

SOAH Docket No. 701-24-18422.IDEA
TEA Docket No. 305-SE-0524

**Before the
State Office of Administrative
Hearings**

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

v.

**Wylie Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

Student, (Student) by next friends Parent and Parent (Parents and, collectively, Petitioner), bring this action against the Wylie Independent School District (Respondent or 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 Student is entitled to private placement at District expense. The Hearing Officer concludes that District provided Student with a free, appropriate public education (FAPE), and thus, private placement at District expense is not appropriate.

I. DUE PROCESS HEARING

The due process hearing was conducted via Zoom on September 3-4, 2024. The hearing was recorded and transcribed by a certified court reporter. Attorney Jordan McKnight represented Petitioner. Debra Liva, Petitioner's advocate, and Student's parents were also present at the hearing. Dean Micknal and Emma Huff of Leasor Crass, P.C. represented Respondent. ***, the Executive Director of Special Education for District, attended the hearing as Respondent's party representative.

The parties offered 19 joint exhibits, all of which were admitted. Petitioner offered 15 exhibits. 13 were admitted without objection. Petitioner's Exhibits 13 and 14 were admitted in part, with a portion of the audio recordings being excluded on relevancy grounds.¹ Additionally, at the hearing Petitioner asked that the Hearing Officer take judicial notice of the chart explaining Lexile levels found on the Texas Education Agency website, which the Hearing Officer did without objection. The chart was subsequently filed by Petitioner and marked as Petitioner's Exhibit 16. Petitioner offered the testimony of Student, Student's Parent; ***, a board certified behavior analyst (BCBA) who evaluated Student; and Dr. ***, a licensed psychologist, licensed specialist in school psychology (LSSP), and BCBA who evaluated Student.

¹ The excluded portions of the exhibits are 2:23:00-2:29:08 in Petitioner's Exhibit (P. Ex.) 13 and 00:13:52-00:18:00 in P. Ex. 14. The Hearing Officer agreed to disregard the irrelevant portion of the exhibits rather than require Petitioner to refile an edited recording.

Respondent offered 10 exhibits, all of which were admitted without objection. Respondent offered the testimony of ***, a BCBA who works for District, and ***, District's Director of Special Education.

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

1. Whether District failed to timely identify Student in all areas of known or suspected disability, including *** and a specific learning disability in ***;
2. Whether District failed to provide Student with a FAPE during the relevant time period by failing to provide meaningful educational benefit and failing to establish an appropriate individualized education program (IEP) including failing to provide appropriate goals, accommodations, and behavior supports, such as applied behavior analysis (ABA) therapy and occupational therapy (OT) services;
3. Whether District failed to educate Student in Student's least restrictive environment;
4. Whether District predetermined denial of Student's outside placement; and
5. Whether private placement at *** is appropriate.

Petitioner requested the following items of relief:

1. An order requiring District to provide private placement at ***;
2. An order requiring District to provide an independent educational evaluation (IEE), to include a full psychological evaluation including cognitive and achievement testing, speech, OT, counseling, and a functional behavior assessment (FBA);

3. An order requiring District to provide compensatory education and related services to include tutoring, OT, speech, psychological services, counseling, social skills, and behavior therapy;
4. An order requiring District to hold an admission, review, and dismissal (ARD) committee meeting to review the IEE and develop an appropriate IEP and behavior intervention plan (BIP);
5. An order requiring District to reimburse any and all of Petitioner's expenses related to educational or diagnostic evaluation and/or services; and
6. Any and all other remedies that Petitioner may be entitled to under law.

II. FINDINGS OF FACT

1. Student is *** years old and was enrolled in District through Student's *** grade year, the 2023-2024 school year. Student did not return to school in District for the 2024-2025 school year, Student's *** grade year, and is currently being homeschooled.²
2. Student has been determined to meet the eligibility criteria under the IDEA for ***, ***, and other health impairment (OHI) for attention deficit hyperactivity disorder (ADHD). In April 2024, Student's ARD Committee determined that Student also qualified for special education and related services as a student with the specific learning disability of ***.³
3. Student demonstrates problems with aggression ***. Student will occasionally ***.⁴

² Transcript (Tr.) at 26-28.

³ Joint Exhibits (J. Exs.) 1 and 5.

⁴ J. Exs. 1, 3, 17, and 18. Tr. at 34, 35, 39, 61, 331.

4. Student received a private psychological evaluation at Parents' request in December 2020 that found Student had cognitive abilities in the average range and met diagnostic criteria for a ***, with implications for ***. Additionally, Student exhibited a ***. Student also demonstrated a ***. The report recommended ABA therapy, as well as several school and home-based accommodations.⁵

2021-2022 School Year – * Grade**

5. Student's annual ARD committee meeting was held on May ***, 2022. Student continued to be eligible for services under the IDEA in the areas of ***, OHI, and ***. Student was placed in a special education setting for ***, and in a general education environment for ***, ***. Student received inclusion support in ***. Student also received counseling services for 20 minutes, five times per *** weeks, and OT for 15 minutes two times per *** weeks.
6. Student's IEP had goals related to reading, math, and speech, as well as six goals relating to behavior. Student had accommodations including adaptations to classroom instruction, additional materials, alterations of assignments and testing, assistance in proofing writing assignments, extra time for completing assignments, and accommodations relating to managing behavior. Student also had accommodations allowing the ***.⁶
7. The MAP is a norm-referenced test used by District to look at academic achievement. It is provided three times a year and compares students to other students in the same grade level who took the assessment.⁷

⁵ P. Ex. 4.

⁶ J. Ex. 1.

⁷ Tr. at 282-284.

8. Student had a Lexile level of *** for reading, which correlates to the ***. Student's MAP scores in reading placed Student in the *** percentile for achievement at the beginning of the year but dropped to the *** percentile in the middle of the year and ended the year in the *** percentile.⁸
9. Student's end of year MAP scores for math placed Student in the *** percentile for achievement. Student's mid-year MAP scores placed Student in the *** percentile for growth.
10. Regarding written expression, Student struggled with *** and required ***. Student did not understand ***. The ARD committee noted that Student did not demonstrate a need for specialized instruction in written expression at that time.
11. Student had several incidents of ***. Student needed to ***.⁹
12. The May 2022 ARD Committee meeting ended in agreement.¹⁰
13. Student passed all Student's courses in the 2021-2022 school year.¹¹
14. Student's State of Texas Assessment of Academic Readiness (STAAR) test results for *** grade show that Student was approaching grade level in math and did not meet grade level in reading.¹²

2022-2023 School Year - * Grade**

⁸ J. Ex. 1, P. Ex. 16.

⁹ J. Ex. 1.

¹⁰ J. Ex. 1.

¹¹ J. Ex. 11.

¹² P. Ex. 15.

15. A revision ARD Committee meeting was held on November ***, 2022, to discuss removal of inclusion minutes for Student's special education classes because inclusion support was not needed in the *** classroom. *** were added as additional accommodations to help with Student's writing concerns. The meeting ended in agreement.¹³
16. Student's annual ARD Committee meeting was held on April ***, 2023. Parents did not show up for this meeting. Student's MAP scores in math show that Student was in the *** percentile for achievement and the *** percentile for growth. MAP scores also show that Student was in the *** percentile for reading and *** percentile for language.
17. Regarding behavior, the ARD Committee noted that Student used physical aggression towards ***, including ***.¹⁴
18. Accommodations were added to *** and to have ***.¹⁵
19. Student was moved to the *** classroom for math and writing due to data indicating Student's behavior was affecting the learning of ***self and others.¹⁶
20. At the hearing, Student's Parent expressed Parent's opinion that the incidents of aggression during this school year were much higher than what was reflected in the ARD Committee notes.¹⁷
21. Student's progress reports for Student's goals during this time period show that

¹³ J. Ex. 2.

¹⁴ J. Ex. 3.

¹⁵ J. Ex. 3.

¹⁶ J. Ex. 3.

¹⁷ Tr. at 40-41.

Student made progress in goals related to understanding how Student's verbalizations affect others, remaining on task, using a calculator, and identifying the controlling idea of a thesis. Student did not make progress in managing anxiety and stress or in following directions. Student regressed in Student's goals related to developing insight regarding other's perspectives and using calming strategies.¹⁸

22. Student passed all Student's courses in the 2022-2023 school year.¹⁹

23. Student's STAAR test results for *** grade show that Student did not meet grade level for ***.²⁰

2023-2024 School Year – * Grade**

24. On December ***, 2023, Student ***. This incident resulted in *** Student.²¹

25. A revision ARD Committee meeting was held on December ***, 2023, to discuss Student's increased verbal outbursts, physical aggression, refusal to work, and other behaviors. It was agreed that Student would be removed from *** and placed in ***. Additionally, a goal was added for ***.²²

26. On February ***, 2024, a revision ARD committee meeting was held. Ms. Liva, Petitioner's advocate, attended with Parents. The meeting was requested due to Parents' concerns that Student was not being successful and was not making progress. District members of the ARD committee stated that, while they believed Student was making progress, Student's behavior

¹⁸ J. Exs. 14 and 16.

¹⁹ J. Ex. 12.

²⁰ P. Ex. 15.

²¹ P. Exs. 3 and 12.

²² J. Ex. 4.

continued to be problematic.²³

27. Parents raised concerns over Student's physical aggression, ***. District members of the ARD Committee noted that Student was passing Student's classes, participating in class, and improving Student's MAP scores. Ms. Liva expressed concern with Student's non-academic growth.²⁴

28. Regarding Student's social skills, it was noted that Student is very good at identifying appropriate behavior strategies in class. However, Student has difficulty applying those strategies in the moment.²⁵

29. Parents stated that Student had seen *** who indicated that Student's ***.²⁶

30. Parents requested out of District placement at a non-public day school, ***. District members of the ARD Committee noted that Student was not currently in the most restrictive environment at school. District members of the ARD Committee proposed, and Parents agreed, to gather additional data to determine if changes were needed to the IEP. It was agreed that Student would receive an FBA and evaluations in the areas of speech/language, ***, in-home training, cognitive, adaptive behavior, academic achievement (including ***), and OT. Parents did not agree to an updated *** evaluation or an evaluation of ***. The ARD Committee agreed to meet again on April ***, 2024, to review the evaluations and complete the annual ARD.²⁷

31. District members of the ARD Committee suggested setting aside two hours for the annual meeting. Ms. Liva objected, demanding a full day. After negotiations, it was agreed to start the annual ARD Committee

²³ J. Ex. 5.

²⁴ P. Ex. 14 at 00:07:00.

²⁵ P. Ex. 14 at 00:11:00.

²⁶ J. Ex. 5.

²⁷ J. Ex. 5; P. Ex. 14 at 00:08:00.

- meeting at *** with a *** stop time.²⁸
32. District members of the ARD Committee requested an agreement to change Student's placement from a general education *** class to a *** setting *** class and a change from Student's general education *** class to *** classroom. Both changes were suggested to address Student's behavior issues by providing Student a smaller classroom environment. Ms. Liva, on Parents' behalf, did not agree at that time but said she would review the proposed changes.²⁹
33. On April ***, 2024, a Behavior Analysis Consultation Plan was prepared by *** related to a *** conducted on April ***, 2024. Mr. *** spoke with Student and Student's Parent and completed a Functional Analysis Screening Tool (FAST) with Student's Parent to determine the function of Student's aggressive behaviors.
34. Mr. *** recommended that Student receive in-school ABA therapy. At the hearing, he testified that he believed that 30 hours should be the maximum per week of ABA therapy.³⁰
35. A full, individual evaluation (FIE) was completed on April ***, 2024. It found that Student continued to need special education supports and services to access and progress in the educational environment. Accommodations were recommended, as well as OT. It was also advised that teachers should avoid engaging in power struggles with Student.³¹
36. Student's annual ARD Committee meeting convened on April ***, 2024. The new evaluations were reviewed. Student was found to meet the criteria as a student with a specific learning disability in the area of ***.³²

²⁸ J. Ex. 14 at 01:23:00 – end.

²⁹ P. Ex. 14 at 01:34:00.

³⁰ P. Ex. 3, Tr. at 134-135.

³¹ J. Ex. 9.

³² J. Ex. 5.

37. District observation of Student's aggression between February ***, 2024 and April ***, 2024 found that Student exhibited verbal aggression on average *** times per week, physical aggression *** times per week, and noncompliance *** times per week.³³
38. It was noted that Student does well in high interest subjects.³⁴
39. After reviewing the evaluations, District members of the ARD Committee attempted to move forward with developing the IEP, but Ms. Liva demanded that the committee move immediately to consideration of placement. District members of the ARD Committee stated that the placement discussion would come later in the meeting after goals, accommodations, and other components were discussed. Ms. Liva refused to discuss anything but placement and, when District committee members refused to discuss placement before developing the rest of the IEP, Ms. Liva and Parents left the meeting at approximately ***. The meeting was scheduled to last until ***. District members of the committee continued with the meeting.³⁵
40. Regarding placement, the District members of the ARD Committee determined that, for the remainder of the year, Student would attend *** in the special education environment. For the next school year Student would attend *** in a special education setting while *** would be in the general education setting with inclusion support.³⁶
41. Placement in a non-public day school was rejected because, in the opinion of the District members of the ARD Committee, it was not Student's least restrictive environment, and Student's needs could be met on a general education campus.³⁷

³³ J. Exs. 10 and 19 at 01:14:00.

³⁴ J. Ex. 19 at 02:11:00.

³⁵ J. Exs. 5, 19 at 02:25:00-end.

³⁶ J. Ex. 5.

³⁷ J. Ex. 5

42. Student passed all of Student's courses in the 2023-2024 school year.³⁸
43. Student's MAP scores for reading placed Student in the *** percentile for achievement and *** percentile for growth. In written expression, Student's MAP scores placed Student in the *** percentile for achievement and *** percentile for growth. Student's MAP scores for math placed Student in the *** percentile for achievement and *** percentile for growth. Student's MAP scores for *** placed Student in the *** percentile for achievement and *** percentile for growth.³⁹
44. Student received a Lexile level of *** in reading, which corresponds to the *** grade range, in August 2023. In December 2023 Student's Lexile level increased to ***, which is still in the *** grade range. Student previously received a *** Lexile level for reading in *** grade, which corresponded to the end of *** grade/beginning of *** grade range.⁴⁰
45. Progress reports for goals during this time period show that Student made progress in identifying grammatical errors, identifying controlling ideas, and taking notes independently. Student did not show progress in identifying triggering situations, independently solving problems with a calculator and spiraled content, and initiating conversation. Student showed regression in using strategies to not become aggressive and in increasing ***.⁴¹
46. Student's discipline report for the 2023-2024 school year shows *** disciplinary incidents. *** incidents involve Student ***, *** incidents involve Student being disruptive or disrespectful, and *** incidents involve Student ***. Student received *** for *** and another *** for ***. Student also received ***

³⁸ J. Ex. 13.

³⁹ J. Ex. 5.

⁴⁰ J. Exs. 1 and 5, P. Ex. 16.

⁴¹ J. Exs. 15 and 16.

*** for an incident involving ***.⁴²

47. Student's Parent testified Parent does not believe that the discipline report included all the incidents that took place during the school year and that Parent could recall at least one instance of District personnel informing Parent that they were not "coding" a disciplinary incident.⁴³
48. Student's *** report shows that, from July 2022 to May 2024, Student regularly ***.⁴⁴
49. STAAR test results for *** grade show that Student did not meet grade level in *** and was approaching grade level in ***.⁴⁵
50. Over the summer of 2024, Student was evaluated by Dr. ***, who provided a psychological report regarding the impact of *** and ADHD on Student's behavior.
51. Dr. *** reviewed previous evaluations, conducted a clinical interview with Parents, conducted the Behavior Assessment System of Children-Third Edition; the Adaptive Behavior Assessment Scale-Third Edition; the Social Language Development Test-Adolescent-Normative Update; the Social Responsiveness Scale-Second Edition; the Autism Diagnostic Observation Scale-Second Edition, Module 3; the Adolescent/Adult Sensory Profile; the NEPSY-II; the Behavior Rating Inventory of Executive Functioning-Second Edition; and the Conners 4.
52. Dr. *** concluded that Student demonstrates a pattern of developmental differences in the areas of language and communication,

⁴² J. Ex. 17. Some incidents fell in to more than one category.

⁴³ Tr. at 57-58.

⁴⁴ J. Ex. 18.

⁴⁵ P. Ex. 15.

social relating and emotional responding combined with significant sensory involvement that is characteristic of children with ***.

53. Dr. *** also concluded that Student displays symptoms of ADHD. Student is not able to regulate and monitor behavior effectively. Due to difficulties with inhibiting and self-monitoring, Student struggles with behavior regulation. Student also demonstrates an inability to regulate emotional responses and shift attention.
54. Dr. *** recommended that Student receive intensive ABA services provided at least 40 hours per week. Services were recommended at this frequency to increase the likelihood of making improvements in skill acquisition and reduction of maladaptive behaviors. It was additionally recommended that Student receive one hour of speech and language weekly and one hour of OT weekly.⁴⁶
55. At the hearing, Dr. *** testified that Student needs a specific, highly individualized research-based intervention that has specific accommodations for Student's areas of disability. Referring to the Student Discipline Report, Dr. *** shared her opinion that the interactions between District staff and Student showed the ***, which were not appropriate when dealing with Student and demonstrated a failure to apply a proper intensive BIP.⁴⁷
56. Dr. *** testified that it was necessary, and a *** necessity, to have Student participate in ABA services/techniques. She again recommended 40 hours/week.⁴⁸
57. Dr. *** testified that, based upon her review of the records and MAP scores, it appears that many of the education programs like reading and written language accommodations are research-based and are being successful. The area she believed District was being unsuccessful was in

⁴⁶ P. Ex. 1.

⁴⁷ Tr. at 172, 183-187, 208.

⁴⁸ Tr. at 189.

behavior and emotional regulation.⁴⁹

III. 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 ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

⁴⁹ Tr. at 191.

B. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁵⁰ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case is on Petitioner to show that District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Andrew F.*, 580 U.S. at 399.

C. FAPE

A hearing officer 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

⁵⁰ 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).

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 meeting the obligation to provide a FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, 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).

District's obligation when developing Student's IEP and BIP is to consider Student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34

C.F.R. § 300.324(a)(1). For Student, whose behavior impedes Student's learning and that of others, District must also consider positive behavioral interventions and supports and other behavioral strategies when developing Student's IEP and BIP. 34 C.F.R.

§ 300.324(a)(2)(i); *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir.2012).

Student's IEPs and BIPs were developed in ARD Committee meetings at which the parties reviewed Student's strengths, evaluation data, academic, developmental, and functional needs, and discussed Parents' specific concerns regarding Student's progress. When Parents brought additional concerns to the February 2024 ARD Committee meeting, a new battery of evaluations were agreed to and conducted. This new evaluation data formed the basis of District's most recent IEP and BIP. While Petitioner complains that District failed to provide appropriate goals, accommodations, and behavior supports, the record reflects that the provided goals, accommodations, and behaviour supports were individualized to meet Student's unique needs.

Petitioner is seeking private placement, arguing that District failed to properly individualized Student's IEP based upon Student's behavior and Parents' concerns. The record does not support this contention. When Student ***, an ARD Committee meeting was convened to allow the parties to discuss how to respond. It was agreed that Student would be removed from *** and placed in a *** class. When ***, Petitioner requested another meeting to discuss private placement at District expense. District listened to Parents' concerns and agreed to conduct additional evaluations to gain information regarding Student's needs and determine if private placement was appropriate. While the next ARD Committee meeting ended in disagreement over the timing of the discussion of

private placement, the record reflects that the decisions of District committee members were based on the results of recent evaluations, Student's performance, teacher observations, and parent concerns.

Petitioner has expressed a preference for ABA therapy instead of the behavioral supports that District currently has in place. While parents are important members of the ARD Committee and their opinions should be considered, they do not have a right under the IDEA to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their child. *Lachman v. Illinois St. Bd. of Educ.*, 852 F. 2d 290, 297 (7th Cir. 1988). While Student's behavior impedes Student's learning and that of others, District has specifically considered positive behavioral interventions and supports and other behavioral strategies when developing Student's IEP and BIP. District has adopted strategies to help Student manage Student's behaviors. While these are not the intensive 30-40 hours per week of ABA therapy that Petitioner prefers, these strategies were individualized to Student and are designed to provide Student with a meaningful benefit likely to produce progress, not regression or trivial advancement.

In Petitioner's closing brief, Petitioner argues that District failed to properly establish baselines for Student's goals, resulting in the initial measurement for several of Student's behavioral goals being at or above the mastery level. However, Petitioner has not shown why initial high performance in a behavior goal indicates that the goal was not properly formulated. The purpose of goals is to describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. *Letter to Butler*, 213 IDELR 118 (OSERS 1988).

While observed behaviors on a single day may be higher or lower, the purpose of measuring goals is to establish if Student has achieved mastery over that skill, not simply to show if Student can perform that skill at a mastery level for one day. In this case, for example, Student showed that Student was able to use strategies to calm himself ***% of the time on August ***, 2023, which the ARD Committee had agreed was mastery level. However, Student's progress in this skill varied by day, going down to ***, up to a high of ***, and then finishing at ***. Despite Student's early performance, this data shows that Student did not master this goal and additional strategies or accommodations may be needed to address Student's aggression. Additionally, Petitioner offered no evidence or argument related to how this alleged failure impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).

Regarding supports for Student's educational needs, Student received classes in the special education environment, inclusion support in general education classes, ***, OT, and significant adaptations to classroom instructions and assessments. These supports were developed at ARD Committee meetings where Parents had the opportunity to discuss their concerns and offer insight. At each annual ARD Committee meeting, statements from Student's teachers regarding Student's strengths and weaknesses were considered, which informed the development of the services Student received. Consideration was also made of evaluation data, and additional evaluations were conducted when new data was needed. Additional services were added at the November 2022 revision ARD

Committee meeting to address writing concerns and at the December 2023 revision meeting to address *** concerns.

Petitioner specifically argues that District failed to individualize Student's IEP to address Student's writing because the May 2022 ARD Committee meeting notes state that Student did not demonstrate a need for specialized instruction in the area of writing. However, a review of the IEP shows that Student received specific accommodations and supports to address Student's writing needs, including assistance in proofing writing assignments, extra time, oral tests, and access to a ***. Therefore, the record shows that Student's IEP included supports and services that were individualized to meet Student's writing needs.

For both Student's behavioral and educational needs, District considered Student's strengths, Parents' concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. The resulting IEP was individualized and designed to provide Student with a meaningful educational benefit likely to produce progress, not regression or trivial advancement. Therefore, Petitioner failed to prove that Student's IEP was not appropriately individualized.

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.* This determination requires an examination of:

1. a school district’s efforts to provide the student with supplemental aids and services in the general education setting;
2. a school district’s efforts to modify the general education curriculum to meet the student’s individual needs;
3. the educational benefit a student is receiving while placed in the general education setting; and
4. the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

Id.

Neither party is seeking to have Student placed in a less restrictive environment. Instead Petitioner argues that, because Student is making little or no progress regarding Student's behavior and Student's behavior impacts the learning of other students, the correct placement for Student is a very restrictive private placement. However, the IDEA requires that Student be educated with non-disabled peers to the maximum extent appropriate. While many of Student's current courses are being provided in more restrictive environments, Student has been receiving some of Student's classes in a general education environment and is scheduled to take Student's *** in a general education environment with inclusion support during Student's *** grade year.

Regarding the *Daniel R.R.* factors, these general education placements would be appropriate because District is providing supplementary aids and services to allow Student to access these courses and Student's passing grades in similar coursework in the past is evidence that Student is receiving academic benefit from these courses. While Student's behavior does impact the learning of others, the evidence does not support a conclusion that the impact is great enough that Student should be denied the opportunity to be exposed to non-disabled peers. Therefore, Petitioner has failed to prove, by a preponderance of the evidence, that District's attempts to educate Student in a less restrictive environment are inappropriate.

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.*

Throughout the relevant period the record shows substantial communication with, and responsiveness to, Parents by District regarding Parents' concerns for Student's education. However, the most recent ARD Committee meeting was not collaborative, with Ms. Liva, Petitioner's advocate, and Parents leaving before the end of the meeting. A review of the records of that meeting show that Ms. Liva and Parents, not the District members of the ARD Committee, were the parties acting in a non-collaborative manner. Ms. Liva demanded that the ARD Committee skip the development of goals and accommodations and move immediately to placement. When the District members of the ARD Committee refused, stating that goals and accommodations informed placement, Ms. Liva and Parents refused to participate

further and left the meeting. Petitioner argued that District was taking too much time on other issues and failing to respond to Petitioner's concerns regarding placement. However, the time allotted for the ARD Committee meeting had not expired when Petitioner walked out. Additionally, nothing in the record shows that District was intentionally prolonging the meeting, engaging in unnecessary discussion, or antagonizing Petitioner. Therefore, the Hearing Officer concludes that Petitioner has not proven that District failed to act in a coordinated, collaborative manner in working with Parents to develop the IEP. To the extent the process was uncollaborative, it was attributable to Parents.

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.*, 703 F.3d at 813-14.

The primary dispute in this matter is whether District provided Student with non-academic benefits in the area of behavior. Petitioner is seeking private placement because they believe that District is unable to manage Student's behavior. During Student's *** grade year, *** instances of misconduct were recorded. One of those incidents involved ***, *** involved ***, one involved ***, and the rest involved Student failing to obey directives from staff. Given the type and relative infrequency of the incidents, the record does not support a finding that District was not managing Student's behavior. Student's Parent testified that additional disciplinary incidents took place but were not

recorded by District. However, no details of these instances were offered and the Hearing Officer has no way of determining if these additional instances took place and, if they did, how often they took place, what happened, or how staff responded.

Regarding Student's progress in Student's behavior goals, District's tracking for Student's *** grade year show regression in using pre-taught strategies to not become verbally or physically aggressive (***% in August 2023 to ***% in February 2024). However, the records from the ARD Committee meetings reflect that Student is very good at identifying appropriate behavior strategies in class but has difficulty applying those strategies in the moment. Student has shown progress in independently taking notes (***% in August 2023 to ***% in February 2024). Student continues to struggle with identifying triggering situations (***% in August 2023, ***% in early September 2023, and a drop back down to ***% at the end of September 2023). While the data reflects that Student continues to struggle to generalize the behavioral skills District is teaching Student, the record does not support Petitioner's assertion that District is unable to manage Student's behaviors or that District has failed to provide Student with meaningful benefit related to Student's behavior.

Student's *** continues to be an area of concern. However, this is due to a *** and District has adopted several accommodations, including ***. While the issue of Student's *** was discussed at the hearing, Petitioner offered no argument or evidence to show that additional accommodations to address this issue would be useful or appropriate. Given the *** nature of the issue, the accommodations in

place, and the lack of argument regarding what, if anything, more could be done, the Hearing Officer concludes that Petitioner failed to prove, by a preponderance of the evidence, that District failed to appropriately address Student's *** concerns.

Regarding Student's academic progress, Petitioner argues that the decline in Student's reading Lexile levels, Student's scores on the STAAR test, and Student's MAP scores for performance show a lack of academic progress. However, Student's MAP scores show that, while Student may be staying the same or declining in performance relative to Student's peers, Student is experiencing*** percentile personal growth in Student's areas of low performance. Student is also passing all Student's courses. Petitioner argues that, because an accommodation was added to consider effort and participation in Student's grades for *** grade and Student was to ***, those grades should not be considered as demonstrating academic progress. However, Student also passed all Student's classes in Student's *** and *** grade year and no evidence was offered to show what, if any, effect consideration of Student's effort and participation or the minimum grade accommodation had on Student's grades. Additionally, Dr. ***, Petitioner's expert, testified that, based upon her review of the records and MAP scores, many of the education programs like reading and written language accommodations are research-based and are being successful. Therefore, taken together, while Student's performance on testing is problematic, Student's high growth, as demonstrated by Student's MAP scores, Student's passing grades, and the testimony of Petitioner's expert, show that Student is receiving meaningful academic benefit.

5. FAPE Conclusion

District has properly individualized Student's IEP and BIP, is providing Student's education in Student's least restrictive environment, has attempted to work in a coordinated and collaborative manner with Petitioner, and is providing meaningful academic and non-academic benefits to Student. Therefore, Petitioner failed to prove, by a preponderance of the evidence, that District has failed to provide Student with a FAPE.

D. CATEGORIES OF ELIGIBILITY

Petitioner contends that District failed to appropriately identify Student in all categories of suspected disability when they failed to identify Student as eligible due to *** until April 2024 or for a specific learning disability in math. Pursuant to the IDEA, "nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter." 20 U.S.C. § 1412(a)(3)(B). Therefore, the question is not what categories of eligibility Student has, but what services are being provided.

The May 2022 IEP includes relevant accommodations such as assistance in proofing writing assignments, extra time for completing assignments, access to a ***. Student also received inclusion support for writing and OT. Additional accommodations to support Student's written expression were added at later ARD Committee meetings. Therefore,

Student was receiving services related to Student's *** throughout the relevant time period. Petitioner has not shown that District's failure to include *** as a separate category in any way impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).

Petitioner did not address why adding the designation of specific learning disability in math is supported by any evaluation, necessary or appropriate, or how it would change the services that Student is receiving. Additionally, Petitioner did not offer any evidence that District failed to identify or evaluate Student in any other area of known or suspected disability. Therefore, Petitioner did not prove, by a preponderance of the evidence, that District failed to appropriately identify Student in all categories of known or suspected disability.

E. PREDETERMINATION

Predetermination occurs when the district members of the IEP team unilaterally decide a student's educational placement in advance of an IEP team meeting. *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004). Petitioner argues that District predetermined the denial of outside placement for Student. However, no evidence was offered to support this contention. While the District members of the ARD Committee refused to make a determination on placement until after the other sections of the IEP were developed, nothing in the record supports a conclusion that the District members of the ARD Committee unilaterally decided the appropriate placement for Student in advance of the meeting

or that they would not have listened to Petitioner's concerns regarding placement if Petitioner had remained at the meeting. Therefore, Petitioner failed to prove that District predetermined Student's placement.

F. PRIVATE PLACEMENT

Petitioner is requesting private placement at *** at District expense. Petitioner must meet a two-part test in order to secure private placement at District expense. First, Petitioner must prove District's proposed program was not appropriate under the IDEA. Second, Petitioner must prove the private placement is appropriate. *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 at 370 (1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993). The Hearing Officer has determined that District's proposed program provided Student with a FAPE and, therefore, was appropriate under the IDEA. Because District's placement is appropriate, private placement at public expense is not appropriate. See *Teague Indep. Sch. Dist. v. Todd L*, 999 F.2d 127 (5th Cir. 1993).

Additionally, even if District had failed to provide an appropriate program, Petitioner failed to prove that placement at *** is appropriate. No witnesses from *** were called. No documents reflecting the educational programs available at *** were offered into evidence. A review of the testimony shows only a hearsay statement from Student's Parent that the director of *** felt that placement was warranted, that someone from *** had contacted District regarding Student, and that some other students at District have been placed with ***. While it was implied that *** would provide the intensive ABA services

recommended by Petitioner's experts, without some direct testimony or evidence regarding the specifics of the courses or programs that would be offered to Student and how those courses or programs would meet Student's needs, the Hearing Officer cannot determine if such a placement is appropriate.

IV. CONCLUSIONS OF LAW

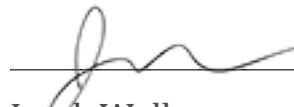
1. The burden of proof in this due process hearing is on Petitioner as the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner did not meet Petitioner's burden to prove that District failed to provide Student a FAPE during the relevant time period or that Student's IEP was not reasonably calculated to address Student's needs in light of Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
3. Petitioner did not meet Petitioner's burden to prove that District failed to timely identify Student in all areas of known or suspected disability. *Schaffer*, 546 U.S. at 62; *R.C. v. Keller Indep. Sch. Dist.*, 958 F. Supp. 2d 718, 730-32 (N.D. Tex. 2013); 20 U.S.C. § 1412(a)(3)(B).
4. Petitioner did not meet Petitioner's burden to prove that District predetermined aspects of Student's IEP or placement. *Schaffer*, 546 U.S. at 62.; *E. R. by E. R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 769 (5th Cir. 2018).
5. Petitioner did not meet Petitioner's burden to prove that the proposed private placement was appropriate. *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 (1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993); *Teague Indep. Sch. Dist. v. Todd L*, 999 F.2d 127 (5th Cir. 1993).

ORDER

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

Signed October 4, 2024

ALJ Signature:



Jacob Wallace

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).