

SOAH Docket No. 701-23-25730.IDEA
TEA Docket No. 356-SE-0823

**Before the
State Office of Administrative
Hearings**

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

v.

**DESOTO INDEPENDENT SCHOOL DISTRICT,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student (Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against the Desoto Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issue in this case is whether the District provided Student with a free appropriate public education (FAPE).

The Judge concludes the District provided Student with a FAPE by developing a program that was reasonably calculated to provide Student educational benefit based upon Student's unique needs and resulted in significant academic and non-academic benefit.

II. DUE PROCESS HEARING

The due process hearing was conducted October 1 – 3, 2024. A certified court reporter recorded and transcribed the hearing. Petitioner was represented by Dominique Augustus and Julianna Swann from the Cirkiel Law Group. Parent also attended the due process hearing. Respondent was represented by Leslie Alvarez and Nicholas Maddox from O'Hanlon, Demerath and Castillo. In addition, ***, the Executive Director of Special Populations for the District, attended the hearing as the party representative.

The parties' 29 joint exhibits were admitted without objection. Petitioner offered 26 exhibits, 25 of which were admitted over any objection. Petitioner withdrew four of their originally disclosed exhibits. Petitioner called as witnesses Parent; ***, ***, special education teacher; ***, special education advocate; ***, independent speech pathologist; ***, educational diagnostician; ***, District occupational therapist; and ***, Student's grandparent. Respondent offered four exhibits, all of which were admitted over any objection. Respondent called as witnesses ***, Student's in-home care giver; and, District specialized instructional program coordinator. Both parties

filed timely written closing briefs. The Decision in this case is due December 6, 2024.

III. ISSUES

Petitioner asserted the relevant timeframe as the 2016-17 school year to the 2023-24 school year and raised the following IDEA issues for decision in this case:

FAPE

1. Whether the District failed to provide Student with a FAPE during the relevant timeframe.
2. Whether the District failed to develop an appropriate individualized education program (IEP) for Student.
3. Whether the District failed to consider and/or provide travel training.
4. Whether the District failed to properly implement Student's IEP.
5. Whether the District failed to consider and/or provide a community resources coordination group (CRCG) referral.¹
6. Whether the District failed to properly train staff.

Evaluation

7. Whether the District failed to properly assess and evaluate Student in all areas of suspected disability.

¹ Petitioner presented no evidence related to this issue at hearing and did not address it in their closing brief. Therefore, the decision will not address this abandoned issue.

8. Whether the District failed to provide Student with an independent educational evaluation (IEE) without unnecessary delay.

Procedural

9. Whether the District failed to provide the Parent with prior written notice (PWN).

IV. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to provide damages to Petitioner based on a loss of past educational opportunities; loss of future educational opportunities; mental anguish in the past; mental anguish in the future; and various out-of-pocket expenses incurred by Petitioner due to the acts or omissions of the District.
2. Order the District to provide an IEE in all areas of suspected disability and need; and/or reimbursement.
3. Order the District to convene an admission review and dismissal (ARD) committee meeting to address the findings of the IEE.
4. Order the District to retain an expert consultant to address Student's educational and non-educational needs.
5. Order the District to include an expert consultant at ARD committee meetings for the next two years.
6. Order the District to have the expert consultant train all District staff who may interact with Student for the next two years.
7. Order the District to have the expert consultant supervise District staff and the ARD committee.
8. Compensatory services including but not limited to academics, speech, occupational therapy, physical therapy, vision therapy, executive functioning skills, social skills training, daily living skills, vocational skills, nursing

services, assistive technology services, orientation and mobility services, and counseling.

9. Order the District to provide private placement at public expense.
10. Order the District to provide Student with occupational therapy services.
11. Order the District to provide Student with nursing services.
12. Order the District to provide Student with physical therapy services.
13. Order the District to provide Student with executive functioning skills.
14. Order the District to provide Student with social skills training.
15. Order the District to provide Student with daily living skills training.
16. Order the District to provide Student with vocational skills.
17. Order the District to provide Student with assistive technology services.
18. Order the District to provide Student with home and family support services.
19. Order the District to provide Student social work services.
20. Order the District to provide Student's family a stipend of up to \$2,000 to receive parental training.
21. Order the District to train staff on guidelines related to appropriate IEPs under the IDEA.
22. Order the District to reimburse Student's family for out-of-pocket expenses incurred due to the failures of the school district.
23. Representation fees.
24. All other remedies the Hearing Officer deems appropriate.

V. RELEVANT TIME PERIOD

Petitioner asserts that the relevant time period for this case begins with the 2016-17 school year and continues through the 2023-24 school year. Respondent, on the other hand, asserts the relevant time period begins on August 14, 2021, two years prior to the filing of this case. Respondent further asserts any claims accruing prior to August 14, 2021 are barred by IDEA's statute of limitations. It was established that the timeframe ends with the 2023-24 school year and does not include the 2024-25 school year. Transcript (TR) at 433.

Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415(b)(6), (f)(3)(C); 34 C.F.R. § 300.507(a)(1), (2). There are two exceptions to the statute of limitations under the IDEA—the misrepresentation and withholding exceptions:

- (d) The [statute of limitations] does not apply to a parent if the parent was prevented from filing a due process complaint due to:
 - (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or
 - (2) the public education agency's withholding of information from the parent that was required by 34 C.F.R. § 300.1, *et seq.* to be provided to the parent.

19 Tex. Admin. Code § 89.1151(d); 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f).

In this case, Petitioner asserted the withholding exception in their amended complaint and contends the relevant time period should be extended back to the 2016-17 school year. More specifically, Petitioner asserted the District's prior written notices from 2016-17 forward were not sufficiently detailed, resulting in a withholding of necessary information from Parent. Under the federal regulations, the District is required to provide Parent with written notice when it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 C.F.R. § 300.503(a)(1), (2). The District is also required to provide Parent with a copy of the procedural safeguards once a year and upon other occasions prescribed by statute. 34 C.F.R. § 300.504(a)(1)-(4).

Case law, however, establishes that the statute of limitations for IDEA violations commences without disturbance when a school district delivers a copy of the procedural safeguards to a parent. "Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act suffices to impute upon [them] constructive knowledge of their various rights under the IDEA." *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008).

Additionally, it is not enough to show a withholding alone. Petitioner must also show that the withholding prevented Petitioner from requesting a due process hearing

until August 14, 2023. Respondent argues that Petitioner cannot show that the alleged withholding of information prevented Petitioner from asserting Petitioner's rights in light of the fact that Petitioner filed a Texas Education Agency (TEA) complaint on December 14, 2021 and a Request for a Due Process Hearing on November 14, 2022 (which Petitioner later dismissed without prejudice).

The judge must make a fact-specific determination as to which claims, if any, may be barred or limited by the statute of limitations or whether either exception applies. *Washington ex rel. J.W. v. Katy Indep. Sch. Dist.*, 447 F. Supp. 3d 583, 593-94 (S.D. Tex. 2020).

With respect to Petitioner's FAPE and evaluation claims, the evidence showed that Parent participated in all ARD committee meetings held beginning in the 2016-17 school year. TR at 92. Parent voiced concerns about Student's program during these meetings, filed a complaint challenging the appropriateness of Student's IEP with TEA in 2021 and filed a prior due process hearing request challenging the appropriateness of Student's IEP and the provision of FAPE on November 14, 2022. Joint Exhibit (JE) 11; Respondent's Exhibit (RE) 1; RE 3. The evidence, thus, establishes that Parent knew, or should have known, of any concerns regarding the provision of a FAPE or evaluation concerns as of the date of each ARD committee meeting attended by Parent since the beginning of the 2016-17 school year. Petitioner did not offer any evidence or argument to establish a different accrual date for these claims.

As for the withholding exception, the evidence established Parent received the procedural safeguards each school year beginning in 2016-17. JE 1; JE 2; JE 3; JE 4; JE 5. Moreover, Petitioner's actions of filing a complaint with TEA and a prior due process hearing request indicate that Petitioner was not prevented from filing a due process request by any alleged withholding by the District. 19 Tex. Admin. Code § 89.1151(d); 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f). Thus, any attempt by Petitioner to show a violation of the IDEA by Respondent prior to August 14, 2021, is barred by the statute of limitations and the relevant time period for this case begins on August 14, 2021.

VI. FINDINGS OF FACT

1. Student is a ***-year-old in the District who is eligible for special education under the categories of *** and speech impairment.²
2. Student sustained the ***. The *** has caused impairments in Student's cognition, language, attention, reasoning, abstract thinking, and motor abilities. Student has a ***
3. The District provided Parent with the notice of procedural safeguards on January ***, 2017, January ***, 2018, January ***, 2019, August ***, 2019, and August ***, 2020.⁴

² JE 9.

³ JE 9 at 61.

⁴ JE 1; JE 2; JE 3; JE 4 at 65; JE 5.

4. Parent filed a complaint with TEA on December 14, 2021 and a prior due process complaint on November 14, 2022.⁵

2021-22 School Year

5. On September 2021, the District convened Student's ARD committee for Student's annual meeting. Parent participated in the meeting and agreed with the resulting IEP and services. The District prepared a PWN detailing the services and considerations.⁶
6. The committee established Student's present levels of academic achievement and functional performance (present levels). Student's reading skills were noted to be developing with an instructional focus on sight word recognition and listening comprehension. Student's sight reading level was at the *** level and Student's reading comprehension was at the lower *** level when a story was read aloud to Student. Student's reading goals focused on improving reading comprehension and expanding sight word vocabulary.⁷
7. In the area of speech, Student was noted to be communicating primarily in ***; answering simple yes/no questions appropriately; struggling with more ***; producing *** words with minimal prompting; and struggling to maintain the breath support for longer utterances. Student's IEP provided eight 30 minute direct speech therapy sessions per grading period. Student's speech therapy services focused on improving the intelligibility of speech, expanding vocabulary, and improving the coordination and strength of Student's oral motor musculature. Student's speech goals worked on providing *** responses to questions about a story read to Student, ***, and improving ***.⁸

⁵ JE 11; RE 1.

⁶ JE 6 at 33-35.

⁷ JE 6 at 2-3, 11.

⁸ JE 6 at 2-3, 9-10.

8. Student was noted to be able to ***. The ARD committee recommended continuing Student's occupational and physical therapies to work on improving Student's coordination, strength, and motor endurance. Student's IEP goals addressed writing ***.⁹
9. Student was noted to have difficulty with handwriting, but Student was able to dictate short sentences when prompted. The IEP focused instruction on sentence building and Student's goals targeted sentence completion from a prompt.¹⁰
10. Student's math skills were noted to be developing with instruction to be focused on computation skills. The math goals included ***.¹¹
11. The ARD committee continued Student's adaptive physical education services to work on Student's ***.¹²
12. The ARD committee determined Student would take the State of Texas Assessment of Academic Readiness (STAAR) *** for all applicable subjects. Student was placed in the applied academics special education setting for all core academic areas and general education with inclusion support for ***. Student received *** minutes of adaptive physical education services per grading period, ***

⁹ JE 6 at 3-4, 9, 18.

¹⁰ JE 6 at 4, 15.

¹¹ JE 6 at 4, 13-14.

¹² JE 6 at 5, 9.

minutes of occupational therapy per grading period, *** minutes of physical therapy per grading period, and *** minutes of speech therapy per grading period.¹³

13. The ARD committee agreed the District would complete a full individual evaluation (FIE) in the areas of cognitive, academic, speech, assistive technology, and adaptive physical education. A notice of evaluation was prepared by the District and signed by Parent.¹⁴

District 2021-22 Evaluation

14. The District completed a FIE of Student during the 2021-22 school year. The District's final FIE report was issued on March ***, 2022. As part of the FIE, in February of 2022, The District completed an assistive technology evaluation; informal measures of conversation and communication; informal measures of articulation, fluency, vocal function, and oral-motor function; an assessment of spoken language; a functional communication profile; an articulation assessment; and interviews with instructional staff. In January of 2022, the District completed a cognitive abilities evaluation; educational achievement testing; a classroom observation; a fine motor skills assessment; visual perception and fine motor coordination testing; timed typing testing; a hand writing assessment; a motor evaluation for wheelchair users; teacher progress reports; a student interview; the children's depression inventory; a behavior assessment; and strengths and difficulties questionnaire. In September and October of 2021, the District completed vision and hearing screening; a gross motor evaluation; and an informal physical therapy assessment. The District attempted to obtain input from Parent for the FIE, but Parent did not respond to the requests for input.¹⁵
15. Student has ***impaired expressive language skills and below average receptive language skills. Student's receptive language is an area of relative

¹³ JE 6 at 21, 27-29.

¹⁴ JE 6 at 32, 42.

¹⁵ JE 9 at 1-2.

- strength, while Student's expressive language and sentence expression are areas of relative weakness. Student's communication-related sensory skills were assessed to be mildly impaired and Student's communication-related motor skills were assessed to be ***.¹⁶
16. Student was evaluated to have speech limitations in articulation, vocal quality, and fluency. Student was nonetheless assessed to be understandable to an average unfamiliar listener aware of the topic of conversation *** of the time. Student *** easily during a conversation, causing Student to trail off at the end of a phrase or pause while Student regains Student's breath.¹⁷
 17. Student has ***weakness, decreased ***control, ***fatigue, altered ***tone, and lower and upper extremity***. Student has pronounced ***in Student's right hand and right-side hemiparesis. Student's ***are a byproduct of the ***, cannot be remediated with therapy, and will always impact Student's writing and typing.¹⁸
 18. Student has full range of motion in both arms and legs and functional range of movement in both hands. Student has difficulty with control, accuracy, and legibility with writing and typing tasks due to***. Student's visual perception and motor coordination are below average. Student requires physical and occupational therapy services at school.¹⁹
 19. Student uses a manual *** with custom seating for extended mobility. Student sits in a standard seat in the classroom, enters and uses the restroom independently, and ambulates short distances on flat surfaces independently with a somewhat uneven and inconsistent gait. Student is unable to walk up ramps or navigate curbs but can walk up and down stairs with supervision.²⁰

¹⁶ JE 9 at 5-6, 8, 13.

¹⁷ JE 9 at 19-21.

¹⁸ JE 9 at 72; TR at 380.

¹⁹ JE 9 at 24-25.

²⁰ JE 9 at 27-28.

20. The evaluation of Student indicated Student does not demonstrate any internalizing or externalizing behavioral difficulties and does not demonstrate any emotional or behavioral challenges.²¹
21. Student performed in the very low range in all domains of the cognitive assessment and Student's adaptive behavior skills were measured to be low. Student's academic achievement was assessed to be very low in all areas. Student's difficulty with motor skills limited Student's ability to complete the cognitive testing, making the results not a true measure of Student's cognitive ability.²²
22. The assistive technology evaluators determined Student's independent speech was superior to device generated speech for spontaneous, functional, social, and task-based communication. Student would not benefit from speech-to-text programs for generating written answers because the programs were unable to recognize Student's speech due to Student's vocal quality and intonation patterns resulting from Student's ***Student has difficulty using either a keyboard or touchscreen, because of Student's hand***. For text-based communications, the assistive technology evaluators recommended Student be provided with a Windows laptop computer with language communication applications, a joystick to control the cursor, one click selection enabled applications, large text predictions, and prolonged time for selections.²³
23. The FIE evaluators concluded Student continued to be eligible for special education in the categories of *** and speech impairment. Student has a ***expressive and receptive language disorder, moderate ***and requires speech therapy services.²⁴
24. Student continued to qualify for adaptive physical education to address Student's gross motor delays, as well as physical and occupational therapy. Student

²¹ JE 9 at 42.

²² JE 9 at 43-45, 61.

²³ JE 9 at 50-53.

²⁴ JE 9 at 61-62.

displays no significant emotional or behavior concerns and does not qualify as a student with an emotional disturbance.²⁵

25. On March ***, 2022, following completion of the FIE, the District convened Student's ARD committee. The meeting was continued on April ***2022. Parent attended both sessions of the meeting and agreed to the IEP and set of services. The District issued PWN setting forth the services and considerations following the second session.²⁶
26. The committee continued Student's eligibility under the categories of *** and speech impairment.²⁷
27. The committee established Student's present levels, noting that Student, since the beginning of the school year, had improved Student's sight word vocabulary recognition and Student's ability to answer comprehension questions about a story read to Student. Student continued to struggle with adding and subtracting two digit numbers and adding bills and coins. Student's goals addressed expanding detail in sentences; expanding sight word vocabulary; improving comprehension by answering "WH" questions after reading a story; adding and subtracting two digit numbers; and ***.²⁸
28. Since the beginning of the school year, Student had increased Student's *** and improved articulation in connected speech. The committee continued direct speech therapy for 180 minutes per grading period. Student's goals addressed improving expressive and receptive language through guided response; improving articulation through muscle exercises and modeling; and producing speech ***.²⁹

²⁵ JE 9 at 61-62.

²⁶ JE 7 at 39-44.

²⁷ JE 7 at 1.

²⁸ JE 7 at 2, 6, 12-24.

²⁹ JE 7 at 2-3, 12-24.

29. Since the beginning of the school year, Student increased Student's ability to ***.³⁰
30. The committee also adopted a science goal related to understanding the forms of energy; a social studies goal related to maps and geography; an art goal for understanding different forms of cultural expression; and a self advocacy goal to improve self-care.³¹
31. The committee determined Student would participate in the STAAR *** assessment. Student was placed in the applied academic special education setting for English language arts, math, science, social studies, and in a general education setting with inclusion support for art, physical education, and an ***. The committee continued *** minutes per grading period of adaptive physical education, *** minutes per grading period of occupational therapy, *** minutes per grading period of physical therapy, and *** minutes per grading period of speech therapy services.³²
32. The District proposed, as compensatory services related to Parent's December 2021 TEA complaint, *** minutes of adaptive physical education; *** minutes of occupational therapy; *** minutes of physical therapy; *** minutes of speech therapy; and *** minutes of academic

³⁰ JE 7 at 3-5, 12-24.

³¹ JE 7 at 12-24.

³² JE 7 at 29, 34-35.

compensatory services. Parent did not agree with the proposal for compensatory services.³³

33. On May^{***}, 2022, the District convened Student's ARD committee to review the compensatory services proposal. Parent continued to disagree with the District's proposal.³⁴

2022-23 School Year

34. On March ^{***}2023, March^{***}, 2023, and April ^{***}2023 the District convened Student's ARD committee for Student's annual meeting. The committee again continued Student's eligibility in the categories of ^{***} and speech impairment. Parent participated in all sessions of the meeting and agreed with the IEP and services. The District provided the notice of procedural safeguards and PWN detailing the services and considerations.³⁵
35. The committee established Student's present levels noting Student was able to answer comprehension questions after a story is read to Student, was able to read a set of ^{***} grade sight words; was able to read simple sentences and was learning decoding for more complex ones; was able to ^{***}. Goals addressed reading complex, one syllable grade level sight words; answering comprehension questions after a guided reading exercise; adding detail to sentences; and ^{***}.
36. The committee noted Student was ambulating on even surfaces in the school with a reverse walker; was able to perform 20 push-ups; was able to strike a ball with a racket; was able to perform sit-ups independently; formed letters with ^{***} accuracy; sized words and letters with ^{***} accuracy; and spaced words and letters with ^{***} accuracy. Goals focused

³³ JE 7 at 42.

³⁴ JE 8 at 40.

³⁵ JE 12 at 1, 43, 48, 57-58.

³⁶ JE 12 at 2, 6, 20-23.

- on walking independently with a walker and without adult supervision; ascending and descending 25 stairs while holding the handrail and being supervised by an adult; completing strength training exercises; legibly writing or typing two sentences with appropriate formation, sizing, and spacing; and using adaptive equipment for independent feeding.³⁷
37. Student was able to locate 10 to 15 core vocabulary words on Student's speech generating communication device; was able to navigate the speech generating communication device to access common phrases, such as "I don't know" and "thank you"; was able to answer how and why questions from a passage; was able to accurately pronounce four and five syllable words; and had improved Student's breath for speech. The present levels noted Student was using both ***. Student's speech intelligibility was noted to be ***for both unfamiliar and familiar listeners with known and unknown context and Student's preference was for verbal communication over use of the communication device. Student's goals addressed expanding Student's expressive and receptive language by increasing the length and complexity of Student's answers to comprehension questions; improving Student's articulation and speech precision through oral-motor exercises; and ***.³⁸
38. Student's IEP also included a goal related to identifying items of interest as part of the transition process; completing multi-step directions using a pictorial check list; identifying potentially dangerous situations and items to help develop Student's personal safety skills; identifying the roles of the branches of government; and identifying the functions of the systems of the human body.³⁹
39. The committee determined Student would again take the STAAR ***. The committee placed Student in general education classes with inclusion support for ***and physical education and in applied academics special education classes for

³⁷ JE 12 at 3-4, 16-17, 25-27.

³⁸ JE 12 at 4, 24-26.

³⁹ JE 12 at 17, 19, 28-29.

- ***. The committee provided Student with *** minutes per grading period of adaptive physical education, *** minutes per grading period of occupational therapy, *** minutes per grading period of physical therapy, and *** minutes per grading period of speech therapy.⁴⁰
40. To address Parent's December 2021 TEA complaint, the District offered 60 minutes of compensatory speech services, 120 minutes of compensatory adaptive physical education services, 240 minutes of compensatory occupational therapy services, 360 minutes of compensatory physical therapy, and 720 minutes of compensatory core academic services. Parent did not agree with the District's proposal and requested one year of compensatory services in each area.⁴¹
41. On May ***, 2023, the ***.⁴²
42. During the relevant time period, the District has had Student using multiple ***. The District failed to consistently implement a *** for Student and did not incorporate into Student's IEP the recommendations of the assistive technology portion of the 2021-22 FIE.⁴³

⁴⁰ JE 12 at 30, 37-38, 40.

⁴¹ JE 12 at 55-56.

⁴² TR at 23-25, 61, 446; JE 13.

⁴³ TR at 256-258, 271-273, 280.

2023-24 School Year

43. On January^{***}, 2024, the District convened Student's ARD committee for a review meeting. Parent expressed concerns about timely delivery of progress reports and communication about Student from District staff. Student's IEP and services were not changed. Parent participated in the meeting and did not agree with the outcome of the meeting. The District provided the notice of procedural safeguards and a PWN explaining the proposed services and considerations.⁴⁴
44. On May ^{***}2024 and May^{***}, 2024, the District convened Student's ARD committee for Student's annual meeting. Parent attended both sessions and expressed concerns about lack of specificity in Student's IEP goals. The committee did not reach consensus and agreed to reconvene in the fall of the 2024-25 school year. The District provided a PWN for the proposed IEP.⁴⁵
45. The committee reviewed Student's present levels, noting Student was able to state the main idea of a story that is read to Student; was assessed to be reading on a ^{***} grade level; could form short sentences when writing with a graphic organizer; and using a calculator, could solve math problems of whole numbers ^{***}and decimals up to the tenths place. Student's goals addressed sequencing the parts of a story after reading an instructional passage; adding detail to topical sentences; and independently completing math word problems.⁴⁶
46. Student was able to locate 10-15 core vocabulary words on Student's ^{***}, identified as both a ^{***}; could navigate ^{***} to use common phrases; understood double meaning words; answered how and why questions with ^{***} accuracy; verbalized four and five syllable words with over ^{***}accuracy; and was able to appropriately breathe for up to 10 seconds for speech. Student's speech intelligibility was noted to be ^{***}with familiar and unfamiliar

⁴⁴ JE 15 at 56-59.

⁴⁵ JE 19 at 65-70.

⁴⁶ JE 19 at 2, 7-8, 32-34.

listeners with known and unknown context. Student verbally communicates Student's wants and needs, responds to questions for general information, and responds to questions for academic and therapy related tasks. Student prefers verbal speech and is frustrated by the difficulties Student's motor limitations cause with accessing the ***. Goals addressed producing target sounds, words, and phrases; improving breath control and speech volume; and using Student's *** when verbal communication breaks down.⁴⁷

47. Student was noted to be able to strike a ball with a racket; display appropriate timing for kicking a ball; progressed to doing Student's strength training exercises independently; ambulate without a walker or support; walk up and down stairs; catch a basketball; complete full range of motion push-ups and wall-sits; form and size letters with ***accuracy; and to have improved writing and typing speed. Goals addressed maintaining and improving muscular strength of the arms, legs, abdomen, and back; improving balance by practicing balancing on one leg; participating in athletic activities; legibly writing two sentences with appropriate sizing and spacing; and typing two sentences with appropriate spacing and capitalization.⁴⁸
48. The committee ***.⁴⁹
49. The committee also adopted goals for answering "WH" questions about ***; answering questions about life cycle connections in

⁴⁷ JE 19 at 3-4, 25.

⁴⁸ JE 19 at 4-5, 23, 25, 33.

⁴⁹ JE 19 at 17, 28-30.

nature after reviewing an image; and studying and expanding understanding of the ***.⁵⁰

50. The District proposed Student be placed in an applied academics special education setting for ***, and general education with inclusion support for ***, physical education, ***, and ***. The District also proposed Student participate in STAAR ***, receive *** minutes per grading period of adaptive physical education, *** minutes per grading period of occupational therapy, *** minutes per grading period of physical therapy, and *** minutes per grading period of speech therapy.⁵¹
51. The District electronic service logs for related services are not an accurate reflection of services delivered. The service logs are automatically generated by the electronic special education case management system and providers are not required to enter time in the electronic system. Student's case manager tracks on paper the related services delivered to Student.⁵²

Independent Education Evaluations

52. On January ***, 2022, Parent requested IEEs in the areas of academic achievement, cognitive/intellectual, occupational therapy, speech/language communication, learning disability, social/emotional, hearing/audiological, adaptive physical education, adaptive behavior, physical therapy, and functional behavior.⁵³
53. On January ***, 2022, the District granted Parent's request for IEEs in the areas of academic achievement, cognitive/intellectual, speech/ language communication, and occupational therapy.⁵⁴

⁵⁰ JE 19 at 26-27, 34.

⁵¹ JE 19 at 43, 48-49.

⁵² TR at 154, 177, 181; JE 22.

⁵³ JE 24.

⁵⁴ JE 25.

54. On August ***, 2022, the District again granted Parent’s request for IEEs in the areas of academic achievement, cognitive/intellectual, speech/language communication, occupational therapy, and assistive technology.⁵⁵
55. In May of 2023, Parent provided the District with the names of the independent evaluators that were selected.⁵⁶
56. The District did not provide Parent information about obtaining IEEs in a timely manner. The District did not adequately explain why it granted some of Parent’s IEE request, but not others.⁵⁷
57. On January ***, 2024, the District and an independent occupational therapist entered into a contract for an independent occupational therapy evaluation at District expense. On January ***, 2024, the District executed a contract for an independent orientation and mobility evaluation at District expense.⁵⁸
58. On September ***, 2023, *** completed an independent speech therapy evaluation. She noted Student has verbal skills that are functional for formal and informal communication. ***determined Student has a ***impairment of ***resulting in a slow rate of***; strained voice quality; ***
59. ***determined, consistent with a ***, Student has difficulties with fluency, voice, articulation, expressive language, receptive language, and pragmatic language. She recommended Student be evaluated by an ear, nose, and throat (ENT) doctor; Student’s vision be assessed by an ophthalmologist; Student’s family receive training on the use of Student’s speech generating communication device; an independent assistive technology

⁵⁵ RE 4.

⁵⁶ Petitioner’s Exhibit (PE) 23 at 30.

⁵⁷ TR at 219-225.

⁵⁸ RE 4.

⁵⁹ JE 26 at 8, 13.

- evaluation to explore alternative methods for accessing electronic devices; and continued speech therapy services.⁶⁰
60. On April ***, 2024, ***completed an independent functional vision assessment with core curriculum assessment of Student. ***noted a November ***, 2023 eye exam completed by an ophthalmologist indicated Student does not have vision loss. ***was impressed with Student’s social interaction skills and indicated Student can effectively communicate Student’s needs. ***concluded Student does not qualify as a student with a visual impairment; has efficient functional vision performance; understands how to communicate visually by making eye contact to engage in conversation; and is able to travel safely in a school environment using Student’s vision.⁶¹
61. On April ***, 2024, ***completed an orientation and mobility evaluation for Student. Student independently navigates the classroom by walking and navigates the hallways and cafeteria *** with adult supervision. Student travels independently in familiar locations; travels around Student’s school with confidence; requires assistance related *** in more complex environments; and does not require orientation and mobility services to benefit from Student’s education.⁶²

VII. 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,

⁶⁰ JE 26 at 19, 21.

⁶¹ JE 27 at 1, 11, 15.

⁶² JE 28 at 2, 4.

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), 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 District's IEP for Student "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).

B. BURDEN OF PROOF

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

C. FAPE AND APPROPRIATE IEP FOR STUDENT

A judge applies a four factor test to determine whether a school district's program provided a FAPE under the IDEA. Those factors are:

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

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

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

1. Individualized on the Basis of Assessment and Performance

Petitioner contends the District failed to individualized Student's program to address Student's identified needs. In particular, Petitioner takes issue with the IEP goals and services for Student, contending they were not adequate to provide Student a FAPE. The District's obligation when developing Student's IEP is to consider Student's strengths,

Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R.

§ 300.324(a)(1). An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 320, 323(a). While the IEP need not be the best possible one or be designed to maximize Student's potential, the District must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The evidence showed the District developed robust IEPs for Student addressing the multiple areas of needs that resulted from Student's ***. All of Student's IEPs identified Student's physical, cognitive, and academic limitations, established Student's present levels, and set out the services to address Student's identified needs. During the 2021-22 school year, the District conducted a comprehensive evaluation, examining Student's speech, gross and fine motor abilities, academic achievement, cognitive ability, and assistive technology needs. This comprehensive evaluation was used to build and individualize Student's IEP and services. Moreover, during the relevant time period, the District adjusted Student's services and goals as Student's skills developed.

Student was identified to have a *** motor speech impairment and expressive and language deficits. The District provided direct speech therapy, goals to address Student's oral-motor issues, goals designed to increase Student's expressive language, and goals to assist with Student's participation in communication. To address Student's fine and gross motor limitations, the District provided substantial amounts of occupational therapy, physical therapy, and adaptive physical education. Student's goals addressed improving Student's strength, endurance, and mobility.

As Student's physical abilities improved, the District increased the goal expectations ***.

The *** also resulted in cognitive and academic limitations for Student. Student's IEP contained goals for reading, written expression, and math computations. These emerging academic skills were addressed through special education instruction and goals targeting the building blocks in these areas. As Student's reading and math skills improved, the District increased the academic expectations.

Petitioner specifically contends the District should have addressed travel training in the IEP. However, the evidence does not support this contention. The independent orientation and mobility evaluator found Student travels independently in familiar locations and travels around Student's school with confidence and she concluded Student does not require orientation and mobility services to benefit from Student's education.

Petitioner also contends the District failed to provide appropriately trained staff. In particular, Petitioner points out that one of Student's special education teachers does not have a current, active teaching certification with the TEA. However, this teacher is part of an alternative certification program and under the IDEA, a teacher participating in such a program may serve as a special education teacher. 34 C.F.R. § 300.156(c)(2)(i)-(ii). Thus, Petitioner failed to show the District did not adequately train staff.

In sum, the District's IEPs for Student were based on assessment and performance and designed to provide meaningful educational benefit. *V.P.*, 582 F.3d at 583.

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).

Because of the limitations from Student's ***, Student requires a special education setting for Student's core academic classes to allow for more individualized instruction on Student's level. To ensure Student interacts with Student's nondisabled peers, the District has educated Student in general education classes with inclusion support for *** courses. Here, Petitioner does not contend the District failed to educate Student in the least restrictive environment. Petitioner's Closing Brief at 18.

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

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

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

Here, Parent participated in all of Student's ARD committee meetings. The District took Parent's concerns and input into account while developing Student's IEP and program. The District held multiple sessions of ARD committee meetings to allow sufficient time to, among other things, address parental concerns. Petitioner did not present any evidence to indicate the District refused to listen to Parent or acted in bad faith while working with Parent to develop Student's program. *Id.*

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).

Here, the evidence showed Student made substantial academic and non-academic progress during the relevant time period. Petitioner takes issue with the scope of Student's continuing deficits and the pace of Student's academic and non-academic progress. Importantly, however, disability remediation, as Petitioner is requesting, is not the goal of the IDEA. Rather, overall educational benefit is the IDEA's statutory goal. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 398 (5th Cir. 2012). The impact of Student's *** causes impairments in Student's cognition, language, attention, reasoning, abstract thinking, and motor abilities. As such, Student's progress

must be measured in terms of the appropriateness for Student's particular circumstances.

Andrew F., 580 U.S. at 403.

At the beginning of the relevant time period for this case, Student's speech was not always ***. However, according to the independent speech pathologist, Student now has verbal skills that are functional for formal and informal communication. Additionally, the independent functional vision evaluator found Student possesses appropriate social interaction skills and can effectively communicate Student's needs. The District has also documented Student's expanded vocabulary, ability to express ***self in longer statements, ***.

Student has made significant physical and motor progress since 2021. Student is able to ambulate *** independently, ***, hit a ball with a racket, perform a substantial number of fitness exercises, and maintain ***. Petitioner points to Student's continued difficulty with proper letter formation and spacing for handwriting. However, these continued difficulties are directly associated with Student's ***which are a non-remediable byproduct of Student's ***.

Student continues to expand Student's sight word vocabulary, improve Student's reading comprehension skills, progress with reading, improve Student's ability to ***. Given the

nature and extent of Student's cognitive impairment, this represents appropriate academic progress.

The District developed a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs. *Andrew F.*, 580 U.S. at 399, 403. Student's IEP and program were developed using the District's comprehensive evaluation and placed Student in Student's least restrictive environment. Parent, as well as key stakeholders from the District, provided input to develop Student's program and Student showed significant academic and nonacademic benefit. A review of the overall educational program shows Student was provided a FAPE and made progress with the program as it was developed. *Michael F.*, 118 F.3d at 253; *Hovem*, 690 F. 3d at 391.

D. PROCEDURAL REQUIREMENTS

Liability for a procedural violation only arises if the procedural deficiency: (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or (iii) caused a deprivation of educational benefits. *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F. 3d 804, 812 (5th Cir. 2003). However, the IDEA does not preclude a judge in a special education proceeding from ordering a school district to comply with statutory procedural requirements. *See Dawn G. v. Mabank Indep. Sch. Dist.*, 2014 WL 1356084, at *5-6, *8 (N.D. Tex. Apr. 7, 2014) (stating that a hearing officer may find procedural defects yet not find a denial of FAPE).

In addition to the FAPE claim, Parent argues that the District committed several procedural violations of the IDEA, including the failure to implement Student's IEP; provide PWN; comprehensively evaluate Student; and timely respond to the request for IEEs.

1. IEP implementation

In determining whether a school district failed to adequately implement a student's IEP, thereby denying the student a FAPE, a hearing officer must consider whether there was a significant or substantial failure to implement the IEP under the third *Michael F.* factor and whether there were demonstrable academic and non-academic benefits from the IEP under the fourth factor. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020). That is, Petitioner must show more than a *de minimis* failure to implement all elements of an IEP. Petitioner must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

a. RELATED SERVICES

First, Petitioner alleges the District failed to provide all of the related services in Student's IEP. In support of this allegation, Petitioner points both to the electronic service logs and the prior TEA complaint. As for the service logs, the evidence showed the electronic logs are automatically generated by the case management

system and are not part of the District's routine documentation of the services provided. Student's case manager documented the related services provided and Petitioner failed to present credible evidence that substantiated the allegations that the related services detailed in the IEP were not actually provided.

Petitioner also attempts to use the results of the TEA complaint filed by Parent as evidence of the District's failure to provide related services in the IEP. However, TEA has closed this complaint and enforcement of any corrective action from a state complaint is not a proper issue in a due process proceeding. *New Jersey Protection & Advocacy, Inc. v. New Jersey Department of Education, et. al.*, 563 F. Supp. 2d 474 (D.C.N.J. 2008); *C.O. and Pat O. v. Portland Public Schools, et. al.*, 406 F. Supp. 2d 1157 (D.C. OR 2006). Therefore, the Judge declines to use this as evidence of failure to implement the IEP.

b. ASSISTIVE TECHNOLOGY

Petitioner also contends the District failed to implement the assistive technology portions of the IEP. Student's ARD committee was required to consider Student's need for assistive technology. 34 C.F.R. § 300.324(a)(2)(v). Here, the ARD committee determined Student first required a *** to supplement Student's speech. However, the District did not consistently implement this portion of the IEP. There is no evidence the District regularly used a *** as part of Student's instruction or speech therapy. Moreover, the District did not select one *** and stick with it in implementing this aspect of Student's IEP. Student's IEP makes references to multiple *** including the ***. The District failed to implement a significant

provision of the IEP when it did not select one specific *** and consistently use it in the delivery of Student's services. *Bobby R.*, 200 F. 3d at 349.

The District must also ensure a student can bring Student's assistive technology home if it is necessary for the provision of a FAPE. 34 C.F.R. § 300.105(b). Here, the District inexplicably waited until May of 2023 to send Student's *** home. Then, the District never provided Parent with the means or training to utilize the device. Finally, the District failed to carry out the assistive technology recommendations from the March 2022 FIE. Student does not appear to have been provided with the recommended Windows laptop computer with ***, a joystick to control the cursor, one click selection enabled applications, large text predictions, and prolonged time for selections.

The District was required to provide assistive technology to Student, who required it as part of Student's special education services. 34 C.F.R. § 300.105(a). The District's failure to implement the assistive technology portions of the IEP is a substantial and material failure. *Id.* The evidence showed Student was frustrated by the failure to provide the appropriate and necessary assistive technology. However, the record is not clear about what impact the assistive technology implementation failures had on Student's progress. The record demonstrates Student made significant progress in the area of speech and communication. Petitioner failed to

present evidence to show what additional progress would have been made with the provision of appropriate assistive technology.

While the failure to provide the appropriate assistive technology does not rise to a denial of FAPE in light of Student's academic and non-academic progress, the Judge none the less determines it is a procedural defect the District must remedy. *Dawn G. v. Mabank Indep. Sch. Dist.*, 2014 WL 1356084, at *5-6, *8 (N.D. Tex. Apr. 7, 2014). To remedy the procedural defect, the District must provide Student the Windows laptop computer with ***, a joystick to control the cursor, one click selection enabled applications, large text predictions, and prolonged time for selections. The District must also facilitate Student using this assistive technology at home.

5. Prior Written Notice

Petitioner contends that the District failed to provide required and adequate PWN. Written notice must be given to the parents of a child with a disability a reasonable time before the school district proposes or refuses to change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 C.F.R. § 300.503(a)(1)-(2). The District provided Parent with PWN when required in this case. Any deficiencies in the PWN alleged by Petitioner did not impede Student's right to a FAPE, significantly impede Parent's opportunity to participate in the decision-making process or cause a deprivation of educational benefits. *Adam J.*, 328 F. 3d at 812.

6. Evaluations

The IDEA and its implementing regulations dictate that each student with a disability must be assessed “in all areas related to the suspected disability.” 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4). These areas include, “if appropriate, . . . social and emotional status, . . . academic performance, communicative status, and motor abilities.” 34 C.F.R. § 300.304(c)(4). The regulations further require that evaluations must be sufficiently comprehensive to identify all of the child’s special education and related services needs . . .” 34 C.F.R. § 300.304(c)(5).

Student has impairments in Student’s cognition, language, attention, reasoning, abstract thinking, and motor abilities as a result of Student’s ***. During the 2021-22 school year, the District completed a FIE that included an assistive technology evaluation; informal measures of conversation and communication; informal measures of articulation, fluency, vocal function, and oral-motor function; an assessment of spoken language; a functional communication profile; an articulation assessment; interviews with instructional staff; a cognitive abilities evaluation; educational achievement testing; a classroom observation; a fine motor skills assessment; visual perception and fine motor coordination testing; timed typing testing; a hand writing assessment; a motor evaluation for wheelchair users; teacher progress reports; a student interview; the children’s depression inventory; a behavior assessment; strengths and difficulties questionnaire; vision and hearing screening; a gross motor evaluation; and an informal physical therapy assessment. Based upon the numerous assessment tools used and the multiple domains assessed,

the judge concludes the District's FIE comprehensively evaluated all areas of Student's impairment. In addition, the District evaluated Student's emotional status to assess a possible impairment in this area. Petitioner failed to prove any deficiency in the FIE. The District's FIE met all relevant criteria under the IDEA. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).

The parents of a child with a disability have the right under the IDEA to an IEE at school district expense if the parent disagrees with the school district's evaluation. 34 C.F.R. §§ 300.502(a)(1)(3)(ii), (b)(1). Upon parental request for an IEE the school district must provide parents information about where the IEE may be obtained and the school district's criteria for the IEE. 34 C.F.R. § 300.502(a)(2).

The school district may not unreasonably delay providing the IEE or filing a request for a due process hearing to determine whether its own evaluation is appropriate. If the school district files for hearing and its evaluation is found to be appropriate, the school district is relieved of funding the IEE. 34 C.F.R. § 300.502(b)(2)(i)-(ii), (b)(3)-(4).

The school district may establish the criteria for funding an IEE including the location of the evaluation. Furthermore, the qualifications of the IEE examiner must be the same criteria the school district uses to conduct its own evaluation to the extent the criteria is consistent with the parental right to an IEE. 34 C.F.R. § 300.502(e).

In this case, the District failed to clearly communicate with Parent following the request for IEEs. In January of 2022 and again in August of 2022, the District approved some of Parent's requested IEEs. The District, however, failed to clearly explain why it was not agreeing to all of the requested IEEs. In addition, it is unclear why the District approved the same IEEs two separate times eight months apart. Moreover, there was some considerable delay contracting with the providers for the agreed upon IEEs. In this case, the District unreasonably delayed fulfilling Parent's IEE requests and did not request a hearing to prove the appropriateness of the FIE. This procedural violation impeded Parent's right to participate in the decision-making process by significantly limiting the independent information Student had available for analyzing Student's program. *Adam J.*, 328 F. 3d at 812. The record in this case, however, does not support the conclusion that additional independent evaluations are necessary at this time for the development of an appropriate program for Student.

VIII. CONCLUSIONS OF LAW

1. The burden of proof is on Petitioner as the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District provided Student a FAPE during the relevant time period, and Student's IEPs were reasonably calculated to address Student's needs in light of Student's unique circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F. 3d 245, 253 (5th Cir. 1997).
3. Petitioner did not meet the burden of proving that Respondent failed to adequately implement the related services in Student's IEPs. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

4. Petitioner did not meet the burden of proving that Respondent's failure to adequately implement the assistive technology components of Student's IEP resulted in a denial of FAPE. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).
5. The District's failure to provide to Student the assistive technology identified in Student's IEP and the FIE was a procedural violation of the IDEA. *Dawn G. v. Mabank Indep. Sch. Dist.*, 2014 WL 1356084, at *5-6, *8 (N.D. Tex. Apr. 7, 2014)
6. Petitioner did not meet the burden of proving that Respondent failed to comprehensively assess Student in all areas of suspected disability and need. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4), (5).
7. Petitioner did not meet the burden of proving that Respondent failed to comply with student and parental procedural rights under the IDEA related to the provision of prior written notice. 34 C.F.R. §§ 300.503(a).
8. Petitioner met the burden of proving that Respondent failed to comply with student and parental procedural rights under the IDEA related to the timely provision of IEEs. 34 C.F.R. § 300.502(b)(2)(i)-(ii), (b)(3)-(4).

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is ORDERED that the District is to provide Student with a Windows laptop computer with ***, a joystick to control the cursor, one click selection enabled applications, large text predictions, and prolonged time for selections.

It is further ORDERED that the District is to make the assistive technology available to Student at home and train Parent on the assistive technology.

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

Signed December 6, 2024.



Steve Elliot

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), .516; 19 Tex. Admin. Code §89.1185(n).