

SOAH Docket No. 701-23-26717.IDEA
TEA Docket No. 369-SE-0823

Before the State Office of Administrative Hearings

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

v.

**NORTHSIDE INDEPENDENT SCHOOL DISTRICT,
Respondent**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student (Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against Northside 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 a free, appropriate public education (FAPE). The hearing officer concludes that it did.

II. DUE PROCESS HEARING

The due process hearing was conducted on September 17-19, 2024, via the Zoom videoconferencing platform. The proceedings were recorded and transcribed by a certified court reporter.

Petitioner was represented by Karen Seal of the Law Office of Karen Seal. Student's Parent, ***, was also present. Respondent was represented by its legal counsel, Elvin Houston of Walsh Gallegos Kyle Robinson & Roalson, P.C. ***, the District's Assistant Director of Compliance for Special Education, attended as party representative.

The parties offered 12 Joint Exhibits. Petitioner offered 14 exhibits. Petitioner withdrew P8 and P14 as duplicative of the Joint Exhibits, and Petitioner's Exhibits 1-7 and 9-13 were admitted, with P12 admitted over the District's objection.

Petitioner offered the testimony of Kassandra Levay, advocate for Petitioner; ***, Student's *** teacher and case manager; Student; Parent; ***, a private evaluator who was designated as an expert in occupational therapy; ***, a District speech therapist; and Dr. ***, Student's pediatrician. Respondent did not call any witnesses.

The parties filed timely written closing arguments on November 1, 2024. The Decision in this case is due on November 19, 2024.

III. PETITIONER'S ISSUES AND REQUESTED RELIEF

A. ISSUES

The relevant timeframe in this matter includes the two-year period before the case was filed. Petitioner raised the following issues for decision:

1. Whether Respondent denied Student a FAPE.
2. Whether Respondent failed to provide special education and related services at the intensity required for Student to receive a FAPE.
3. Whether Respondent failed to provide special education services in the least restrictive environment.
4. Whether Respondent failed to implement an appropriate academic program based on Student's individual needs and to continue Student's education *** grade.
5. Whether Respondent failed to implement Student's individualized education program (IEP).
6. Whether Respondent failed to provide appropriate training to its teachers, staff, and administrators in meeting Student's needs.

B. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. An order directing Respondent to train staff on providing an appropriate educational environment based on an IEP, data collection, social skills, and admission, review, and dismissal (ARD) committee decisions.

2. An order directing Respondent to provide *** classes in all core areas of academics and social skills to Student for at least 30 minutes a day five days per week after ***.
3. An order directing Respondent to provide compensatory tutoring and social skills training during the summer of 2023, as well as social skills training next year along with *** services and academics.
4. After assessment, an order directing Respondent to convene an ARD committee meeting to provide appropriate services and measurable goals and objectives that address all of Student's educational needs this year and until Student ages out or no longer needs *** services.
5. An order directing Respondent to provide highly qualified, certified teachers.

IV. RESPONDENT'S POSITION

Respondent generally and specifically denied the allegations and maintains it provided Student a FAPE consistent with its obligations under the IDEA at all relevant times. Respondent raised the affirmative defense of the two-year statute of limitations.

V. FINDINGS OF FACT

1. Student is ***years old and lives in the geographical boundaries of the District with Parent. Student attended school in the District from the beginning of *** until Student *** at the end of the 2022-2023 school year.¹
2. Student was diagnosed with attention deficit disorder in ***. In *** grade, Student required *** after "*** at home." An initial evaluation in November 2013, Student's *** grade year, found Student eligible for special education and related services as a student with an

¹ Joint Exhibit (JE) 7 at 7; Petitioner's Exhibit (PE) 7 at 3; Transcript (Tr.) at 81-82, 234.

emotional disturbance and as a student with an other health impairment (OHI) due to attention deficit hyperactivity disorder (ADHD).²

3. Student also receives special education and related services as a student with a speech impairment in pragmatic language. Student demonstrates weaknesses in pragmatic language impacting Student's ability to communicate and understand social language within Student's academic environment.³
4. A 2014 private evaluation obtained by Parent yielded diagnoses of ***, ADHD, ***, and autism spectrum disorder (provisional diagnosis). The District assessed Student for eligibility as a student with an autism spectrum disorder in 2017. At the time, Student continued to have significant behavioral concerns, including an inability to sustain attention and becoming easily overwhelmed which resulted in refusal to complete work and outbursts. District evaluators found Student did not meet the eligibility criteria as a student with an autism spectrum disorder and recommended continuing Student's current areas of eligibility, with emotional disturbance as Student's primary disabling condition.⁴
5. Assessments of Student's intellectual functioning have varied over the years but generally indicate that Student functions within the below average range of overall intelligence. During ***, Student attended "****" classes in all academic areas, which are classes for students who receive modified curriculum. Because change is difficult for Student, Student remained with the same teachers throughout *** at Parent's request.⁵
6. Teachers' reports indicate that Student was well-behaved in class, polite to adults and others, got along with peers, and followed class rules. Student would, at times, have "emotional outbursts" where Student would get frustrated

² JE 7 at 5, 8, 10-11.

³ JE 7 at 2-3; Tr. at 395, 399.

⁴ JE 7 at 10-11.

⁵ JE 7 at 15-19; Tr. at 172-73, 183-85, 257.

and upset. Student readily apologized after having a bad day and/or moment in class.⁶

7. Student struggles with functional skills, and Student's scores on adaptive behavior assessments consistently fell in the below average range. Student relies on Parent for many things and continues to be "very dependent" on Parent for assistance with tasks, including ***. Student is unaware or not interested in ***. Parent must remind Student to ***.⁷
8. Student has ***. Student works with two mentors, who provide support when Student gets frustrated or does not understand a social situation.⁸
9. Parent has ***. Student otherwise has the right to make Student's own decisions. Student's pediatrician and psychiatrist believe Student needs ***, and Parent has been weighing this option.⁹

2021-2022 School Year: * Grade**

10. Student's ARD committee met on November***, 2021, to revise State of Texas Academic Assessment of Readiness (STAAR) expectations.¹⁰
11. The ARD committee convened on April ***, 2022, for an annual review. Parent attended with an advocate and raised concerns about regression during virtual instruction due to shorter assignments and "too much time to ***self this school year." Parent requested compensatory services in English and math. Student showed regression during the 2021-2022 school year, and the District agreed to provide 96 hours of compensatory services during the summer of

⁶JE 2 at 3-5.

⁷JE 7 at 11, 17-19; PE 12 at 4-13; PE 13; Tr. at 255-56, 260-62, 316.

⁸JE 9 at 12; Tr. at 224, 373-74.

⁹JE 6 at 3; Tr. at 369-71, 460, 465-67.

¹⁰JE 1 at 1, 3.

2022. Parent also requested a person-centered *** planning meeting at the beginning of the 2022-2023 school year.¹¹

12. The April 2022 IEP considered Student's present levels of academic achievement and functional performance (PLAAFPs) in all academic areas (reading, writing, math, ***) and speech and considered Student's behavioral and functional skill levels. The PLAAFPs in academic and functional areas established Student's baseline performance and identified Student's strengths and needs.¹²
13. Student received direct and collaborative speech therapy services targeting pragmatic language skills. The committee reviewed Student's progress on speech goals targeting the ability to consider others' perspectives and developing Student's own (goal met), topic maintenance in conversation (**% average accuracy), and controlling anger, frustration, and impulsivity when faced with a challenging situation (**% accuracy). Student actively participated in speech therapy sessions, had increased Student's ability to discuss others' topics of interests, and had become more comfortable participating in conversations with unfamiliar peers. Needs included being more open to participating in activities outside Student's comfort zone and expanding Student's expressions beyond happy, angry, sad, and mad to better understand others' perspectives.¹³
14. Student received occupational therapy (OT) support for sensory strategies and written output. Student's case manager had several different *** available for Student to use when feeling overwhelmed or upset. Student had access to word prediction software and speech to text but preferred not to use these tools. Student's need for OT support since starting ***continued to be "very minimal."¹⁴
15. The ARD committee initially considered *** services in May 2019. During the 2020-2021 school year, Student *** to assist with development of *** and received

¹¹ JE 2 at 1, 36-37, 48-50.

¹² JE 2 at 2-6.

¹³ JE 2 at 6-8.

¹⁴ JE 2 at 8.

*** skills training. During the 2021-2022 school year, Student *** and another *** to develop ***.¹⁵

16. The April 2022 IEP continued to refine Student's *** services with Student's input. The District conducted an informal interview and assessment on April ***, 2022. Student had various ***. Student did not, however, have an understanding of what it took to *** in these areas.¹⁶
17. The April 2022 IEP considered Student's ***-related strengths and needs. Student's strengths included manners, working hard, and adjusting to Student's teachers. Meanwhile, Student's education-related needs included preparing for ***. In ***, Student needed to increase awareness of Student's disability by researching how it can impact three different ***. As for ***, Student needed to learn to ***. The April 2022 IEP included a *** goal focused on using campus resources and Student's case manager to identify *** opportunities and short-term objectives targeting Student's identified needs.¹⁷
18. The *** plan considered Student's ***-related behavior needs. To obtain Student's future goal, Student needed to continue to focus on coping skills, organizational skills, and completing tasks while attending to instructions.¹⁸
19. The April 2022 IEP included three speech therapy goals to be provided by the speech language pathologist. The goals targeted Student's pragmatic language skills deficits, including topic maintenance in conversations, developing

¹⁵ JE 2 at 9, 11.

¹⁶ JE 2 at 10.

¹⁷ JE 2 at 10-11, 21.

¹⁸ JE 2 at 11.

appropriate emotional responses to problems, and understanding how others may feel in response to real or hypothetical situations.¹⁹

20. The IEP included a reading goal aimed at the use of context clues to respond to comprehension questions and a language arts goal that targeted Student's writing skills and required Student to "produce a piece of cohesive writing that attends to the topic" with limited prompting when given a writing assignment. A second language arts goal focused on Student's ability to edit and revise first and second drafts. The IEP included a math goal for identifying correct mathematical processes and/or equations to solve multi-step problems as well as *** goals requiring Student to apply new academic vocabulary to respond to comprehension questions. The IEP also included two adaptive behavior goals. One of these goals focused on completing an assignment on time and by the end of the class period while the second goal targeted Student's ability to attend to activities and use provided resources with limited prompting.²⁰
21. The April 2022 IEP included extensive classroom accommodations, including checks for understanding; extra time for oral responses; modified curriculum and assignments; frequent and immediate feedback; frequent breaks; frequent monitoring for on task behavior; gaining attention before directions and an opportunity to repeat and explain instructions; peer tutoring; note-taking assistance and/or providing a copy of class notes; accepting oral answers; providing correctly-completed examples; repeating oral instructions; short instructions; assignments read upon request; oral administration of tests in a small group; chunking written work; extra time for completing work; reduced assignments; preferential seating; encouraging Student to write initially and then providing an opportunity to use a computer; access to math aids and word prediction software; and opportunities to reteach and retest.²¹
22. Student's IEP called for 30 minutes per week of instruction in the *** classroom, a dedicated classroom that provides behavioral assistance and supports. Student also had access to the *** classroom when feeling

¹⁹ JE 2 at 15-16.

²⁰ JE 2 at 16-20.

²¹ JE 2 at 22.

overwhelmed. Behavioral accommodations included opportunities to earn rewards; opportunities for unlimited bathroom usage with time limits for returning to class; positive reinforcement; visual and verbal cues for social interactions as needed; scaffolding of academic assignments; providing opportunities to reflect with an adult following peer conflict; access to *** or Student's case manager to discuss positive strategies to regulate and return to class; and access to sensory items as needed.²²

23. Accommodations specific to speech and language included faded modeling of target skills; checks for understanding; breaking directions down into smaller steps and chunking information; rewording directions; providing verbal and/or visual prompts; positive reinforcement; extended response time; and pairing Student with a positive role model for group projects.²³
24. Student received small group academic instruction outside of the general education setting. The Texas Essential Knowledge and Skills (TEKS) for Student's assigned grade level exceeded Student's present level of educational performance, and Student required instruction below Student's current grade placement. In addition, Student's modifications could not be implemented in the general education classroom without eliminating essential components of the curriculum or activity, and Student's schedule of services for the 2021-2022 and 2022-2023 school years called for *** instruction in a special education classroom in all academic areas for 225 minutes per week per subject.²⁴
25. The ARD committee convened on May ***, 2022, to consider recent STAAR test results and changes to Student's participation going forward. Student did not pass the *** STAAR test, and the committee agreed Student did not need to retake the exam. Due to Student's reading needs, the committee agreed to replace Student's *** class next school year with a reading

²² JE 2 at 22, 30-31, 36.

²³ JE 2 at 23.

²⁴ JE 2 at 28-31.

course and agreed to remove Student's *** goal. The ARD committee also agreed Student would ***.²⁵

2022-2023 School Year: * Grade**

26. The ARD committee conducted a Review of Existing Evaluation Data (REED) in October 2022. Parent reported Student lacked independence in Student's ability to function at home and indicated it was "stressful that Student has high personal goals and Student won't be able to reach them." Additional cognitive and achievement assessments were recommended, as well as assessment for characteristics of autism spectrum disorder.²⁶
27. Parent also requested additional assessment of Student's behavioral needs, and the District conducted a functional behavior assessment (FBA) in October 2022. Student's strengths included understanding verbal directions, being respectful and attentive, engaging in lessons, and seeking out assistance when needed. Student's off-task behavior was limited to phone use throughout the school day across settings. Student otherwise did not engage in any "serious behaviors" interfering with learning. Although off task, Student completed assignments and was easily redirected by the classroom teacher.²⁷
28. Current information about Student's communication skills and needs showed Student demonstrated mastery of Student's goals for providing greetings and farewells and engaging in conversation turn-taking with peers. The REED found Student continued to exhibit characteristics of a speech impairment in pragmatic language. An updated assessment was not recommended.²⁸
29. The Monteiro Interview Guidelines for Diagnosing the Autism Spectrum, Second Edition (MIGDAS-2) is an interview method for evaluating verbal children suspected of having autism spectrum disorders. Student demonstrated a pattern of developmental differences in the areas of social

²⁵ JE 3 at 1, 17. The ***.

See 19 Tex. Admin. Code § ***.

²⁶ JE 7 at 1, 5.

²⁷ JE 4 at 1-3; JE 7 at 10.

²⁸ JE 7 at 3-5.

relating and emotional responses frequently seen in individuals with autism. On the Autism Spectrum Rating Scales, teacher and Parent input indicated severe symptoms of the disorder. Results of the Gilliam Autism Rating Scale-Third Edition (GARS-3) indicated Student exhibits an increased number of characteristics associated with autism spectrum disorder based on an Autism Index score of ***. Results suggested a very likely probability of the disability for which Student will require substantial support.²⁹

30. District evaluators concluded that Student exhibited significant impairments in verbal communication, nonverbal communication, and social interaction during the developmental period. Though Student continued to display characteristics of an emotional disturbance, autism spectrum disorder was recommended as Student's primary area of eligibility.³⁰
31. Student is below grade level in reading and math. A District LSSP administered the Woodcock-Johnson Tests of Achievement (WJ-IV-ACH). Results had to be interpreted with caution due to Student's reluctance and lack of motivation to participate. Student achieved the following grade equivalency scores: basic reading skills ***; reading comprehension ***; math calculation ***; math reasoning ***; and written expression ***. Reading assessment data shows Student was working with *** grade reading materials. Math assessments in September and December 2022 showed Student was capable of working at a *** grade level with the use of a calculator.³¹
32. A District *** specialist conducted a person-centered *** assessment in November 2022. Participants included Student, Parent, and Student's teacher/case manager. The assessment identified Student's interests and things that motivated Student, including ***.³²

²⁹ JE 7 at 10-14.

³⁰ JE 7 at 14.

³¹ JE 7 at 22-23; JE 9 at 3-4.

³² JE 6 at 1-2.

33. The assessment considered *** goals. In the area of *** Student's ideas and interests included ***. Student did not have an interest in obtaining *** education. A *** goal was developed. Student and Student's family would identify a *** program in the next year where Student could continue to work on *** skills.³³
34. The District gave Petitioner information on *** as well as referrals to numerous agencies that offer services and supports to persons with disabilities. The District also provided a referral to the ***. Student began working with the ***.³⁴
35. The ARD committee convened on December ***, 2022, to review the evaluations and update Student's areas of eligibility based on the evaluation. The committee considered the October 2022 FBA and determined that a Behavior Intervention Plan (BIP) was needed to address compliance (completing an undesired task and/or assignment when given) and remaining on task and removing distractions (***). The BIP included strategies to address task completion and off-task behavior, including positive behavioral interventions and supports. The committee also reviewed and adopted an Autism Supplement.³⁵
36. The January 2023 IEP considered Student's PLAAFPs in all academic areas (reading, writing, math, ***) and considered Student's behavioral and functional skill levels. The PLAAFPs in academic and functional areas established Student's baseline performance and identified Student's strengths and needs.³⁶

³³ JE 6 at 4-5.

³⁴ JE 6 at 5-6; Tr. at 274-75.

³⁵ JE 9 at 37, 40-49.

³⁶ JE 9 at 2-8.

37. To determine Student's preferences and interests as Student progressed ***, the ARD committee considered an age-appropriate *** assessment; informal assessments; parent, teacher, and student input; and a *** interview conducted on October ***, 2022. On December ***, 2022, Student completed a Personal Preference Indicator with Student's *** teacher. Student preferred working with others/teamwork, an environment without crowds, and hands on project-based work. Student was very interested in both ***. Student ***.³⁷
38. The *** plan considered Student's strengths and needs. Strengths included self-awareness of Student's interests and Student's ability to speak on these topics, advocating for ***self and others, and Student's knowledge of ***. Student's educational needs included remaining on task during instruction and working independently. In the area of ***, Student needed to work on completing undesired tasks. In the area of ***, Student needed to demonstrate knowledge of functional math skills, including ***.³⁸
39. During the 2022-23 school year, Student *** to assist with learning how to build and use various *** and a general *** skills course "to help Student as Student***."³⁹
40. The January 2023 IEP included a reading goal targeting increasing comprehension; a writing goal targeting editing and proper use of grammar, punctuation, and capitalization; and a *** goal targeting increasing comprehension. A functional *** goal targeted functional math skills and a functional goal targeted attending to activities with limited prompts. The IEP included a behavior/*** education goal targeting remaining on task and a behavior/*** goal of completing undesired tasks or assignments. The IEP also included three speech therapy goals targeting pragmatics, including responding appropriately

³⁷ JE 9 at 11-12; PE 7 at 22-32; Tr. at 212.

³⁸ JE 9 at 12.

³⁹ JE 9 at 12.

through affect or comments when communicating, increasing emotional vocabulary, and a goal focused on improving ***.⁴⁰

41. The January 2023 IEP included a *** supplement with an anticipated ***. Parent disagreed with the January 2023 IEP and with its determination that Student should ***. The committee reconvened on February ***, 2023. Parent continued to disagree with Student's program and the District's proposal that Student ***.⁴¹
42. The District offered Student services ***. Parent, however, has consistently declined the District's offers that Student attend *** for additional services ***, believing the services were not appropriate to meet Student's needs.⁴²
43. Parent requested a due process hearing prior to ***, and the parties participated in a resolution session on May 3, 2023. The parties entered into an agreement in June 2023, at which time the hearing request was dismissed without prejudice. Pursuant to the resolution agreement, the District provided 60 hours of compensatory services in summer 2023 and Student worked with a District *** specialist over the summer who continued to develop Student's person-centered plan. The parties also agreed to hold an ARD committee meeting on or before September ***, 2023, to discuss Student's program for the 2023-2024 school year.⁴³
44. Parent contacted the District in late July 2023 about scheduling an ARD committee meeting. The District confirmed it would do so. Petitioner,

⁴⁰ JE 9 at 18-23.

⁴¹ JE 9 at 15, 35; JE 10 at 34-35.

⁴² PE 11 at 1-3; Tr. at 82-83, 113, 117, 131-32, 237.

⁴³ Tr. at 148-49, 358-65.

however, chose not to convene to further discuss Student's program in the fall of 2023. Parent filed the instant hearing request on August 29, 2023.⁴⁴

45. The District was prepared to offer additional programming to Student for the 2023-2024 school year. In a report dated August ***, 2023, the *** specialist who worked with Student in the summer of 2023 provided a summary of recommendations to be implemented at ***. Student would continue to work on skill building in the areas of interest identified in Student's person-centered plan, including exploring specific ***.⁴⁵

2023-2024 School Year

46. Student did not return for additional services in the District for the 2023-2024 school year. Parent instead arranged for Student to attend *** for four days a week beginning in October 2023. Student did "very well" in the beginning and enjoyed attending. After the holiday break in December, however, it was difficult to get Student to return and attend consistently.⁴⁶
47. *** also has a *** program. *** services were recommended because Student needs consistency and clear expectations set by someone other than Parent. Student also needs opportunities to engage with peers and develop a social network. The *** program assists residents with ***.⁴⁷
48. After participating in the ***, Student was offered a placement in the *** program, but Student declined to go. Student testified Student did not go because Student does not *** stating this made Student

⁴⁴ Tr. at 366-69.

⁴⁵ PE 11 at 1-3.

⁴⁶ Tr. at 253-54, 259, 274.

⁴⁷ Tr. at 254-55, 262, 267-70.

“uncomfortable.” Student remains eligible to participate in the *** program if Student will agree to go.⁴⁸

49. Student was evaluated by an experienced occupational therapist, ***, in December 2023 to assess Student’s need for OT services. Parent provided her with the OT report included in the October 2022 REED, but Ms. *** did not review other school records or Student’s IEP. The report recommended ongoing OT services, including compensatory services. Ms. *** also recommended Student participate in a *** program to improve Student’s ***.⁴⁹
50. Motivation is a barrier to Student achieving any level of independence from Parent. Student’s pediatrician since 2018 is concerned Student does not have the “motivation” to progress in terms of education, ***, testifying that “my feeling is Student is going to be a ***.”⁵⁰

VI. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party seeking relief and the IDEA creates a presumption in favor of the educational plan proposed by the school district. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2011). There is no distinction between the burden of proof in an administrative hearing and the burden of proof in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4

⁴⁸ Tr. at 214, 265-66, 274, 455.

⁴⁹ PE 12; PE 12 at 2; Tr. at 337-40.

⁵⁰ Tr. at 450, 453, 455, 458-59, 462, 468-69.

(5th Cir. 2009). The burden of proof is on Petitioner to show that the District failed to develop and implement appropriate IEPs during the relevant time period.

B. 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 services and supports provided must be at public expense and comport with the 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). In this case, the District was responsible for providing Student with a program that was reasonably calculated to enable Student to make progress appropriate 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).

C. FAILURE TO IDENTIFY

Petitioner contends the District failed to appropriately identify Student's areas of eligibility under the IDEA by not identifying Student's eligibility as a student with an autism spectrum disorder until Student's ***. The hearing officer finds that this claim is outside the limitations period.

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 FAPE to the child within two years of the date the parent

knew or should have known about the alleged action forming the basis of the complaint. 20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(1)-(2); 19 Tex. Admin. Code § 89.1151(c). The relevant timeframe in this case includes the two-year period before the case was filed. Respondent raised the statute of limitations as an affirmative defense.

Student received a provisional autism spectrum disorder diagnosis from a private evaluator in 2014. In 2017, the District evaluated Student for eligibility as a student with autism and did not recommend a change in Student's primary area of eligibility from emotional disturbance. Parent thus knew or should have known in 2017 that Student's primary area of eligibility remained emotional disturbance and any claim challenging the 2017 evaluation accrued at or around that time. The instant case was filed in August 2023, more than five years after the facts giving rise to the claim were first known to Parent. Petitioner's eligibility claim therefore falls well outside the limitations period.

Even if Petitioner's eligibility claim were timely pursued, the record before the hearing officer supports the District's findings regarding eligibility. At the time of the 2017 evaluation, Student continued to have significant behavioral concerns at school, including inability to sustain attention and becoming easily overwhelmed resulting in refusal to complete work and outbursts. Student's primary area of eligibility thus remained emotional disturbance, which is notably consistent with the IDEA proscription that "[a]utism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance." 34

C.F.R. § 300.8(1)(i).

While Petitioner's eligibility claim falls outside the limitations period, school districts have an obligation to provide an appropriately individualized program regardless of a student's disability classification. *See* 20 U.S.C. § 1412(a)(3)(B). Whether Student's IEP was appropriately individualized is considered below.

D. APPROPRIATE PROGRAM

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

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) (citing *Andrew F.*, 580 U.S. 386).

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

A school district must have an IEP in effect 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 services will be provided. 34 C.F.R. §§ 300.22, .320, .323(a). In developing the IEP, the school district must consider the student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1).

While the IEP need not be the best possible one or designed to maximize a student's potential, it must nevertheless provide the student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

a. Speech Services

Student received special education and related services as a student with a speech impairment in the area of pragmatic language. Student demonstrates weaknesses

in pragmatic language impacting Student's ability to communicate and understand social language within Student's academic environment.

Student's April 2022 and January 2023 IEPs each included speech goals addressing the needs identified through assessment and performance and when considering Student's PLAAFPs in this area. The speech therapist implemented goals on providing greetings and farewells and engaging in conversation turn-taking with peers; topic maintenance in conversations; developing appropriate emotional responses to problems and understanding how others may feel in response to real or hypothetical situations; responding appropriately through affect or comments when communicating; and increasing emotional vocabulary. In addition to speech goals targeting Student's pragmatic language deficits, Student's IEP included numerous accommodations specific to speech and language development.

The speech therapist implemented not only goals addressing pragmatics but also goals relevant to Student's *** needs, including a goal related to ***. Student made progress on Student's speech therapy goals during the spring 2023 semester but did not achieve mastery criteria of ***% by the end of the semester. However, these were annual goals developed in January 2023, and the record evidenced Student was making appropriate progress towards mastery in the four months since these goals were introduced.

The record showed that Student received appropriate speech services that were tailored to Student's individualized needs based on assessment and performance and that Student made appropriate progress in this area.

b. Behavior

Appropriate behavioral supports and interventions are important components of FAPE. A need for special education and related services is not limited to academics, but includes behavioral progress and learning appropriate social skills. *Venus Indep. Sch. Dist. v. Daniel S.*, No. CIV.A. 301CV1746P, 2002 WL 550455, at *11 (N.D. Tex. Apr. 11, 2002). For a student whose behavior impedes his or her learning or that of others, the IEP must consider positive behavioral interventions and supports and other behavioral strategies. 34 C.F.R. § 300.324(a)(2)(i).

Student has behavioral needs at school that appear to have been largely managed through classroom and instructional accommodations, and Student's IEPs included an extensive set of behavioral accommodations to support these needs. Teachers reported Student was polite, engaged appropriately with staff and peers, and was easily redirected when engaging in off-task behavior. Student also received specialized behaviorally focused programming in the *** classroom and had access to the *** classroom when feeling overwhelmed or upset.

The District conducted an FBA in October 2022 and identified completing undesired tasks and off-task behavior as behaviors impeding Student's learning. The ARD committee developed a BIP that included positive behavioral interventions and supports targeting these needs.

The evidence showed the Student's program was appropriately individualized on the basis of assessment and performance in this area.

c. Occupational Therapy

Petitioner contends the District failed to provide Student OT services at the intensity required. Related services are “such developmental, corrective, and other supportive services as are required to assist a child . . . to benefit from special education.” 34 C.F.R. § 300.34.

Student received OT support for sensory strategies and written output. Student’s case manager had several different *** available for Student to use when feeling overwhelmed or upset, but Student did not care to use them. Student had access to word prediction software and speech to text but preferred not to use these tools. While Student chose not to use these strategies, the District made them available to Student once these needs were identified.

Student was evaluated by ***, an experienced occupational therapist, in December 2023. Her report identified deficits in fine motor skills and visual motor processing and coordination deficits that contribute to Student’s difficulties with ***. The report contained an extensive set of medically necessary interventions to assist Student with overcoming obstacles to ***. The report, however, is of limited value in evaluating Student’s services in the District. Ms. *** did not review Student’s IEP and was thus unable to provide an opinion about what services the District provided to Student or whether these services were appropriate to meet Student’s needs.

Each time the ARD committee considered Student's need for OT and when it conducted the October 2022 REED, the OT providing these services reported that Student's need for OT support since starting *** continued to be "very minimal." Notably, the District OT was not called to testify and the limited record on this topic did not otherwise overcome the presumption of appropriateness of the District's programming in this area.

d. Academics

Petitioner alleges the District failed to provide Student an appropriate academic program.

The evidence showed that Student was below grade level in reading and math and that Student received modified instruction in all academic classes. Petitioner's argument narrowly focuses on the results of the Woodcock-Johnson Tests of Achievement from Student's re-evaluation in the fall of 2022 showing grade level equivalency scores well below grade level. The District evaluator, however, cautioned that these scores likely did not reflect Student's true abilities because Student did not fully participate in the testing. Indeed, reading assessment data shows Student was working with *** grade reading materials during Student's *** grade year and math assessments that fall showed Student was capable of working at a *** grade level using a calculator. Though still below grade level, Student's performance was consistent with Student's need for modified curriculum in all academic areas.

A review of April 2022 and January 2023 IEPs further showed that the ARD committee undertook a thorough examination of Student's PLAAFPs in all academic subjects and developed academic goals consistent with Student's baseline performance and identified needs at the time.

The record before the hearing officer did not overcome the presumption of appropriateness of Student's program in this area and showed that Student's academic program was appropriately individualized based on assessment and performance.

e. Autism Services

For students with autism in Texas, the ARD committee must also consider whether the student's IEP should include the following: extended educational programming; daily schedules reflecting minimal unstructured time and active engagement in learning activities; in-home and community-based training; positive behavior support strategies based on relevant information; futures planning for post-secondary environments; parent/family training and support; suitable staff-to-student ratios; communication interventions; social skills supports; professional educator/staff support; and teaching strategies based on peer-reviewed, research-based practices for students with autism. 19 Tex. Admin. Code § 89.1055(e). This regulation is commonly referred to as "the Autism Supplement."

District testing conducted in the fall of 2022 found that Student met criteria as a student with an autism spectrum disorder. The ARD committee adopted this recommendation in December 2022 and, consistent with state regulations, the

committee considered and included the Autism Supplement in the January 2023 IEP.

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); *Rowley*, 458 U.S. 176 at 181 (IDEA does not concern itself with labels, but with whether a student is receiving a FAPE). The question is thus not what categories of eligibility Student has, but what services are being provided. Petitioner failed to present any persuasive evidence pointing to elements of Student’s IEP that would have been different or how Student’s program failed to meet Student’s needs related to autism. He thus did not meet Student’s burden of proof on this claim.

f. * Services**

Beginning at ***, the IDEA requires an IEP to include appropriate measurable *** goals based upon age-appropriate *** assessments related to ***. 34 C.F.R. § 300. *** (b)(1). The IEP must also include “the *** services . . . needed to assist the child in reaching those goals.” 34 C.F.R. § 300. *** (b)(2). In Texas, *** planning begins at ***. Tex. Educ. Code § ***; 19 Tex. Admin. Code § *** (h). Under state law, the ARD committee must consider, and where appropriate, address the following in the student’s IEP:

Tex. Educ. Code § ***; 19 Tex. Admin. Code § *** (h).

The ARD committee initially considered *** services in May 2019. In 2020, 2021, and 2022, the District solicited input from Student to identify areas of interest. The District developed a person-centered plan and continued refining the plan with Student and Parent input and conducted an inventory of interests in December 2022. As such, the evidence showed that Student was appropriately involved in Student's ***.

Student took several courses that helped Student explore potential areas of interest and develop functional skills relevant to ***. During the 2020-21 school year, Student ***. During the 2021-2022 school year, Student ***. During the 2022-2023 school year, Student ***.

Student's *** plans considered Student's ***-related behavioral needs, including developing coping skills, organizational skills, and completing tasks while attending to instructions. Student's IEPs, and specifically Student's BIP and various behavioral accommodations, appropriately focused on reducing off task behavior. Student's January 2023 IEP included a *** goal targeting remaining on task, a *** goal of completing undesired tasks or assignments, and a functional goal targeted at attending to activities with limited prompts. The January 2023 IEP also considered Student's functional needs related to *** and included a functional math/*** goal targeting ***.

Both in ARD committee meetings and in Parent's testimony, Parent expressed concerns that the District created unrealistic expectations in Student of Student's ***. Student expressed an interest in a wide variety of *** and some of Student's self-reported *** interests were indeed not realistic given the nature and extent of Student's disabilities. The record, however, does not support Petitioner's contention that the District encouraged Student to *** even though this *** goal was well beyond Student's reach. Student has a strong interest in ***, and based on interviews and Student's input into Student's person-centered *** plan, ***. At the time, however, Student did not have an understanding of what it would take to further any of Student's stated *** interests. The District targeted this identified need, and Student's April 2022 IEP included a goal aimed at increasing Student's awareness of Student's disability by researching how it can impact three different ***. Student's testimony at the hearing demonstrated an understanding

that ***.

Student was also referred to numerous agencies outside the public school system that provide long-term benefits and supports to persons with disabilities.

Student has several complex disabilities that have made *** life challenging. According to Student's pediatrician, Student does not presently have the motivation to change Student's circumstances despite Parent's efforts to find a program Student would attend. Student, however, understands Student's legal right to refuse services Student does not want and, to date, has chosen to remain at home despite Student's eligibility for the *** program.

g. Staff Training

The IDEA requires that special education and related services be provided by "qualified personnel" who are appropriately and adequately prepared and trained, and who possess the content knowledge and skills to serve children with disabilities. 34 C.F.R. § 300.156(a). Petitioner alleges the District failed to provide appropriate training to its teachers, staff, and administrators in meeting Student's individual needs. Petitioner, however, failed to present evidence to support this claim.

2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with nondisabled 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); *Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036, 1048 (5th Cir. 1989). State regulations require a school district’s continuum of instructional arrangements to be based on the students’ individual needs and their IEPs and include a continuum of educational settings. 19 Tex. Admin. Code § 89.1005(c).

Assessment and performance indicate that Student requires small group instruction, and Student received academic instruction in *** classes throughout ***. While this instructional arrangement offered diminished access to the full range of curriculum, placement outside the general education classroom was appropriate because the TEKS for Student’s assigned grade level exceeded Student’s level of educational performance given the nature and extent of Student’s disabilities. Because Student required instruction below Student’s current grade placement and these modifications could not be implemented in the general education classroom without eliminating essential components of the curriculum or activity, the evidence supports the placement arrangement provided for in Student’s IEPs.

Based on the evidence presented, the hearing officer concludes that Student was mainstreamed to the maximum extent possible, and Student’s placement was the least restrictive environment to meet Student’s needs. This factor weighs in favor of the District.

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

The record overall showed a largely collaborative relationship between the parties up until Student's ***. Parent actively participated in ARD committee meetings, often with an advocate, and was given opportunities to express Parent's concerns. The District, in turn, attempted to address Parent's concerns and made modifications to Student's IEP with Parent's input. However, the relationship between the parties became more contentious in Student's *** when the District recommended that Student *** at the end of the 2022-2023 school year, while Parent wanted Student to return for another year. Petitioner, however, failed to present evidence that the District failed to comply with ***

*** applicable to students who receive special education services.

The parties resolved a prior due process hearing in June 2023, and, pursuant to the resolution agreement, the District provided additional ***-focused services over the summer. The evidence showed that the District was aware of its obligation to provide Student continued services upon request because Student continued to be *** pursuant to completion of Student's IEP. *See* 19 Tex. Admin. Code § 89.1070(j). In addition to fulfilling its legal obligation in this respect, the District was prepared to live up to its end of the June 2023 resolution agreement to convene an ARD committee meeting to discuss Student's program for the 2023-2024 school year. Parent, however, declined to resume discussions with the ARD committee that fall as the parties had planned.

Parent was dissatisfied with the District's proposal that Student attend ***for the 2023-2024 school year for additional *** services, but it does not appear that Parent or Student visited the program to explore what it had to offer before reaching the conclusion that the program could not meet Student's needs. Petitioner was, of course, free to decline continuing services from the District, but Parent's failure to live up to Parent's end of the resolution agreement to further discuss Student's services with the ARD committee fell short of the collaborative process envisioned by the IDEA.

In conclusion, this factor favors the District. To the extent there was a lack of collaboration, it was attributable to Parent for the reasons discussed. Petitioner failed to establish that the District excluded Parent in bad faith or refused to listen to Parent.

4. Academic and Non-Academic Benefits

Whether a student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813-14 (5th Cir. 2012). The purpose of an IEP is to provide an educational benefit, not remediate a disability. *E.R.*, 909 F.3d at 765-66 (citing *Andrew F.*, 580 U.S. 386). The evidence in this case showed that Student received academic and non-academic benefits and made appropriate progress in light of Student’s unique circumstances.

Student showed regression during remote instruction during the 2021-2022 school year, and the District provided 96 hours of compensatory services during the summer of 2022 to address these deficits. The evidence showed Student received academic benefit from Student’s program during the 2022-2023 school year. “[P]assing marks and advancement from grade to grade” are “sufficient indicia” of academic progress to satisfy the IDEA. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000). In this case, Student advanced from grade to grade, received passing grades in Student’s classes, and ***.

The evidence also supports that Student received non-academic benefit from Student’s educational program. Student was well-behaved in class, worked well with peers, and followed class rules. Through targeted interventions, Student’s off-task behavior improved, and Student also increased Student’s capacity to understand and use social language consistent with Student’s unique needs.

Based on a holistic review of the evidence presented, the hearing officer concludes that Student received academic and non-academic benefits from Student's special education program and, overall, made appropriate progress from year to year. *See H.W. v. Comal Indep. Sch. Dist.*, 32 F.4th 454, 468-69 (5th Cir. 2022) (stating that the inquiry into educational benefit should properly focus on a holistic, overall academic record perspective).

5. FAPE Conclusion

The purpose of an IEP is to provide an educational benefit, not remediate a disability. *E.R.*, 909 F.3d at 769 (citing *Andrew F.*, 580 U.S. 386). When the four requirements set forth in *Cypress-Fairbanks v. Michael F.*, are met, a school district satisfies its FAPE obligation. The hearing officer concludes Student's program was individualized on the basis of assessment and performance, delivered in the least restrictive environment, services were provided in a coordinated, collaborative manner by the key stakeholders, and Student made academic and non-academic progress. When Student's program is considered as a whole, Student was provided a FAPE by the District. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012).

E. IEP IMPLEMENTATION

Petitioner alleges the District failed to implement Student's IEP. When determining whether a school district failed to adequately implement a student's IEP, a hearing officer must determine (1) under the third *Michael F.* factor, whether there was a significant or substantial failure to implement the IEP, and (2) under the fourth *Michael F.* factor, whether there have been demonstrable academic and non-

academic benefits from the IEP. *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1389 (2021). Petitioner must show more than a *de minimis* failure to implement all elements of Student's IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Bobby R.*, 200 F. 3d 341 at 349.

As discussed, the evidence showed Student received a benefit from Student's educational program. Petitioner did not present any evidence showing the District failed to implement significant or substantial provisions of Student's IEP.

F. PRIVATE PLACEMENT

Petitioner requests 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 the 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.*, 471 U.S. 359, 370 (1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993). The hearing officer concludes that the District provided Student with a FAPE and that Student's program was appropriate under the IDEA. Because the District's placement was appropriate, private placement at public expense is not. *See Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127 (5th Cir. 1993).

Additionally, even if the District had not provided a FAPE to Student, Petitioner failed to show that placement at *** would be appropriate.

Although Parent testified as to Parent's understanding of what the program entails, no witnesses from *** were called, and no documentary evidence was offered detailing the programs available at ***.

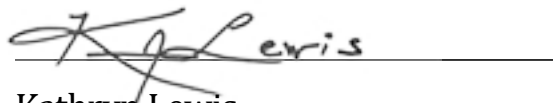
VII. CONCLUSIONS OF LAW

1. The burden of proof in this case was on Petitioner. *Schaffer*, 546 U.S. at 62.
2. Petitioner did not meet Student's burden to prove that the 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).
3. Petitioner did not meet Student's burden of showing that the District denied Student a FAPE by failing to develop appropriate IEPs. *Schaffer*, 546 U.S. at 62; *Rowley*, 458 U.S. at 188; *Andrew F.*, 580 U.S. at 399, 403; *Michael F.*, 118 F. 3d at 248, 253.
4. Petitioner did not meet Student's burden of showing that the District denied Student a FAPE by failing to appropriately implement Student's IEPs during the relevant timeframe. *Schaffer*, 546 U.S. at 62; *O.W.*, 961 F.3d at 796; *Bobby R.*, 200 F.3d at 349.
5. The District provided Student a FAPE during the relevant time period, and Student's IEPs were reasonably calculated to enable Student to make appropriate progress in light of Student's unique circumstances. *Andrew F.*, 580 U.S. at 399, 403; *Michael F.*, 118 F. 3d at 248, 253.

VII. ORDER

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

Signed November 19, 2024.

A handwritten signature in black ink, appearing to read 'K. Lewis', is written over a solid horizontal line.

Kathryn Lewis

Presiding Administrative Law Judge

VIII. NOTICE TO THE PARTIES

This Decision 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(a); 19 Tex. Admin. Code § 89.1185(n).