fall 2023 semester, it is unclear if this was due to a lack of effort, student absences, or not turning in work after student expulsion. Student passed all student classes, was on grade level or above, and passed student most recent STAAR test. Additionally, student participated in multiple extracurricular activities.

## **5. FAPE Conclusion**

The District developed a program for Student that was reasonably calculated to provide Student an educational benefit based upon student unique needs. *Andrew F.*, 580 U.S. at 399, 403. Student's IEP and program were developed using District evaluations, Parent, as well as key stakeholders from the District, provided input to develop Student's program, and Student made significant progress. A review of the overall educational program shows Student was provided a FAPE until student expulsion (see below), and made progress with the program as it was developed and implemented. *Michael F.*, 118 F.3d at 253; *Hovem*, 690 F. 3d at 391.

### **E. FAPE after Expulsion**

Petitioner argues that the District was required to provide special education services to Student after student expulsion in compliance with the IDEA and federal regulations. The District argued at hearing that under Chapter 12 of the Texas Education Code, after a student is expelled, the District no longer has an obligation to provide services. Additionally, the District argued that a charter school is not required to provide a DAEP.

A child with a disability who is removed from a placement based on a disciplinary decision must continue to receive educational services, although in a different setting, and to progress toward meeting the student's IEP goals. 34. C.F.R. § 300.530 (d)(1)(i). If the removal is a change of placement, the child's IEP team determines appropriate services. *Id.* at (d)(5). While the IDEA does not

specify what setting is required for the services, they may be provided in the home, in an alternative school, or in another setting. *OSEP: Memorandum 95-16: April 26, 1995*, Office of Special Education Programs. Children with disabilities that attend public charter schools retain all rights and protections under the discipline procedures of the IDEA. *OSEP 22-02: Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions: July 2022*, Office of Special Education and Rehabilitative Services. In fact, the District's own handbook follows the federal regulations and states a student must still receive services after removal.

The evidence is undisputed that Student was expelled on December \*\*\*, 2023, and did not receive any services from the District after this date. This Administrative Law Judge ruled on the expedited issues in this case and upheld the expulsion. However, any issues regarding a FAPE, which would include services post expulsion, were bifurcated into this proceeding. Nothing in the language under Chapter 12 of the Texas Education Code exempts charter schools from providing services to students who have been expelled. Here, the District's own handbook indicates students with disabilities are required to continue to receive services after a removal and does not make a distinction about expulsion. Even if the District's handbook attempted to make an exception for expulsion, it would be incorrect. All IDEA disciplinary provisions under the regulations apply to students in public charter schools. Therefore, the District should have provided Student with student educational services after student expulsion on December \*\*\*, 2023, until the date of student withdrawal on January \*\*\*, 2024. The fact the District does not have a DAEP is irrelevant because the services could have been provided at the home or

somewhere else agreed upon by the ARD committee. The District failed to provide required services to Student after student expulsion.

## **F. IEP Implementation**

When a parent brings a claim based on a school district's failure to implement an IEP, the *Michael F.* first factor (whether the program is individualized) and second factor (whether the program is administered in the least restrictive environment) are generally "not at issue." *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hanna W.*, 961 F.3d 781, 795-96 (5th Cir. 2020) (citing *Bobby R.*, 200 F.3d 341). Rather, a court or hearing officer must decide whether a FAPE was denied by considering, under the third factor, whether there was a "substantial or significant" failure to implement an IEP; and under the fourth factor, whether "there have been demonstrable academic and non-academic benefits from the IEP." *Id.* at 796 (citing *Bobby R.*, 200 F.3d at 349). Whether a provision of the IEP is significant relates primarily to whether it confers an educational benefit. *Lamar Consol. Indep. Sch. Dist. v. J.T. b/n/f April S.*, 577 F. Supp. 3d 599 at 605, (S.D. Tex. 2021).

The evidence showed that Student's inclusion logs were blank from April 2022 to March 2023, which is consistent with Student's testimony that no one helped student in \*\*\*grade. It is perplexing that the teaching assistants that provided Student's inclusion supports during the fall of 2023 did not know student special education eligibility criteria and had never seen student IEP. However, the inclusion logs for the fall of 2023 included documentation and show Student

received student inclusion supports for that semester. The three teaching assistants who testified stated Student did not ask them for help and asked the classroom teachers, which is consistent with Student's own testimony of asking teachers for help. Petitioner presented no evidence other than Student's testimony that student did not receive student inclusion supports or accommodations. Student's own testimony of being allowed to turn in homework late and receiving a math calculation aide for the STAAR test supports that student received student accommodations. Even if the failure to provide the inclusion services for most of the 2022-2023 school year is considered a substantial or significant failure to implement Student's IEP, it does not rise to the level of a denial of a FAPE when taken into consideration with the fact Student did not access student inclusion supports when they were available, student received student accommodations, and the academic and non-academic progress student made as mentioned above.

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

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

Student's April 2023 IEP indicated student special education services were interrupted, reduced, delayed, suspended, or discontinued during the 2019-2020 school years, but Petitioner presented no evidence that Student needed any compensatory services due to this. The evidence showed that the District addressed the COVID-19 Special Education Recovery Act in the ARD committee meetings in 2022 and 2023 as noted in the committee deliberations and determined Student did not need compensatory services. Petitioner did not meet the burden of proving the District failed to provide compensatory relief as required by the COVID-19 Special Education Recovery Act (SB 89).

#### **H. Procedural Issues**

Petitioner alleges procedural violations of the IDEA. Liability for a procedural violation only arises if the procedural deficiency impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Parent claims Parent did not receive any progress reports from the District. The District policy was to email progress reports home by a student's case manager. Neither the District Special Education Coordinator nor the District's Regional Special Education coordinator could testify as to who was Student's case manager, which is concerning. This Administrative Law Judge cannot determine whether Parent received the progress reports or not. Parent was involved as an active member in Student's ARD committee meetings, participated in the development

of student IEPs, and was aware of student progress because it was discussed in deliberations, and Parent received student report cards. However, even if Parent had not received the progress reports, the District's failure did not rise to a denial of a FAPE because it did not impede Student's right to a FAPE, did not significantly impede the Parent's opportunity to participate in decision making, and did not cause a deprivation of educational benefit. The credible evidence showed Student's IEP was appropriate, implemented effectively, and that student made academic and non-academic progress. Petitioner failed to meet its burden on this claim.

## VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District provided Student a FAPE until December \*\*\*, 2023, and student IEP was reasonably calculated to address student 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); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
3. The District failed to provide Student a FAPE after December \*\*\*, 2023, by failing to provide educational services to Student post expulsion 34 C.F.R. 300.530(d).
4. The District met the obligation to conduct necessary and timely evaluations of Student. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303.
5. Petitioner did not meet student burden of proving that the District failed to implement Student's IEP. *Schaffer*, 546 U.S. at 62; *Bobby R.*, 200 F.3d at 349.
6. Petitioner failed to show Student required COVID-19 compensatory services. Tex. Educ. Code § 29.0052.

7. Petitioner did not meet student burden of proving the District made a procedural violation. 34 C.F.R. § 300.513(2)(i-iii).

## 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 (2nd Cir. 2002). Hearing officers 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. Dept. of Educ.*, 471 U.S. 359, 369 (1985).

An impartial hearing officer has the authority to grant all relief deemed necessary, including compensatory education, 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). Compensatory education imposes liability on the school district to pay for services it was required to pay all along and failed to do so. *See Meiner v. Missouri*, 800 F.2d 749, 753 (8th Cir. 1986); *D.A. v. Houston Indep. Sch. Dist.*, 716 F.Supp.2d 603, 612 (S.D. Tex. 2009), *aff'd*, 629 F.3d 450 (5th Cir. 2010) (upholding decision that student failed to prove amount of compensatory reimbursement for school district's failure to timely evaluate).



Compensatory education may be awarded by a hearing officer after finding a violation of the IDEA. It constitutes an award of services to be provided prospectively in order to compensate the student for a deficient educational program provided in the past. *G. ex. rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295 (4th Cir. 2003). A qualitative, rather than quantitative, standard is appropriate in fashioning compensatory and equitable relief. *O.W.*, 961 F.3d at 800; *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).

Petitioner brought forward no expert testimony or evidence explaining the nature and scope of the compensatory services Student requires to remedy the denial of FAPE in this case. In this case, Student should have continued to receive educational services after student expulsion on December \*\*\*, 2023, until student withdrew from the District on January \*\*\*, 2024. Student's IEP included a goal for reading and a goal for math and student should receive compensatory services, in the form of tutoring, commensurate with student IEP goals for the period of time when student received no services. Given the broad discretion of the Administrative Law Judge in fashioning relief, the Administrative Law Judge makes the following orders:

1. The District shall provide Student with 40 hours of compensatory reading and math tutoring at District expense. The provision of the services must start by December \*\*\*, 2024, and must be completed by May \*\*\*, 2024.
2. Parent shall select a private tutoring provider and inform the District no later than 5:00 p.m. on November \*\*\*, 2024. Once the provider is selected by Parent, Parent shall inform the District, and the District shall pay the private tutoring provider directly. Parent may select an individual or a company to provide the tutoring. The private tutor may

work for the District or for Student's public school district as a teacher. A private tutor who works for the District or Student's public school district must hold a teaching certificate in the tutoring subject area. Parent may select a business or organization whose purpose is to provide tutoring services.

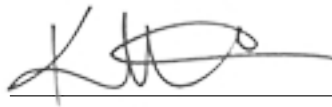
3. If Petitioner does not provide the District with name of the provider by 5:00 p.m. on November \*\*\*, 2024, the District is not obligated to provide the compensatory services.
4. If Student fails to complete the 40 hours of tutoring by May \*\*\*, 2025, the District is not obligated to continue to pay for the services after May \*\*\*, 2025.

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requested relief is **GRANTED IN PART AND DENIED IN PART** as described above.

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

**Signed October 18, 2024.**

ALJ Signature:

A handwritten signature in black ink, appearing to read 'Kasey White', written over a horizontal line.

Kasey White

Presiding Administrative Law Judge

## **NOTICE TO THE PARTIES**

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