

SOAH Docket No. 701-25-00011.IDEA
TEA Docket No. 003-SE-0924

Before the State Office of Administrative Hearings

**Student, by next friends Parents,
Petitioner**

v.

**McKinney Independent School District,
Respondent**

FINAL DECISION

Student (Student), by next friends Parents (Parents and, collectively, Petitioner), brings this action against McKinney 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 issues in this case are whether the District failed to find Student eligible for special education in all areas of need, failed to appropriately evaluate Student in all areas of suspected disability, and failed to provide Student with a free appropriate public education (FAPE).

The Administrative Law Judge (Judge) concludes the District found Student eligible for special education in all areas of need, the May 2024 FIE is appropriate, and it provided Student with a FAPE by offering a program reasonably calculated to enable Student to make appropriate progress in light of student's unique circumstances.

I. DUE PROCESS HEARING

The due process hearing was conducted on April 9–10, 2025, via the Zoom videoconferencing platform. Student and Parents were represented throughout this litigation by their legal counsel, Janelle Davis with Janelle L. Davis Law, PLLC. Parent (Student's parent) and Parent (Student's parent), Student's parents, also attended the due process hearing. The District was represented throughout this litigation by its legal counsel Rebecca Bradley and Erika Toledo with Abernathy, Roeder, Boyd & Hullet, P.C. ***, Executive Director of Special Populations, and ***, Senior Director of Special Populations, attended the hearing as the party representatives.

The parties submitted 108 joint exhibits, and all were admitted. Petitioner submitted 13 separately disclosed exhibits, and all or portions of five of those exhibits were admitted over objections. Petitioner offered the testimony of *** (a private psychologist, Licensed Specialist in School Psychology (LSSP), and Board Certified Behavior Analyst (BCBA)), one of Student's *** grade teachers, a District ***, Student's parent, and Student's *** grade *** teacher.

Respondent submitted 38 separately disclosed exhibits, and all or portions of six of those exhibits were admitted over objections. Respondent offered testimony of a District-contracted LSSP, Student's *** grade case manager/special education and resource teacher, and Student's *** grade *** teacher. The hearing was recorded and transcribed by a certified court reporter. Both parties timely filed written closing briefs. The Decision in this case is due June 13, 2025.

II. ISSUES

A. PETITIONER'S ISSUES

Petitioner identified the relevant timeframe as the 2019–2020 school year to the 2024–2025 school year and raised the following issues for decision in this case:

FAPE

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

Eligibility

Whether the District failed to timely and appropriately find Student eligible for special education and related services in all areas of need.

Evaluation

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

Bullying

Whether the District failed to protect Student from bullying.

Procedural

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

Training

Whether the District failed to properly train staff on the appropriate way to provide special education services to Student.

B. RESPONDENT'S LEGAL POSITION AND ADDITIONAL ISSUES

Respondent generally and specifically denied Petitioner's factual allegations and legal claims and denied responsibility for providing any of Petitioner's requested relief. Respondent also asserted the statute of limitations as an affirmative defense and sought dismissal of non-IDEA claims. Finally, Respondent raised a counterclaim alleging that Petitioner is not entitled to an independent educational evaluation (IEE) at District expense because the District's evaluation was appropriate.

III. REQUESTED RELIEF

A. PETITIONER'S REQUESTED RELIEF

Petitioner requested the following items of requested relief:

1. Order the District to provide an IEE in the areas of autism, speech, specific learning disability, cognitive and achievement, and any other areas of need Student displays.

2. Order compensatory education and related services specific to Student's academic and other progress, including but not limited to social skills, tutoring support, and executive functioning skills coaching/camps.
3. Order that the District pay the cost of private placement for the Student.
4. Order that the District remove and expunge *** and expunge the Student's records related to the ***.
5. Reimbursement of any out-of-pocket expenses Parent has incurred for private services or therapies or fees related to such services and therapies, including post-traumatic stress disorder counseling needed for the Student, therapy costs, home school materials, summer enrichment programs recommended by the Student's counselor.
6. Reimbursement for the Student's ***, which the Student was unable to participate in because of the District's failures.
7. Any and all other remedies that Petitioner may be entitled to under the law.

B. RESPONDENT'S REQUESTED RELIEF

Respondent requested an order establishing that the District evaluation was appropriate, and that Petitioner is not entitled to an IEE at the District's expense.

IV. FINDINGS OF FACT

1. Student enrolled in the District for *** grade in the 2019–2020 school year. Student is a very energetic *** who is outgoing and friendly. Student is very interested in *** and ***.¹
2. During the 2019–2020 school year, Parents emailed with Student's ***grade teacher about student's speaking out of turn, difficulty with work, impulsive behaviors, and being "playful" but off task. The teacher emailed Student's parent about a survey to determine what motivated Student to develop a behavior system for student as a tiered intervention. Student's *** grade

¹ Petitioner's exhibit (PE) 2 at 15; Transcript Volume I (Tr. Vol.) at 178-79.

teacher, with 26 years of experience, never suspected Student had a disability.²

***** Grade 2021-2022 school year**

3. On September ***, 2021, Student's parent emailed the District staff to notify them that Student's pediatrician diagnosed student with attention deficit hyperactivity disorder (ADHD) and that student was on medication. Student saw a private counselor and student's counselor did not believe student had ADHD, so Parents stopped the medication. The District replied with paperwork to begin the full and individual initial evaluation (FIIE) process.³
4. The District completed an FIIE on December ***, 2021, due to Parents' concerns related to Student's problems with focusing, completing work independently, and impulse control. The December 2021 FIIE included parental input, teacher input, educational records, classroom observations, and formal and informal testing. Various evaluators conducted the tests, and they did so in ***, Student's native language. Student's cognition is in the overall average range with deficits in fluid intelligence and visual processing.⁴
5. The evaluators determined Student did not meet the criteria for dyslexia as student did not demonstrate unexpected deficits in reading or phonological awareness. Student scored in the average range for grade level expectations in decoding, fluency, reading comprehension, written expression, and spelling. Although informal testing indicated student was below grade level for reading, this may have been impacted by student's inability to focus during testing.⁵
6. Formal testing reflected that Student's instructional level in math was below grade level for math calculation skills and math problem solving. The evaluation team concluded, based on these results, that Student met the

² Joint Exhibit (JE) 3 at 44-47; PE 3 at 1, 20, 21, 34, 36, 37, 42, 43-51; Tr. Vol. I at 157-58.

³ PE 3 at 92.

⁴ JE 1 at 1, 7-9, 24.

⁵ JE 1 at 14, 16.

criteria for a specific learning disability in math problem solving and math calculation.⁶

7. Student also displayed off-task behaviors, had impulsive tendencies, and was overly active in the classroom. Student lost focus easily, seldom worked well independently or completed student's assignments, made careless mistakes, and had difficulty with organization. The December 2021 FIIE indicated that Student also met eligibility criteria due to other health impairment (OHI) for ADHD pending a medical report from a physician and included recommendations for the admission, review, and dismissal (ARD) committee to consider positive behavior supports and accommodations.⁷
8. Student's ARD committee met on January ***, 2022, for the initial meeting. The committee reviewed the December 2021 FIIE and determined Student was eligible for special education services with a specific learning disability in math calculation and math problem solving and OHI – ADHD. Student learned best with one-on-one instruction. Parents attended the meeting and signed their agreement to the IEP. Parents received prior written notice and procedural safeguards on January ***, 2022.⁸
9. The IEP included four math goals for ***. Student had two reading goals for context clues to identify unknown words and identifying figurative language. Student's positive behavior supports included cues to focus, reminders to stay on task, and positive reinforcement of expected behavior. Testing accommodations for the State of Texas Assessments of Academic Readiness (STAAR) and the Measure of Academic Progress (MAP) assessments were included in the IEP.⁹
10. The IEP listed the following accommodations for all subjects: preferential seating near instruction, relate new information to previously acquired

⁶ JE 1 at 15, 17.

⁷ JE 1 at 17-18.

⁸ JE 8 at 1-2, 7-8, 19, 21-22, 26.

⁹ JE 8 at 7-10, 12, 22, 26.

knowledge, assess prior knowledge before introducing new topics, sequential direct instruction, small group instruction when possible, have Student repeat back instructions or information to ensure student understands, use of a guideline tool, extra time on assignments and assessments, small group assessments, and oral administration of assignments and assessments. Student's accommodations and assistive technology for math included developing number sense, ***.¹⁰

11. Student received math instruction in the *** classroom and reading instruction in the general education classroom with inclusion support.¹¹

***** grade 2022–2023 school year**

12. Student was homeschooled for student's *** grade year.¹²

***** grade 2023–2024 school year**

13. Student's parent emailed the District at the beginning of the 2023–2024 school year. She informed the District that Student was bullied at the end of the school year in *** grade which is why student was homeschooled in *** grade. The bullying involved the "*** game" where other students would ***, calling student ***.¹³
14. Student's ARD committee met for an annual review on August ***, 2023. Student continued to be easily distracted by peers, had trouble maintaining focus, and worked better in a small group. Student's eligibility criteria and schedule of services remained the same. Student's math goals were updated to include *** and correct

¹⁰ JE 8 at 10.

¹¹ JE 8 at 16, 19.

¹² Tr. Vol. I at 189.

¹³ JE 56; JE 57; Tr. Vol. I at 186, 201

identification of the *** problems. Student's *** and context clues reading goal were continued. Six of student's accommodations in all subjects remained the same. The other five were removed. Student's math and assistive technology accommodations were updated. The committee agreed no new evaluations were needed. Student's parent attended the meeting, expressed concerns about Student's struggles with electronic assessments, and agreed to the IEP. The District provided procedural safeguards and prior written notice to Parents on August ***, 2023.¹⁴

15. On September ***, 2023, Student's parent reported five allegations of Student being bullied which involved four incidents of Student being called a *** or the *** by student 5, student 12 and student 2, and one incident of student 3 ***.¹⁵
16. The District investigated the bullying allegations and determined that one of the incidents involving the *** supported a finding of bullying as defined by law and District policy; however, the District determined none of the other four incidents supported such a finding because they were peer interactions that involved either mutual name calling or reciprocal behavior between individual students.¹⁶
17. The District took the following interventions: permanent homeroom change for Student, guidance lessons on respect and bullying for the entire grade level, frequent check-ins with Student, monitoring of peer interactions by staff, and small group sessions with the counselor for Student.¹⁷
18. In September, Student's parent emailed the District about three additional incidents of alleged bullying: Student was *** and *** by student 15, Student was *** by student 26, and student 4 *** Student. The District assured

¹⁴ JE 9 at 2-3, 8-10, 20-22, 26.

¹⁵ JE 23; The Judge used the numbers for the other students used by the parties in the exhibits

¹⁶ JE 25.

¹⁷ JE 25.

Parents that it discussed every incident with the other students, that the teachers were aware of the bullying investigation, and they were actively monitoring the situation.¹⁸

19. After four incidents in October between Student and student 2, where the District determined Student said inappropriate things or engaged in inappropriate actions, the District implemented a stay-away agreement between the students to remain in effect until the end of the school year.¹⁹
20. The parent of student 2 was ***. Parents allege the other parent retaliated against Student by telling other students *** Student. The District investigated these allegations and found no evidence of retaliation or discrimination.²⁰
21. Student made progress on student's IEP goals by the beginning of October. On October ***, 2023, Student's parent emailed student's reading, writing, and *** teacher and requested more paper and pencil work for Student rather than work requiring the use of technology. Student's teacher accommodated this request.²¹
22. During *** on November ***, 2023, the campus *** questioned student 1 about an interaction between Student 1 and Student. Student 1 explained that Student ***, so she wanted to punch Student. Student admitted to *** because "it's funny."²²
23. On November ***, 2023, Student was involved in another incident with student 1 on the *** where both children ***. Student 1 *** Student causing student to ***. The District implemented a stay-away agreement between

¹⁸ JE 59; JE 62.

¹⁹ JE 26.

²⁰ JE 28; JE 29; JE 30.

²¹ JE 65; Tr. Vol. II at 317-18.

²² PE 7 at 1; Tr. Vol. I at 169.

the students. The District investigated the incident and determined it involved *** by student 1 but did not constitute bullying. The District continued the same interventions from the September bullying investigation.²³

24. By December 2023, Student made more progress towards student's IEP goals. Student improved from ***% accuracy on student's a*** goal to ***%; student improved from *** first time trials on student's identify the operation goal to *** first time trials; from *** trials for *** to *** trials; and from *** trials on student's context clues goal to *** trials.²⁴
25. In early January 2024, Parents requested Student be evaluated for speech. Parents consented to a classroom observation, and the District determined Student did not demonstrate articulation errors. Therefore, an evaluation in the area of articulation was not recommended.²⁵
26. On January ***, 2024, Student received a discipline referral for a technology violation ***. The District notified Parents and Student's technology privileges were temporarily revoked.²⁶
27. On the same day, Student's case manager attempted to schedule an ARD committee meeting to discuss Student's anxiety, and Parents declined. They stated they agreed with student's current accommodations, did not want Student to miss any additional instruction time, and indicated Student still saw a private counselor for anxiety and declined counseling through the District.²⁷
28. On January ***, 2024, Student was confronted by student 13 who made fun of Student *** and then *** Student. The District investigated the incident and determined there was inappropriate

²³ JE 31; JE 32; JE 34.

²⁴ JE 16; JE 17.

²⁵ JE 72; JE 75.

²⁶ JE 22.

²⁷ JE 76; JE 77; Tr. Vol. II at 392-93.

contact, but it did not constitute bullying. The District continued monitoring peer interactions and continued check-ins with students.²⁸

29. The District conducted a revision ARD committee meeting on February ***, 2024. During the meeting, Parents expressed concerns regarding Student's anxiety about attending school due to a combination of ADHD and bullying. Additionally, they expressed concerns about Student's speech *** and about student's access to technology. The committee agreed to complete Student's three-year reevaluation by the end of the school year and include speech testing. The District provided procedural safeguards on February ***, 2024.²⁹
30. The ARD committee added the following accommodations to Student's IEP: teacher monitored use of technology (reminders to stay on task); assessments provided on paper when available; extra time on assignments and assessments; chunking of assignments into smaller workloads; allow for movement opportunities; positive reinforcement; provide copy of teacher notes after Student makes an attempt; and allow Student to *** during whole group lessons. The meeting ended in agreement.³⁰
31. Student's parent filed another bullying complaint on February ***, 2024, which alleged student 20 said Student ***, told another student ***, and regularly ***. The District's investigation determined the incidents did not support a finding of bullying and implemented a stay-away agreement between Student and student 20.³¹
32. On March ***, 2024, Student received a discipline report for "***/verbal violation." It was reported Student indicated student would ***. Student received

²⁸ JE 35; JE 36.

²⁹ JE 10 at 2, 11; JE 2 at 2.

³⁰ JE 10 at 9.

³¹ JE 10 at 9; JE 37; JE 38; JE 40.

***. Per District policy, the District conducted a ***.³²

33. By March 2024, Student made progress on student's IEP goals. Student mastered student's *** goal; correctly solved *** problems ***% of the time for most problems and ***% of the time for *** with regrouping; was able to identify the correct operation in *** trials and correctly solved *** problem in *** trials; and used context clues to identify an unknown word in *** trials.³³
34. On student's *** quarter report card, Student's teachers reported student had made progress in all academic areas and noted specifically that student's reading fluency and comprehension increased. Additionally, student showed progress in staying on task for longer periods of time and completing assignments but continued to struggle at times with following directions.³⁴
35. Parents emailed teachers and staff multiple times to discuss a variety of issues including bullying concerns; Student's academics, disabilities, and behavior; and to schedule meetings. Student's *** grade reading, writing, and social studies teacher never heard student discuss *** in her classroom.³⁵
36. Student withdrew from the District on March ***, 2024, to be homeschooled. During the school year, Student received individual counseling sessions, small group counseling sessions, and small group guidance lessons from the District. Student's teachers implemented student's IEP accommodations such as seating near instruction, small groups for instruction when needed, extra time, oral administration, access to manipulatives, reminders to stay on task, and positive praise.³⁶

³² JE 5 at 6; JE 36 at 11-14; JE 49 at 2; PE 5 at 4; Tr. Vol. I at 220.

³³ JE 18.

³⁴ JE 19; Tr. Vol. II at 328, 342.

³⁵ JE 56 – JE 101; Tr. Vol. II at 307.

³⁶ JE 11 at 3; JE 21; Tr. Vol. II at 321, 420-21.

After Student's Withdrawal from the District

37. The District sent a letter to Parents on March ***, 2024, that notified them the investigation into Student for bullying student 20 concluded with no findings of bullying and determined the conduct was reciprocal inappropriate ***. The District's interventions remained the same.³⁷
38. The District completed its reevaluation (FIE) on May ***, 2024. The May 2024 FIE included parental input, teacher input, educational records, classroom observations, an interview with Student's doctor and therapist, a Student interview, and formal and informal testing. The evaluation tools used were neutral and without bias.³⁸
39. The District-contracted LSSP did not include any testing for autism because no one in Student's ARD committee meetings, Student's prior evaluation, Parents, or Student's doctor or therapist mentioned autism as a possible disability, and the LSSP did not suspect autism during her testing of Student.³⁹
40. The May 2024 FIE included an OHI report from Student's pediatrician which was completed on March ***, 2024, and provided a diagnosis of ADHD. It also included an OHI disability report from Student's certified physician's assistant (PA-C) which reflected Student's diagnoses of ADHD, generalized anxiety disorder, and major depressive disorder. Student's PA-C and private counselor indicated Student struggled with student's mental health due to bullying at school. Student's anxiety symptoms included worry, impaired concentration, difficulty focusing, and difficulty completing schoolwork.⁴⁰
41. The May 2024 FIE used the Behavioral Assessment for Children, Third Edition (BASC-3) to measure behavior, social skills, and emotional development. Teachers and Parents gave Student *** or

³⁷ JE 41.

³⁸ JE 5 at 1-2; TR. Vol. II at 349, 351.

³⁹ Tr. Vol. II at 357-59, 373.

⁴⁰ JE 3 at 4; JE 4 at 3; JE 5 at 4, 22.

*** ratings in the following areas: hyperactivity, aggression, depression, attention problems, learning problems, atypicality, adaptability, and study skills. Student initiated negative interactions with students, did not think through consequences of student's actions, and ***, later saying student was joking.⁴¹

42. Parents indicated Student would argue when denied student's own way, tease others, sometimes bully, get back at others, and become overly aggressive. They reported student was easily stressed, fearful, nervous, and had heightened anxiety and feared for student's safety at school.⁴²
43. The May 2024 FIE evaluator used the Wechsler Intelligence Scale for Children - Fifth Edition (WISC-V) to determine Student's full scale IQ was *** and student had a general ability index in the *** range. Student's cognitive profile showed a pattern of strengths and weaknesses that continued to suggest a learning disability.⁴³
44. The May 2024 FIE concluded that Student had adaptive behavior needs in the areas of self-direction and interpersonal skills (such as gaining the attention of peers in an appropriate way and communicating student's feelings appropriately) that needed to be addressed in student's educational planning.⁴⁴
45. The May 2024 FIE used the Gray Oral Reading Tests - Fifth Edition (GORT-5) to assess Student's reading achievement. Student's instructional level in reading was *** grade level for decoding and fluency, but *** grade level for reading comprehension. Based on the Woodcock-Johnson Tests of Achievement – Fourth Edition (WJ-IV), Student continued performing *** grade level in math for math calculations and math problem solving. Student's instructional level in writing met grade level expectations for ideation and content, but consistent use of mechanics was a concern.⁴⁵

⁴¹ JE 5 at 7, 22.

⁴² JE 5 at 7; JE 11 at 3.

⁴³ JE 5 at 13, 15.

⁴⁴ JE 5 at 15.

⁴⁵ JE 5 at 18, 20-21.

46. The May 2024 FIE concluded that Student continued to meet the criteria for a student with a learning disability in the areas of math problem solving and math calculation, OHI-ADHD, and now met the criteria for a learning disability in reading comprehension, but did not meet the criteria for a student with ***.⁴⁶
47. Student's ARD committee convened an annual/re-evaluation/advancement meeting on May 20, 2024. Parents attended the meeting with an advocate. The proposed IEP added specific learning disability in reading comprehension to Student's eligibility. Student continued to struggle with math, reading, and student's ability to focus. The proposed IEP added using *** to student's assistive technology devices and services. Student's reading goal changed from being based on *** text to being based on Student's ***reading level. Student's math goal related to identifying the correct operation was modified to add the use of visual supports, and the goal for subtraction added the use of a calculator. The proposed IEP added social skills goals for utilizing coping strategies and conversational skills.⁴⁷
48. The proposed IEP added the following positive behavior supports: minimizing distractions, not calling Student out in front of peers, access to a calm down space, check-ins with a staff member or case manager, case manager and Parents work together to create a communication system, and daily check-ins regarding current emotional state.⁴⁸
49. For Student's accommodations across settings, the proposed IEP added check for understanding regarding assignment directions, reading support upon student request on assignments, pair verbal instructions with written instructions when possible, shortened assignments without reduction of TEKS, encourage use of a planner, and restrictions placed on laptop use.⁴⁹

⁴⁶ JE 5 at 21-23.

⁴⁷ JE 9 at 9; JE 11 at 1, 8-11, 26; Tr. Vol. II at 326.

⁴⁸ JE 11 at 12.

⁴⁹ JE 11 at 12.

50. Student would continue to receive math instruction in the *** setting and would now receive English and 45 minutes daily of social skills in *** setting. Student would also receive *** for science and *** in the *** setting.⁵⁰
51. The ARD committee accepted the May 2024 FIE and recommended additional evaluations of a functional behavior assessment and a psychological services evaluation. At Parents' request, dyslexia and dysgraphia testing were added to the additional evaluations. Parents disagreed with Student not meeting eligibility criteria for *** and requested an IEE. Parents expressed concerns with Student's laptop usage and restrictions as well as student's anxiety, depression, experiences with bullying, and safety, and requested Student receive constant supervision by an individual. Parents never signed consent for the proposed additional evaluations due to their concerns for Student's safety on campus.⁵¹
52. During the ARD committee meeting, Parents requested placement of Student in the ***. The District members of the ARD committee disagreed and stated the data did not support *** or constant supervision. The *** is for students with *** that impede their learning in the *** setting. The meeting ended in disagreement. Parents requested a reconvene with a new ARD facilitator and that Student's personal doctor and the school nurse attend. The District sent Parents prior written notice on May ***, 2024.⁵²
53. On August ***, 2024, the District sent formal notice to the Parents for a reconvene ARD committee meeting with multiple date options, and Parents never provided a date that worked for them. The District offered Parents *** for social skills, and Parents did not allow Student's participation. *** are programs aimed at

⁵⁰ JE 11 at 19.

⁵¹ JE 11 at 22-24; Tr. Vol. I at 247-50.

⁵² JE 11 at 24; JE 12.

providing special education services from Districts to ***.⁵³

54. Between January and September 2024, Parents filed multiple complaints and appeals regarding bullying, inquiries about the discipline of student 1, and concerns about retaliation regarding the *** and the *** assessment resulting from Student's ***. The District investigated the allegations and determined that no bullying or retaliation occurred.⁵⁴

Private Evaluation

55. In January 2025, a private LSSP/BCBA conducted a psychological evaluation on Student. The evaluation included Parent information, review of previous District evaluations, observation of Student at a homeschool group interaction, and several formal and informal evaluations. The evaluator did not speak to anyone from the District because Student was not currently enrolled.⁵⁵
56. As a part of her evaluation, the private LSSP administered the BASC-3. Student's parent continued to rate Student at-risk for attention problems and rated student elevated for hyperactivity, conduct problems, aggression, depression, and anxiety. Student continued to be *** in reading comprehension as evidenced by the GORT-5. Due to student's ADHD, Student struggled with behavior regulation, emotional regulation, initiating tasks, and planning, organizing, and completing tasks.⁵⁶
57. The evaluator used the Social Responsiveness Scale, Second Edition (SRS-2) and Autism Diagnostic Observation Schedule – Second Edition (ADOS-2) to assess behaviors related to autism spectrum disorder. Student had deficiencies in reciprocal social behavior; difficulty with making social

⁵³ JE 13; JE 101; Tr. Vol. I at 252-55; 34 C.F.R. § 300.132.

⁵⁴ JE 43, 44, 45, 46, 47, 49, 51, 54.

⁵⁵ PE 2 at 14; PE 3 at 19; Tr. Vol. I at 33.

⁵⁶ PE 2 at 21-22, 24, 54-55.

inferences; difficulty understanding others' thoughts, ideas, and feelings; and sensory issues that impact student's behavior, attention, and socialization. Student demonstrated excessive interest in highly specific topics related to ***.⁵⁷

58. Student's parent reported that student had *** with student's younger siblings and would do things to ***. Student would *** with student's siblings, failing to have a discussion with them first. Student's parent described Student as *** and reported that student would *** to provoke her.⁵⁸
59. The private evaluator diagnosed Student with autism spectrum disorder, pragmatic language disorder, sensory integration disorder, ADHD, executive function disorder, and learning disability in math, written language, and reading. She did not believe student met the eligibility criteria for ***.⁵⁹
60. The private evaluator made recommendations including the following: frequent positive feedback from adults; praise in front of a significant person; sensory time; earning rewards and privileges; cues to stay on task; small group instruction or 1-1 opportunities; teaching self-regulation; providing a copy of class notes; private discussion of behavior; participation in counseling to learn cognitive behavioral skills; opportunity to retreat to a predetermined, quiet space; participation in sensory integration activities throughout the day; and monitoring for signs of stress and anxiety.⁶⁰

⁵⁷ PE 2 at 30, 32, 34; Tr. Vol. I at 48.

⁵⁸ PE 2 at 49-50.

⁵⁹ PE 2 at 55; Tr. Vol. I at 35, 61, 68.

⁶⁰ PE 3 at 56-57.

Training

61. Student's *** grade teachers and special education case manager received various trainings throughout their years teaching in the District and specific training on Student's IEP in August of 2023.⁶¹

V. DISCUSSION

A. STATUTE OF LIMITATIONS

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); 34 C.F.R. § 300.507(a)(1)-(2). The limitations period begins to run when a party knows, or has reason to know, of an injury. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995).

There are two exceptions to this rule. The timeline does not apply 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.

⁶¹ Respondent's Exhibit (RE) 13; RE 14; RE 20; Tr. Vol. II at 301-02.

20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f); 19 Tex. Admin. Code § 89.1151(d). Parents bear the burden of establishing an exception to the limitations period. *G.I. v. Lewisville Indep. Sch. Dist.*, No. 4:12-cv-385, 2013 WL 4523581, *8 (E.D. Tex. Aug. 23, 2013).

Petitioner filed this case on September ***, 2024, asserted both exceptions to the two-year statute of limitations, and is attempting to get back to the 2019 school year for claims and relief in this case. The District filed its answer on September 27, 2025, and asserted neither exception applied to this case.

1. Misrepresentation exception

To prevail on a misrepresentation claim, the alleged misrepresentation must be intentional or flagrant. Petitioner must establish not that the school district's educational program was objectively inappropriate, but instead that the school district subjectively determined Student was not receiving a FAPE and intentionally and knowingly misrepresented that fact to student's parents. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 245 (3d Cir. 2012). Additionally, Petitioner must show that the school district "intentionally misled them or knowingly deceived them regarding their child's progress." *Id.* at 246.

Petitioner argues the District violated its child find duty by not evaluating Student prior to December 2021. While child find was included in Petitioner's original complaint, the Judge discussed the topic at the prehearing conferences on

September ***, 2024, and January ***, 2025, and the issues for hearing were memorialized in Order Nos. 3 and 5. Child find was not included in the issues. Instead, based on Petitioner's responses to questioning, eligibility was determined to be the issue. Petitioner did not object to Order Nos. 3 or 5. Petitioner argues Student's parent notified the District of parent's concerns regarding Student's behavior and progress beginning in *** grade, and the District did nothing. Petitioner presented no evidence of any alleged misrepresentations made by the District prior to the December 2021 FIEE.

Furthermore, after the District developed an IEP for Student in January 2022, no staff or personnel from the District ever indicated to Parents that the allegations that form the basis of this complaint were resolved. The District continued to update Student's IEP based on student's needs in an effort to provide Student with an appropriate program and offered and/or completed additional evaluations. Again, Petitioner presented no evidence of any specific misrepresentation or that any alleged misrepresentations prevented the Parents from filing a due process complaint. The Judge concludes the misrepresentation exception does not apply in this case.

2. Withholding Exception

Petitioner presented no evidence that the District withheld any required information from the Parents. The evidence showed that one or both Parents attended all ARD committee meetings and received prior written notice and notice of procedural safeguards multiple times beginning on January ***, 2022. Receipt of the

procedural safeguards indicates Parents “knew or should have known” of the alleged action that serves as the basis for the request for a due process hearing. *El Paso Indep. Sch. Dist. v Richard R.R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008) (“When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statute of limitations for IDEA violations commences without disturbance . . . that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA”). Due to the lack of evidence produced by Petitioner on this claim and the fact the Parents received the required information from the District, the Judge finds the withholding exception does not apply to this case.

Accordingly, the relevant time period for the case is within the two-year statute of limitations. The child find issue is outside the statute of limitations period.

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 and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n.4 (5th Cir. 2009). The burden of proof is on the party seeking relief and in this case, on Petitioner to show the District failed to conduct an appropriate evaluation, failed to find student eligible in all areas of need, failed to protect student from bullying, and failed to provide Student with a FAPE by failing to offer a program

that was reasonably calculated to enable Student to make appropriate progress in light of student's circumstances. *Schaffer*, 546 U.S. at 62; *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

C. EVALUATION UNDER THE IDEA

In conducting an evaluation under the IDEA, a school district must (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP; (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b). The student must also be assessed in all areas of suspected disability. 34 C.F.R. § 300.304(c)(4).

Petitioner argues that the District failed to evaluate Student in all areas of known or suspected disability. The District's December 2021 FIIE is outside the two-year statute of limitations period, and its appropriateness will not be addressed. The May 2024 FIE met the IDEA requirements. The evaluation included a variety of assessment tools and strategies including teacher and parental input, student observation, standardized and informal assessments, and other technically sound instruments to assess Student's abilities and needs. 34 C.F.R. § 300.304(b). Each evaluation addressed Student's educational strengths, deficits,

and needs and continued to support Student's eligibility for special education under the criteria for specific learning disabilities in math and reading and OHI-ADHD. Petitioner presented no evidence regarding the appropriateness, or lack thereof, of the May 2024 FIE.

Petitioner claims the District should have evaluated Student for autism because of Student's private evaluation results, which is discussed below under eligibility.

At the time of the May 2024 FIE, none of Student's teachers, Student's private doctor, Student's therapist, any ARD committee members, the LSSP who conducted the District's May 2024 FIE, or Parents suspected Student had autism or needed an evaluation for autism. Based upon the credible evidence presented, Petitioner did not prove the District failed to conduct timely evaluations in all areas of suspected disability or that the District's May 2024 FIE was not appropriate.

D. COUNTERCLAIM

Petitioner seeks an IEE as part of its requested relief in the Complaint. Respondent filed a counterclaim asserting the appropriateness of its FIE. A parent of a student with a disability has the right to obtain an IEE at school district expense if the parent disagrees with the school district's evaluation. 34 C.F.R. § 300.502(b)(1). However, a school district may challenge the parental right to the IEE at school district expense by filing a request for a due process hearing to show its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2)(ii). This may also be

effectuated by filing a counterclaim in an already pending parent-initiated due process proceeding. If the school district meets its burden on that issue, although parents are still entitled to secure an IEE, they do so at their own expense. 34 C.F.R. § 300.502(b)(3).

The evidence showed that the District's May 2024 FIE was appropriate as discussed above. Petitioner is not entitled to an IEE at District expense.

E. ELIGIBILITY

Petitioner alleges that the District failed to find Student eligible for special education under the eligibility classification of autism. Questions of eligibility and identification of a student with a disability are resolved on the basis of whether an evaluation shows the student meets the criteria of one or more of the enumerated disability classifications and demonstrates a need for special education. *See* 34 C.F.R. § 300.8(a), (c)(1-13). To be eligible for special education services, a student must both have a qualifying disability and need special education services to address the disability, not simply be likely to benefit from special education services. *Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 382 (5th Cir. 2007).

Student was previously identified as a Student with a disability and in need of special education services in 2021. Therefore, the issue is not if Student has a disability, but rather under which classification student is eligible for special education services. Petitioner argues that autism should be included in Student's IEP. The

IDEA does not require classifying a student in a particular category, but only the provision of an appropriate education. *Lauren C. by & through Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 370 (5th Cir. 2018). As long as a school district evaluates a student to target specific issues a student is experiencing, it need not identify and diagnose every possible disability a child has. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3rd Cir. 2012). Additionally, the review of a school district's eligibility determination should be assessed at the time of the student's evaluation and not from the perspective of a later time with the benefit of hindsight. *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 214 (5th Cir. 2019) (citing *L.J. by & through Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2017)). Instead, the school district's eligibility decision must be judged on the basis of whether it took the relevant information into account at the time the eligibility decision was made, not whether it worked. *Id.* In May 2024, the information available to the District was that Student had specific learning disabilities in reading and math and OHI-ADHD. The fact that Student's private evaluation diagnosed student with autism ten months after student left the District does not mean the District had any reason to test for autism in May 2024. While Student was enrolled in the District, no District employees or Parents felt Student needed special education services due to autism.

Additionally, the private evaluator diagnosed Student with autism spectrum disorder based on a medical diagnosis using the DSM-5 and not the criteria for special education eligibility. The DSM-5 is a clinical tool for identifying psychiatric and developmental disorders – not a legal standard for determining special education eligibility under the IDEA. The inquiry under the IDEA is a broader,

more educationally focused inquiry. A child may have autism and still not meet the eligibility criteria under the IDEA. *Alvin*, 503 F.3d at 382; 34 C.F.R. § 300.8(a). Petitioner's private evaluator agreed with the District's May 2024 FIE that found Student did not meet eligibility criteria for an emotional disturbance. This concurrence seems to support the appropriateness of the District's evaluation.

What label the District used for Student's special education classification is immaterial as long as student received a FAPE. *Lauren C.*, 904 F.3d at 371. As the FAPE analysis below sets forth, the District provided Student with a FAPE.

Based on evidence presented, the Judge is unable to determine if Student meets eligibility for special education as a student with autism spectrum disorder. Petitioner did not meet student's burden of establishing that the District failed to properly include the eligibility classification of autism.

F. DUTY TO PROVIDE A FAPE

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

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

G. FAPE

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

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

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

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

1. Individualized on the Basis of Assessment and Performance

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

The evidence showed that the District developed an IEP based on assessment and performance. Student's IEP included measurable annual goals, related services, and accommodations based on student's present levels. The District updated Student's IEP, including student's accommodations and goals, multiple times based on student's needs and performance, Parents' input, ARD committee deliberations, and evaluations and assessments. All ARD committee meetings prior to May ***, 2024, ended in agreement.

In May 2024, the District proposed a new IEP which added more *** time for Student and added inclusion time for science and ***. Additionally, the proposed IEP added social skills instruction in the *** setting to address Student's struggles with peer interactions. The additional time in the *** meant Student would spend more time in a smaller setting. This corresponded with student's then-present levels which indicated that student learns better in small groups or with one-on-one instruction and was consistent with recommendations made by student's private evaluator.

Additionally, many of the accommodations added to Student's proposed IEP were recommendations included in Student's private evaluation. For example, the private evaluator recommended positive feedback from adults; sensory time; opportunity to retreat to a predetermined, quiet location; small group instruction; and monitoring Student for signs of stress or anxiety. The District's May 2024 proposed IEP similarly included positive reinforcement and specific praise, movement breaks and access to ***, access to calm-down space in a

predetermined space, small group instruction, and daily check-ins regarding current emotional state.

Parents argue Student's IEP should have included eligibility as a student with autism, but as discussed above, Student's IEPs and a proposed IEP were based on student's disabilities and needs known at the time of development, and the IEPs addressed student's educational and non-educational needs.

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). State regulations require a school district's continuum of instructional arrangements to be based on students' individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

1. Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
2. If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.* This determination requires an examination of:

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

Id.

The evidence showed Student was educated in student's least restrictive environment. In *** grade, Student's initial IEP had student receiving math instruction in the special education setting and reading instruction in the general education setting with inclusion support. When Student returned to the District in the 2023–2024 school year for *** grade, student continued with the same placement. At the ARD committee meeting in May 2024, the proposed IEP had Student

receiving math, reading, and social skills training in the special education classroom and science and social studies in the general education classroom with inclusion support. Student's May 2024 FIE and student's present levels indicated the increase in time in the special education classroom was necessary.

During the May 2024 ARD committee meeting, Parents and their advocate wanted Student placed in the *** classroom for student's safety. The ***classroom is for children with significant behavior needs that inhibit their learning in the general education classroom. The data does not support this classroom for Student, no teachers indicated Student's behavior impeded student's or other students' access to their education, and Petitioner presented no evidence to the contrary.

Petitioner's main concern is Student's safety and student being in a smaller setting in order to be monitored. The May 2024 proposed IEP provides the majority of Student's time at school in the special education setting, which is a smaller, more monitored setting and still allows Student to interact with student's non- disabled peers to the maximum extent possible.

Petitioner failed to provide any evidence that the District failed to educate Student in student's least restrictive environment.

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

The IDEA contemplates a collaborative process between the school district and the parents. *E.R.*, 909 F.3d at 766. The IDEA does not require a school district,

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

The evidence showed services were provided in a coordinated, collaborative manner by key stakeholders. One or both Parents attended all ARD committee meetings and attended one meeting with an advocate. Until May ***, 2024, all ARD committee meetings ended in agreement. The District updated Student's IEP using Parents' concerns and suggestions. For example, the District reduced Student's screen time and agreed to a dyslexia/dysgraphia evaluation. Parents communicated with District personnel and District personnel communicated with each other regarding Student. Parents withdrew Student from school because they felt student was unsafe due to bullying and that the District was retaliating against Student due to the grievances Parents filed against the District. Parents' displeasure with how the District handled their allegations of bullying and the disagreement on Student's placement in the *** classroom does not prove the District excluded them in bad faith or refused to listen to their concerns. Also, Parents refused to sign consent for an evaluation and reconvene the May 2024 ARD committee meeting. Petitioner failed to meet its burden on this prong.

4. Academic and Non-Academic Benefits

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

The evidence showed Student made academic and non-academic progress. When Student returned to the District in August 2023, in math student was unable to identify coins or their values, struggled with adding and subtracting 3- and 4-digit word problems, and when presented with word problems, frequently asked if student needed to add or subtract. Meanwhile, in reading, student struggled to use context clues to identify unknown vocabulary words. Student made academic progress during student's time in the District, and by March 2024, Student mastered one of student's goals and improved on the rest of student's IEP goals. Additionally, student made non-academic progress by staying on task longer and completing assignments.

Additionally, IEPs are intended to be implemented and measured for a given academic year; therefore, academic and non-academic benefits must be weighed considering the entirety of the academic year. *Lamar Consol. Indep. Sch. Dist. v. J.T. by next friend April S.*, 577 F. Supp. 3d 599, 607-08 (S.D. Tex. 2021). In this case, Student withdrew from the District prior to the end of the school year, hindering an analysis of the concerns raised by Petitioner. Petitioner did not meet its burden on this prong.

5. FAPE conclusion

The District developed a program for Student that was reasonably calculated to enable Student to make appropriate progress in light of student's circumstances. *Endrew F.*, 580 U.S. at 399. Student's IEP and program were developed using District evaluations 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 made progress. A review of the overall educational program shows Student was provided a FAPE and made progress with the program as it was developed and implemented. *Michael F.*, 118 F.3d at 253.

H. IEP IMPLEMENTATION

When a parent brings a claim based on a school district's failure to implement an IEP, a court must decide whether a FAPE was denied by considering, under the third factor, whether there was a "substantial or significant" failure to implement an IEP; and under the fourth factor, whether "there have been demonstrable academic and non-academic benefits from the IEP. *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hanna W.*, 961 F.3d 781, 795-96 (5th Cir. 2020) (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)).

The credible evidence shows that Student's IEP was implemented with fidelity. Petitioner failed to present any evidence of the District's alleged failure to implement Student's IEP. To prevail on an implementation claim under the IDEA,

Petitioner must show more than a *de minimis* failure to implement all elements of that IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Bobby R.*, 200 F.3d at 349. Petitioner did not meet its burden on this claim.

I. BULLYING AS A DENIAL OF FAPE

A school district's failure to stop bullying may constitute a denial of a FAPE. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3d Cir. 2004). Bullying a student with a disability that results in the student not receiving a meaningful educational benefit constitutes a denial of a FAPE. *Letter to Dear Colleague*, 113 LRP 33753 (OSERS Aug. 20, 2013). Bullying may lead to a denial of a FAPE if school personnel were deliberately indifferent to, or failed to take reasonable steps, to prevent bullying that adversely affects or results in the regression of educational benefit or substantially restricts the student with a disability from accessing educational opportunities. *T.K. and S.K. ex rel. K.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 289, 316 (S.D.N.Y. 2011).

Petitioner argues that Student was bullied throughout student's time in *** grade and that the District failed to address the issue. Parent filed bullying forms or mentioned bullying to the District via email for *** instances. Each time, the District investigated the allegations. The District found the group *** was bullying and all other individual allegations were not bullying. In response to the bullying, the District changed Student's homeroom, delivered guidance lessons to the entire grade about bullying, provided small group sessions with the counselor for

Student, conducted frequent check-ins with Student, and staff monitored peer interactions. The District investigated Student *** times for bullying of other students, and the District determined none of those incidents rose to the level of bullying. Student had stay away agreements between student and *** other students.

Parents' biggest complaint is about Student *** at school, and the punishment of student 1. The District determined the *** incident did not rise to the level of bullying and the students engaged in mutual *** prior to Student being ***. Additionally, no teacher witnessed Student being bullied. While this Judge finds the number of negative peer interactions troubling, the evidence showed the District conducted investigations for each incident, implemented changes based on the conflicts between Student and other students, and Student continued to benefit from student's program despite these allegations. Petitioner presented no evidence that the District was deliberately indifferent to Parents' concerns or failed to take reasonable steps to address the bullying.

Additionally, Petitioner failed to tie the bullying to any lack of educational benefit or missed educational opportunity. Student did not miss school, did not have tardies, and did not change any of student's patterns of school participation. Student continued to make academic and non-academic progress, and Petitioner presented no evidence to the contrary. Based on the credible evidence, Petitioner did not meet its burden on this issue.

J. PROCEDURAL ISSUES

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

Petitioner argues the District impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE. As discussed above, one or both Parents attended all ARD committee meetings, one with an advocate; participated in the discussions about Student's program; and all meetings prior to May 2024, ended in agreement. Also, the District reduced Student's screen time and agreed to conduct additional evaluations in the areas of dyslexia, dysgraphia, and speech all at Parents' request.

Petitioner presented no evidence of the District impeding Parents' participation. Programming and placement decisions were discussed at the ARD committee meetings with Parents in attendance. The fact that Parents disagreed with the final ARD committee decision regarding Student's placement in May 2024 does not show the District denied them meaningful participation. Petitioner did not meet its burden on this claim.

K. TRAINING

Petitioner argues that the District failed to properly train staff to implement Student's IEP. 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).

Student's *** grade math and science teacher; student's *** grade reading, writing, and *** teacher; and student's special education teacher and case manager had the required educational background for their jobs, were trained on Student's IEP, and received various trainings throughout their time in the District. Petitioner presented no evidence to support this claim; therefore, Petitioner did not meet its burden on this issue.

L. REIMBURSEMENT FOR PRIVATE SCHOOL

Student must meet a two-part test in order to secure private placement at school district expense. First, Student must prove that the school district's program was not appropriate. Second, Student must prove that the proposed private placement is appropriate. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. v. Carter*, 510 U.S.7 (1993).

In this case, the District provided Student with FAPE; therefore, there is no need to consider whether Student met the second prong of the private placement test.

VI. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District provided Student a FAPE during the relevant time period, and student's IEP was reasonably calculated to enable student to make appropriate progress in light of student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
3. The District met its obligation to conduct necessary and timely evaluations of Student. 34 C.F.R. § 300.301-.304.
4. The District's evaluation was appropriate and complied with all requirements under the IDEA. 34 C.F.R. § 300.304.
5. Respondent is not required to grant Petitioner an IEE at public expense. 34 C.F.R. § 300.502 (b)(1).
6. Student continues to be eligible for special education services and related services as a student with specific learning disabilities in math and reading and OHI. 34 C.F.R. § 300.8(c)(9), (10); 19 Tex. Admin. Code § 89.1040 (c)(8), (9).
7. Petitioner did not meet its burden of proving that the District failed to protect Student from bullying. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3d Cir. 2004), *T.K. and S.K. ex rel. K.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 289, 316 (S.D.N.Y. 2011).
8. Petitioner did not meet its burden of proving that the District made a procedural violation. 34 C.F.R. § 300.513 (a)(2)(i-iii).
9. Petitioner did not meet its burden of proving that the District failed to properly train staff on how to provide special education services to Student. 34 C.F.R. 300.156(a).

ORDER

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

Signed June 13, 2025.

ALJ Signature:

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

Kasey White
Presiding Administrative Law Judge

NOTICE TO THE PARTIES

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