

SOAH Docket No. 701-25-01922.IDEA
TEA Docket No. 031-SE-0924

**Before the
State Office of Administrative
Hearings**

**STUDENT, by next friend PARENT,
Petitioner**

v.

**Klein Independent School District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student (***) or Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against the Klein Independent School District (Respondent, the District, or KISD) 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 provide Student a free appropriate public education (FAPE), and if not, whether

Petitioner's unilateral private placement was appropriate. The Administrative Law Judge (Judge or ALJ) concludes that the District did not provide Student a FAPE during the relevant time period and Petitioner's unilateral private school placement was appropriate.

II. DUE PROCESS HEARING

The due process hearing was conducted on April 8-9, 2025, via the Zoom videoconferencing platform. Petitioner was represented by attorney Mark Whitburn with Whitburn & Pevsner PLLC. Student's Parent and grandparent attended the due process hearing. Respondent was represented by attorneys Erik Nichols and Matthew Acosta with Spalding Nichols Lamp Langlois. Dr. ***, KISD Director of Special Education, and ***, Assistant Director of Special Education, attended the hearing as the party representatives for the District. The hearing was recorded and transcribed by a certified court reporter.

The parties jointly offered 13 exhibits; all were admitted. Petitioner submitted 13 separately disclosed exhibits, of which all or portions of 11 were admitted. Respondent submitted 16 separately disclosed exhibits, of which all or portions of 9 were admitted.

Petitioner offered the testimony of the following members of Student's *** grade ***** School team: the Licensed Specialist in School Psychology (LSSP), the Speech-Language Pathologist (SLP), the general education *** and *** teachers, and Student's special education teacher/case manager. Petitioner also offered the testimony of Student's *** grade special education teacher from ***** School in KISD. From the ***

***, Student's current school, Petitioner called the President/COO and the Director of Curriculum and Instruction. Petitioner's Parent also testified.

Respondent offered the testimony of a District Special Education Campus Coordinator.

Both parties timely filed written closing briefs. The Decision in this case is due on May 28, 2025.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following issues from the 2022-23 school year to the present for decision in this case:

1. Whether the District denied Student a FAPE during the relevant time period;
2. Whether the District denied Student a FAPE by failing to develop an appropriate individualized education program (IEP);
3. Whether the District denied Student's Parent the right to meaningfully participate in the decision-making process; and
4. Whether the District failed to educate Student in Student's least restrictive environment.

B. RESPONDENT'S LEGAL POSITION AND ADDITIONAL ISSUES

Respondent generally and specifically denies Petitioner's factual allegations and legal claims. Respondent pleads the affirmative two-year statute of limitations defense based on the original filing date of September 26, 2024. Respondent also asserts that Parent failed to give notice of the intention to place Student in private school at District expense.

IV. REQUESTED RELIEF

A. PETITIONER'S REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Reimbursement for educational expenses incurred by Parent;
2. Prospective private placement at District expense; and
3. Any other appropriate relief.

V. FINDINGS OF FACT

1. Student resides in KISD. Student attended District schools from *** through *** grade (the family lived out of state for one year during that time). KISD identified Student as a student with autism and speech impairment as a young child and provided special education services to Student throughout Student's enrollment.¹
2. During the 2024-25 school year, Student was an *** grade student in Student's *** year at the ***. *** is an academically based, private school specializing in educating students with autism.²

2021-22 school year, * grade**

3. Student was in *** grade at ***** School during the 2021-22 school year. Student was placed in general education with accommodations for most of Student's school day. For reading/language arts and math, Student's Admission, Review, and Dismissal (ARD) committee designed a combination of general education class time with in-class support and specialized pullout services in a small- group, special education setting. Student had modified curriculum listed as an accommodation in Student's IEP.³

¹ Joint Exhibit (J) 4 at 1-2; J5 at 1.

² Tr. 2 at 394-395, 455-57.

³ J1.

4. Student received social skills instruction and behavior monitoring and support services through the *** program. *** provided behavior monitoring and in-class support across environments and a daily, 30-minute social skills class in the special education setting. The *** class also served as a place where Student could go to cool down as needed if Student was experiencing emotional/behavioral dysregulation.⁴
5. Student's speech-language impairment limited Student's expressive, receptive, and pragmatic communication abilities, and functional communication was identified as a critical need. Student received group speech therapy for an average of 15 minutes a week, also in the special education setting.⁵
6. Functionally, Student had difficulty initiating and completing tasks and assignments independently. Student disengaged easily from Student's classwork and what was happening in class. Student needed "moderate to maximal cues and prompts" for problem-solving, planning, and independent engagement in activities. Student needed multiple prompts and significant processing time to initiate and complete assignments. Student's teachers pointed to these difficulties as causing breaks in Student's focus and engagement and requiring prompting and redirection to return to task. Teachers also described this as "noncompliance" and "repetitive off task behaviors."⁶
7. Student was noted to experience emotional outbursts with change. Student frequently engaged in ***. Student had a communication goal focusing on identifying Student's emotions, but Student's team discontinued it in 2021-22 after Student did not master it.⁷
8. The District developed a functional behavioral assessment (FBA) and behavior intervention plan (BIP) for Student in 2020; this was still in place during the 2021-22 school year. The FBA identified two problem behaviors: a) daily noncompliance with directives; and b) weekly physical aggression directed at people and objects.⁸

⁴ *Id.*

⁵ *Id.*

⁶ J4 at 5-7.

⁷ *Id.*

⁸ J2 at 5-6; J4 at 31.

9. Student's *** grade annual ARD committee meeting was held on November ***, 2021. The parent input section of Student's *** grade IEP indicated that Parent had some questions about ***, made a request for the school to help Student use the lunch line and expressed a concern about Student's *** behavior ***.⁹
10. Student's academic goals¹⁰ were in the areas of:
- a. Reading comprehension: ***;
 - b. Writing: ***, and
 - c. Math: ***.
11. Student's functional goals¹¹ were in the areas of:
- a. Behavior/self-regulation: when experiencing anxiety in an over-stimulating environment, or after being given a high-demand task, to use a calming strategy and refrain from an emotional outburst for 10 minutes;
 - b. Behavior/adult directives: to comply with adult directives with no more than three verbal/nonverbal prompts;
 - c. Behavior/social skills: to appropriately engage in a conversation when spoken to by a peer or adult; and
 - d. Speech-language/total communication: to use total communication to request desired activities or objects, communicate when Student needed help or when Student was hurt or sick, and to answer basic yes/no questions.
11. Student's triennial full and individual evaluation (FIE) was due May ***, 2022, but the November annual IEP did not include a plan for reevaluation. On May ***, 2022, a review of existing evaluation data (REED) was completed; it

⁹ J2 at 2; J4.

¹⁰ J4 at 13-15.

¹¹ J4 at 11-13.

concluded that Student did not require a new evaluation. The REED incorporated by reference Student's 2019 (** grade) FIE, which had analyzed Student's intellectual abilities and adaptive (*i.e.*, independence-oriented) behavior together and concluded, "Student's estimated intellectual ability is above the intellectual disability range expectations. [...] Student's adaptive behavior is not consistent with Student's measured level of cognitive functioning. [Student's] adaptive behavior was measured to be much lower than Student's intellectual functioning."¹²

13. No evidence was presented to suggest that an ARD committee meeting or discussion took place before or after completion of the May 2022 REED.¹³
14. Student's FBA and BIP were updated on May **, 2022. The record is silent as to the reason for this update. No evidence was presented to suggest that an ARD committee meeting or discussion took place before or after the FBA and BIP were updated.¹⁴
15. In end-of-year teacher interviews for the FBA, Student's teachers noted that socially, Student was greeting Student's teachers, kidding around with a friend in class, starting to interact more with peers, and had "shown great strides." They noted that Student would usually attempt Student's work. Student could follow directions, would join a group when asked to join and could complete work with step-by- step instructions. Student participated with peers during **, could **, and was successfully transitioning from class to class.¹⁵
16. The end-of-year parent interview for the FBA described a child who asked questions (especially on a topic of interest, like **) and could sometimes talk about Student's feelings. Parent described Student as social. Student enjoyed playing with neighborhood friends as well as playing alone. Parent noted that Student could "calm **self down pretty quickly" by walking in the courtyard or

¹² J1 at 6-7.

¹³ J1; J2.

¹⁴ J1; J2.

¹⁵ J2 at 2-3.

spending time in Student's room, and that Student would apologize after yelling. Student was happy.¹⁶

2022-23 school year, Fall semester – * grade**

17. Student transitioned to ***** School in the 2022-23 school year for *** grade. Student's IEP from November 2021 was still in place.¹⁷
18. Student's ***. Student was ***, all in the general education setting. Student also had a ***, both in the special education setting. The special education *** - might have satisfied Student's IEP requirement of specialized pull out services for reading, but there is no evidence to suggest Student's pull out writing and math needs were accounted for.¹⁸
19. Student's former *** services were delivered through the *** program. Like ***, *** provided case management, behavior monitoring and in-class support across environments, and a daily *** class - *** - in the special education setting. As with ***, Student could use the *** class as a cool down space if Student was experiencing emotional/behavioral dysregulation. Student continued to receive group speech therapy for an average of 15 minutes a week in the special education setting.¹⁹
20. Email exchanges in August 2022 between Parent and teachers reflected concerns from both about different aspects of Student's early experience in ***.²⁰

¹⁶ J2 at 2; Tr. 1 at 291.

¹⁷ J1.

¹⁸ Tr. 1 at 302-304.

¹⁹ J5; Tr. 1 at 111-112; Tr. 2 at 515-520.

²⁰ Tr. 1 at 302.

21. Parent emailed Student's case manager to share concerns about Student's schedule, changing classes, and ***expectations for academic and personal independence on a busy campus. Parent wrote that Student was overwhelmed, and Parent was worried because Student did not want to talk about it. Parent wanted to increase support for Student and add a communication plan, and Parent requested to "sit down for an IEP to meet the team and come up with a plan that seems more appropriate."²¹
22. Student's *** teacher initiated a different email exchange asking Parent to remind Student to do Student's missing classroom work as homework. The teacher explained her weekly practice of emailing "progress reports" to the students with information about their grades and completed or missing work for the week. She provided instructions to pass along to Student about where to log in to check Student's grades and completed work, indicating that Student could obtain class notes and quiz reviews in the same online location. In reply, Parent advised, "Being at school is also extremely overwhelming for Student and Student needs those few hours at night to get it all out and decompress. This is why Student has support staff at school. Maybe we need to sit down with the team or adjust Student's IEP."²²
23. Parent testified that Parent was getting similar communications regarding missing work from all four core academic teachers. The general education teachers were generating frequent emails about each student's missing work from the District's computerized gradebook system. The emails were not adjusted to reflect Student's modified curriculum, accommodations, IEP content goals, or individualized expectations for what Student needed to learn or how Student was expected to demonstrate Student's knowledge under Student's IEP. General education teachers at ***** followed a campus policy of not assigning extra work as homework to be done outside of school; instead, the ***expectation was for students to finish any incomplete work from the day at home.²³
24. Parent testified that in ***, Student did not have to do unfinished work outside of school. Parent stated that before coming to ***,

²¹ Respondent's Exhibit (R) 16 at 1; R7 at 1-3.

²² R7 at 1, 6-7; R7 at 1-3, 6-7; P6.

²³ Tr. 1 at 297.

Student's schoolwork was modified per Student's IEP, and also that Student was completing tests, quizzes, and assignments as needed during Student's 90 minutes/day of dedicated special education time. *** was aware that Student could not do homework independently and Student often became dysregulated when attempting to do work at home, even with Parent supporting Student. Parent testified that Student's *** grade instructional team collaborated to make sure Student could complete any work that needed to be done outside of class during the school day with special education support.²⁴

25. After starting *** grade at *****, Student began to exhibit new behaviors after school. Student was requiring increasing time after school to decompress. Student's after-school demeanor was different from the previous year at ***, and Student's behaviors in the car after school were intensifying.²⁵
26. On September ***, 2023, the special education secretary at ***** sent an invitation to Parent for Student's annual ARD meeting scheduled for November ***, 2023. Parent signed and returned the notice the same day.²⁶
27. In late October 2022, Parent emailed Student's case manager expressing concern about seemingly small issues triggering Student's perseveration/dysregulation loops at school. This email highlighted an apparent focus in Student's *** class on using school-appropriate language. Student was receiving specific directives to use "yes," instead of "yup." Parent wrote that Student had a perseverative loop related to this topic, that it was creating avoidable upset and emotional/behavioral dysregulation for Student, and getting in the way of valuable instructional time. Parent described a similar situation from a previous school year that resulted in Student's refusal to speak to teachers for extended periods of time, and Parent worried that this situation could develop again.²⁷
28. Around the same time, as the team was preparing for Student's annual ARD, the general education teachers voiced consistent concerns about Student's engagement and performance in their classes. Comments from an internal

²⁴ Tr. 1 at 295.

²⁵ Tr. 1 at 291-292, 301-302.

²⁶ R13 at 1-2.

²⁷ Petitioner's Exhibit (P) 7 at 6; Tr. 1 at 120-122, 133-134.₁₀

Google doc that Student's case manager used to gather pre-ARD teacher input included, among others: "Requires one to one attention to do Student's work period even then the knowledge of the material and quality of work is far behind." "Underperforming in math." "Does not do much in class." "Attention span seems to be about 8 to 10 seconds." "Student seems unable to complete class work independently." "Can be loud and disruptive in class." The teachers were beginning to discuss Student's need for 1-to-1 support as a reason Student might not be appropriately placed in general education.²⁸

29. Student's annual ARD committee meeting was held on November ***, 2022.²⁹
30. Teachers identified Student's present emotional/behavioral levels as noncompliance with work assignments, prompt-dependence to complete steps in assignments, and having emotional outbursts due to change. Teachers observed Student sometimes "****" or "***" when disengaged in class. They noted Student's slow processing time in responding to teacher directives. This section of the IEP states that Student's 2021-22 school year behavior goals would carry over to the new IEP with "higher mastery criteria [sic] in order to help increase generalization across settings."³⁰
31. The ***** teacher reports were consistent with behaviors identified in the May ***, 2022 FBA. The FBA added combined perseveration and emotional dysregulation: "When Student perseverates on topics regarding change (***) or when being told something that Student thinks differently about (***), Student will ***." The function of this behavior was identified as avoidance or delay of the task at hand. The previous problem behaviors (noncompliance with a directive due to perseveration and physical aggression) were labeled "historical" in the update, but they were not removed.³¹

²⁸ R5 at 1-4; Tr. 1 at 126-142.

²⁹ J5.

³⁰ J5 at 3-4.

³¹ J2 at 4 -

32. Student's lone communication goal was complex. It addressed self-advocacy, making requests, answering yes/no questions and using total communication. This goal was discontinued without commentary about if, or how, Student's communication needs had changed.³²
33. The parent input section included Parent's concerns that Student was not exhibiting the same interest in learning at school that Parent saw at home, Student's *** was increasing "for hours when Student gets home from school," Student was withdrawing from family, not sleeping well, and seemed unhappy. With respect to work completion, "Student's clearly not getting Student's 'regular' class work done and it's frustrating getting emails from Student's subject teachers constantly that Student needs to do makeup work and that Student has no grades or all zeros or has to do homework or work on the weekends. It's not realistic. I feel like all that classwork should be addressed with *** and I should get a consolidated update on Student's progress and grades through that."³³
34. The teachers identified Student's present academic levels³⁴ as follows:
- a. Reading: ***.
 - b. ELA (Writing): ***.
 - c. Math: ***.
 - d. Science: ***.

³² J5.

³³ J5 at 7.

³⁴ J5.

- e. Social Studies: no information provided about academic knowledge, skills, or competencies.
35. Student's redeveloped academic IEP goals³⁵ for the 2022-23 school year show little variation from the previous IEP or relationship to the scant academic present levels described by Student's teachers.
- a. Reading comprehension: ***;
 - b. Writing: ***; and
 - c. Math: ***.
36. The ARD committee added a vocabulary/concept goal requiring Student to complete verbal or written work tasks with 75% accuracy to demonstrate Student's content understanding in reading, math, science and social studies with 75% accuracy.³⁶
37. For Student's functional goals³⁷, the November 2022 IEP carried the three existing behavioral goals over from the previous year with unchanged or reduced mastery criteria:
- a. Behavior/self-regulation: ***.
 - b. Behavior/adult directives: ***

³⁵ J5 at 11-13.

³⁶ *Id.*

³⁷ J4; J5 at 10-11.

***.

c. Behavior/social skills: ***.

The IEP team did not include a speech goal to replace the one they discontinued.

38. Student's class schedule remained the same, but the ARD committee increased Student's academic in-class support to cover the entire class period for each of the core academic classes, 4 out of 5 days per week. Modified curriculum (quantity and skill level) remained as an accommodation with no further description in the IEP. The team added 15 minutes every three weeks of direct counseling as a related service, to be delivered by the school LSSP connected to the *** team.³⁸
39. Student's *** grade IEP team determined that Student did not need a new evaluation. The IEP states: "Last evaluation is dated 5/***/2022. The assessment is current. [...] Parent request or campus request: None. Due date: N/A."³⁹
40. On December ***, 2022, Parent emailed Student's LSSP expressing significant concern about ***'s emotional-behavioral health. Parent described angry episodes and ***behaviors. Parent wrote that ***'s behaviors had regressed, Student would not communicate Student's needs, leave the house, or engage in family activities. "Student's also not learning anything in school or doing Student's work so it makes no sense to me to have Student in the regular classes if Student's not benefitting from it."⁴⁰
41. The LSSP followed up by phone the same day. The LSSP also replied to Parent's email with information about a behavioral episode the day before. "*** was upset at the *** and [a *** team member] was called to the class for Student *** Student's

³⁸ J5 at 15, 22-23.

³⁹ J5 at 1, 26-27.

⁴⁰ P7 at 7-9; Tr. 1 at 294.

***. She said that Student deescalated quickly once she came, and this was the only time this week she has seen this behavior.” The LSSP attached a list of local outside counselors to her response. In the same email, the LSSP confirmed that she had spoken with the campus diagnostician to initiate a new evaluation for Student⁴¹

42. ***** issued a notice of proposal to evaluate the same day, December ***, 2022. The notice identified that Parent’s reason for requesting the evaluation was because Student was “starting to show regression at home” and the ARD committee’s reason because “updated information is need [sic] [...] Suspected speech impairment, ***, and occupational therapy.”⁴²
43. There is no record of ARD committee discussion, request or planning for this evaluation, whether in an ARD meeting or otherwise.⁴³

Spring semester, 2022-23 school year

44. Student’s evaluation was completed on February ***, 2023. The reasons for the evaluation were listed as determining eligibility for Speech Impairment and ***. The request for an occupational therapy (OT) evaluation was attributed to Parent’s concerns with sensory processing having an impact on Student’s success in the classroom.⁴⁴
45. The educational diagnostician and the occupational therapist each interviewed Parent seeking input for the FIE. In these interviews, Parent shared that Student had many special interests and strengths involving researching and learning everything Student could about topics that interested Student and sharing that knowledge. Parent said Student used to “get along great with others, laugh, spend time, have conversations, and go places.” However, now, Student would come home in the evening and spend several hours *** and/or alone in Student’s room, Student had become more withdrawn, Student did not want to come out of Student’s room, and Student resisted ***

⁴¹ *Id.*, Tr. 1 at 305-309.

⁴² R13 at 6-11.

⁴³ J5 at 1, 26-27. *See also* November ***, 2022 annual ARD, evaluation section.

⁴⁴ J3 at 1, 14.

and ***. Parent said Student was “making huge messes, breaking things,” and Student did not “talk to anyone anymore or interact like Student used to. [...] Student is an entirely different child from a year ago since starting *****.”⁴⁵

46. An OT evaluation was conducted as part of the FIE. The evaluator conducted a series of functional skills observations across all parts of Student’s day and a parent interview. Teachers completed ratings as part of the Sensory Profile 2. This 14-page portion of the FIE contains observational and assessment data and analysis. The evaluator concluded that Student was “making progress on all IEP goals without school based occupational therapy as a related service.” The evaluation stated in addition, that Student was “well-supported by ***” and Student’s current BIP and IEP. As such, OT services were not recommended.⁴⁶
47. The FIE, which incorporated older evaluation data, referred to three previous times in which Student’s adaptive behavior was evaluated in 2013, 2016, and 2019. The February 2023 assessment yielded results consistent with previous evaluations indicating Student’s adaptive behavior skills were extremely low.⁴⁷
48. The FIE also incorporated 2013, 2016, and 2019 evaluation results describing Student’s intellectual abilities. Student’s 2013 percentile ranking on the cognition section of the Developmental Profile-3 was ***/100⁴⁸. Student’s 2016 percentile rankings on five subsets of the Kaufman Assessment Battery for Children, 2nd Edition (KABC-II), were: ***. The 2019 FIE again attempted the KABC-II, but the evaluator was reportedly unable to obtain a result due to behavior/compliance issues. The 2019 evaluator reached conclusions in this

⁴⁵ J3 at 1, 18-19, 28-29.

⁴⁶ J3 at 14-28, 58, 60.

⁴⁷ J3 at 41-46.

⁴⁸ Percentile rankings identify the student’s position relative to other same-aged children on the same evaluation. A percentile ranking of *** indicates Student performed better on the evaluation than ***% of same-aged children who took the same test.

domain using other data (*see* J1 at 6), but this information was omitted from the 2023 evaluation.⁴⁹

49. The FIE assessed Student's intellectual abilities using the Wechsler Intelligence Scales for Children-V (WISC-V). Student's scaled and standard scores, and their corresponding classification descriptions from the test publisher (*e.g.*, low, extremely low) were reported, but Student's percentile rankings were not. The evaluation report did not analyze Student's WISC-V scores in the context of Student's historical testing in the same areas, nor in the context of the other evaluation data provided in the OT, communication, and social/emotional parts of the evaluation, or the May 2022 FBA.⁵⁰
50. A revision ARD committee meeting was held on March ***, 2023, so the committee could review the FIE. Based on the evaluation, the ARD committee determined that Student met eligibility criteria as a student with ***. "[Student] will now be a student with ***, and the district process will start to see if [Student] qualifies for the *** program."⁵¹
51. "****" refers to KISD's Alternative Cross-Curricular Education in a Structured Setting. Parent testified that the ***** team referred to this as "****." The teachers could not easily describe the *** program.⁵²
52. After the evaluation review ARD, Student's case manager initiated a Campus Student Support Request so an observation could be scheduled with a District administrator who could later make recommendations about a placement change.⁵³

⁴⁹ J3 at 35-40.

⁵⁰ Tr. 2 at 411-412.

⁵¹ J6 at 1-2.

⁵² Tr. 1 at 314-315, 244-249, Tr. 2 at 529-538.

⁵³ P8 at 2-3.

53. In the request form⁵⁴ for the observation, Student's case manager described the team's behavior concerns as follows:
- a. Social: initiating or responding in interactions with peers without prompting, difficulty maintaining reciprocal conversations, lacking interest in participation for partner/group activities, "does not speak in class."
 - b. Self-regulation: emotional outbursts after perceiving something (or a rule) has changed, class and teacher disruptions to persistently ask to use the restroom to avoid classroom participation.
 - c. Engagement and work completion: needs extra processing time (up to 10-15 seconds) to process and respond to the teacher or follow a directive, heavily prompt dependent to move on to the next step or question after completing a step in a problem or question, struggles to maintain Student's attention in class, teacher observations include Student ***. The teachers referred this last category as non-compliance with work assignments.
54. Student's case manager described academic concerns as provided by the in-class support teacher in several of Student's classes. This teacher indicated that Student would stop working if she turned her attention to helping other students and needed one to one support to keep moving through Student's work. She noted that Student "may understand part of the concepts in class," but that Student seemed unable to complete work without having someone sit with Student. Student did not advocate for ***self in class. This teacher also stated that since returning from winter break, Student had been *** more, which created more interference with Student's ability to engage in class. When overwhelmed by a task in class, Student would ***. Significantly, this feedback is behavioral and does not provide any information about ***'s academic knowledge, abilities, or skills in any specific curricular area.⁵⁵
55. In response to the question, "Is there anything else you wish the observer to know before scheduling an observation?" Student's case manager responded that

⁵⁴ P8 at 2.

⁵⁵ P8.

with the new FIE, Student now had the *** eligibility. She described the “overall consensus” as a conclusion that Student’s withdrawal and work avoidance would continue unless Student had “one-on-one instructions throughout the class period.” She stated, “We would like to have Student considered for a possible instructional setting change in the *** classroom.”⁵⁶

56. The case manager reported Parent’s input that since attending ***, Student “***” and had become more aggressive as the year progressed. “Parent feels this is due to the academic demands. [...] Parent is 100% on board with a change to a new instructional setting because Parent feels like Student will not be lashing out as much.”⁵⁷
57. On April ***, 2023, a District Low Incidence Disabilities Interventionist, observed Student in Student’s *** class, presumably for ***. As a result of her observation, the interventionist – who was not a member of Student’s ARD committee - recommended placing Student in the *** program for the 2023-2024 school year.⁵⁸
58. Student’s progress on Student’s 2022-23 school year IEP goal to use a calming strategy and refrain from an emotional outburst for 10 minutes was reported as mastered at 84% in the previous IEP before repeating the goal for *** grade. Over the next three quarterly reporting periods, Student’s progress was reported as 84%, 82%, and 100%. No other data or information was provided as to the circumstances or skills within the goal.⁵⁹
59. Student’s progress on Student’s 2022-23 school year IEP goal to comply with teacher directives was reported as not mastered at 50% in the previous IEP before repeating the goal for *** grade. Over the next three quarterly reporting periods, Student’s progress was reported as 38%, 53%, and 100%. No other data or information was provided as to circumstances or skills within the goal, or

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ J9, J10, J11, J12.

disability-related factors known to the teachers, such as Student's slow processing speed.⁶⁰

60. Student's progress on Student's 2022-23 school year IEP goal to engage with peers or teachers when spoken to was reported as not mastered at 0% in the previous IEP before including the goal again for *** grade. Over the next three quarterly reporting periods, Student's progress was reported as 61%, 76%, and 71%. No other data or information was provided as to circumstances or skills within the goal, or disability-related factors known to the teachers and speech therapist, such as Student's expressive, receptive, and pragmatic language impairments.⁶¹
61. Student's progress on Student's 2022-23 school year IEP goal to learn content vocabulary and concepts as demonstrated by work completion in Student's *** classes was reported as an average of four grades from different subjects on general education test/assignments per quarter: 79%, 50%, and 75%. Demonstrating comprehension of general education concepts through work completion at 75% or better does not reflect specially designed instruction. This performance target also set a higher passing standard for Student than for Student's non-disabled peers who satisfy passing at 70%.⁶²
62. Progress on Student's remaining goals for *** were each reported as an average of four grades on general education test/assignments for each subject per quarter.
 - a. ***
 - b. ***
 - c. ***

Though the information above was entered on Student's IEP progress reports, it does not constitute progress data on Student's IEP goals.⁶³

⁶⁰ J9, J10, J11, J12.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

May *, 2023 Review ARD/IEP: placement change to *****
*for *** grade, Fall semester, 2023-24 school year*

63. A review ARD was held on May ***, 2023, with the purpose of placing Student in the *** program for *** grade. Student's eligibility was identified in the categories of autism, speech impairment, and ***.⁶⁴
64. Student's present levels were updated to include the IQ scores from the February 2023 FIE. This included predictive, general statements from the test publisher that with Student's scores, Student "may" have difficulty keeping up with peers in the classroom; concentrating and attending to information presented to Student; and Student "may" experience challenges solving problems, using logic, and understanding complicated concepts. The narrative stated that Student had cognitive processing deficits in each of the five competency areas tested by the WISC-V without further explanation, Student was "at risk" for reading comprehension problems, Student "may" work more slowly than Student's peers and/or "may" feel frustrated or confused when material is presented too quickly.⁶⁵
65. Student's WISC-V scores were reported without analysis or any individualized information about how Student's cognitive profile impacted Student, individually, in Student's actual school experience.
66. Student's proposed academic IEP goals for *** grade⁶⁶ were in the areas of:
- a. Reading comprehension: ***;
 - b. Writing: ***

⁶⁴ J8 at 1. Tr. 2 at 529-538.

⁶⁵ J8 at 1-3.

⁶⁶ J8.

- c. Math: ***.

New goals were added for *** grade ***,⁶⁷ asking Student to learn:

- d. ***; and

- e. ***.

67. Student's team included only one functional IEP goal for *** grade: a carry-over, for the fourth year in a row, of the goal to use a calming strategy and refrain from emotional outbursts for 10 minutes.⁶⁸
68. The IEP proposed no *** grade goals or other instruction in the areas of social skills, task initiation/completion, or pragmatic communication skills.⁶⁹
69. Out of the *** for the 2023-24 school year, Student's projected *** grade schedule of services reflected the following ***⁷⁰:
- a. ***: general education with in-class support
 - b. ***: general education with in-class support
 - c. ***: ***, special education
 - d. ***: ***, special education
 - e. ***: ***, special education
 - f. ***: ***, special education
 - g. ***: ***, special education

⁶⁷ J8 at 12-14.

⁶⁸ J8 at 14.

⁶⁹ J8 at 14.

⁷⁰ J8 at 26-27.

h. ***

70. Student's projected 2023-24 school year (*** grade) schedule of services⁷¹ also included:

a. ***

b. ***

71. There is no evidence of ARD committee discussion of the relationship between specific findings in the new FIE, their potential alignment with Student's then-current IEP goals, accommodations, modified curriculum, schedule of services, or any other element of Student's 2022-23 (*** grade) IEP. Likewise, the record is devoid of descriptive information about how the *** program or the "Structured Learning Environment" identified on Student's proposed *** grade schedule of services differed from ***, "specialized pullout" or any other service delivery options that might have been available within KISD's continuum of services.

72. A parent input section was not included in the *** grade IEP. Parent agreed to the change of placement because Parent believed anything would be better for Student than maintaining Student's current placement and IEP. Parent distinguished between agreeing to get Student *out* of Student's current placement and believing the projected *** grade IEP and placement were appropriate for Student.⁷²

Withdrawal from the District and enrollment at ***

*** grade, 2023-24 school year

*** grade, 2024-25 school year

73. Parent notified the District via email on August ***, 2023, that Parent intended to withdraw Student from KISD and enroll Student at the *** for the 2023-2024 school year. Parent's notice included a brief description of the May ***, 2023, ARD committee meeting and Parent's disagreement with Student's removal from the general education setting with supplemental aids and services. The notice identified *** as Parent's intended unilateral

⁷¹ J8 at 26-27.

⁷² J8 at 35, Tr. 1 at 67-70; Tr. 2 at 330-331.

placement and advised that Parent would be seeking tuition reimbursement for Student's *** grade year. Parent's letter also noted Parent had left a phone message for the registrar at *** on August ***, 2023 and had spoken by phone with the KISD special education department the following day.⁷³

74. *** has provided Student with an individualized learning plan that resembles a public education IEP for both years Student has attended school there. ***'s Director of Curriculum and Instruction referred to these documents during testimony as "IEPs." For ease of discussion, the judge will refer to them as such.⁷⁴
75. ***'s Director of Curriculum and Instruction testified that content classes follow the Texas Essential Knowledge And Skills (TEKS). Students are placed according to the grade level at which they are accessing the curriculum, not according to their chronological age or public school grade level. In this way, small group classes can follow a measurable scope and sequence while students are accessing curriculum according to their individual present levels. The students are placed based on classroom assessments that tie back to TEKS and grade levels. *** conducts formative assessment in this area at the beginning, middle, and end of each school year.⁷⁵
76. Student's *** and *** grade *** IEPs contain baseline present level information of Student's functioning in the areas of language and communication; physical, health, motor and sensory; and emotional/behavioral/social skills and competencies. The information is presented in the form of rating scales/checklists for ease of comparison year-to-year and also includes anecdotal/narrative sections.⁷⁶
77. Student's *** and *** grade *** IEPs contain baseline present level information for Student's academic skills and competencies, as well as what Student

⁷³ P7; R7 at 81-87

⁷⁴ R:15 3-14 (*** grade), 21-32 (*** grade).

⁷⁵ Tr. 2 at 395-398, 441-445, 458.

⁷⁶ R:15 22-24, 21-32.

is working on, including TEKS and grade level, within each content area. The Developmental Reading Assessment (DRA) and Decoding Survey assessment data are available for reading. The information is presented in the form of rating scales/checklists for ease of comparison year-to-year and also includes anecdotal/narrative sections.⁷⁷

78. Student's *** and *** grade *** IEPs contain a section entitled "Targeted Academic Goals for the [current] School Year." These sections identify specific TEKS that Student will emphasize individually in each course.⁷⁸
79. Student's *** and *** grade *** IEPs contained an individualized BIP.⁷⁹
80. Student's *** grade *** IEP showed Student's present levels to be on a mixed ***/*** grade level across subject areas, and Student's targeted academic goals reflected TEKS-based learning targets on ***/*** grade level.⁸⁰
81. Student earned passing final grades, ranging from ***, in all of Student's *** grade classes at ***. Student earned passing semester grades, ranging from ***, in all of Student's *** grade classes at *** except one. Student's semester grade in ***.⁸¹
82. Student no longer needs significant time to decompress after school and does not engage in *** behavior generally.⁸²
83. Petitioner's enrollment contracts with *** show that the family was charged \$*** for tuition for the 2023-2024 school year and \$*** for tuition for the 2024-25 school year. Parent also testified that Parent

⁷⁷ R:15 22-24, 21-32.

⁷⁸ R15 at 9-10, 26-27.

⁷⁹ R15 at 10-11, 27. Tr. 2 at 387.

⁸⁰ R15 at 24-27.

⁸¹ R15 at 33-34.

⁸² Tr 2:346:11-347:8, 2:379:16-380:9.

has spent approximately \$*** on transportation expenses, \$*** on Student's lunches, and \$*** on Student's registration fee.⁸³

VI. DISCUSSION

A. DUTY TO PROVIDE A FAPE

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

The District is responsible for providing Student with specially designed, personalized instruction with sufficient support services to meet Student's unique needs, so Student receives 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. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

⁸³ P9 at 1-7, 10-13; Tr 2:341:11-351:23.

B. BURDEN OF PROOF

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

Petitioner's burden of proof in this case is twofold. First, Petitioner must prove that the District denied Student a FAPE by 1) failing to engage in IEP development that was appropriately responsive to Student's academic and functional progress trends as well as stakeholder input and concerns; thereby also 2) failing to offer Student a program reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Endrew F.*, 580 U.S. at 399; *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997). Next, to recover their requested remedies, Petitioner must prove that Parent's choice of *** was an appropriate unilateral placement for Student under the IDEA. 34 C.F.R. § 300.148.

C. FAPE

A judge in a special education case applies a four factor test to determine whether a school district's program meets IDEA requirements. Those factors are:

1. Whether the program is individualized on the basis of the student's assessment and performance;
2. Whether the program is administered in the least restrictive environment;

3. Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
4. Whether positive academic and non-academic benefits are demonstrated.

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

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

1. Individualized on the Basis of Assessment and Performance

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 and BIP is to consider Student's strengths, Student's parent's

concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1).

a. Individualization in 2021-22 (grade)**

Petitioner does not assert claims for alleged deficits in the District's 2021-22 school year (** grade) programming for Student. However, a close look at Student's special education supports, services, progress, and academic and nonacademic benefits from that school year provides a useful comparison with the following school year, for which Petitioner alleges KISD denied Student a FAPE.

Several things in Student's ** grade IEP point to appropriate individualization of Student's programming to meet Student's unique, disability-based educational needs in the most mainstream environment possible for Student. Student's IEP goals from that year, when paired with an accommodation for modified curriculum, suggest a student who is functioning academically behind Student's peers, but who is also appropriately challenged by curriculum modified to Student's level that tracks the TEKS, while placed in and making meaningful progress in the general education classroom. Notably, Student was served through different types of special education services in ** grade. That year, Student received behavior support services from the campus ** team, both as in-class support in the general education setting, and in a small group special education environment for social and emotional skills instruction. Student's academic program was similarly varied. ***** School placed Student in the general education setting working on modified TEKS with special education in-class support in that setting, as well as pullout services to the small group special

education environment to work on math and reading/language arts.

On the other hand, the sections of Student's IEP describing evaluation and state- and District assessments communicated a different message. The evidence showed that the District gave short shrift to the requirement and value of basing IEP planning on evaluation data that goes beyond confirming a student's eligibility. An evaluation that uses research-based, data-driven tools and methodologies to reveal the student's internal profile as a learner - especially when it highlights the ways in which the student's disability impacts them individually at school - can anchor individualized programming in a way that outlasts the student's changing grade levels or team members that change from year to year. Student's IEP and evaluation history did not accomplish this.

Student's state- and District assessment scores (from State of Texas Assessment of Academic Readiness (STAAR), Measure of Academic Progress (MAP) , and DRA testing) suggest Student was on a ***/*** grade level in reading, writing and math, and not even approaching passing standards for Student's *** grade (and later, *** grade) STAAR tests. This is a sharp departure from the image of a student with academic and behavioral skills and competencies that would allow Student to be placed in general education *** classes with no special education support. This information also raises questions about Student's progress with the level and types of support Student was receiving. Even so, Student's 2021-22 (*** grade) ARD committee concluded Student did not need a new evaluation, and they effectively check- marked Student's continuing eligibility status and left it at that.

Despite the mixed impressions given by this IEP, parent and teacher input about Student's present levels of performance suggest Student was making academic and social gains that were acceptable to Student's ARD committee. A meaningful

barometer as to how Student was doing in *** grade is the nature of expressed parental concerns. That year, Parent was concerned (related to ***) about Student ***. Parent was also wondering about the impact of modified curriculum on Student's future ***. Significantly, Student's emotional/behavioral experience, while complex, reflected a relative balance between school-related stressors, still-emerging coping skills and the impact on Student's ability to devote a proportionate amount of energy to both the school and non-school parts of Student's life.

The *** team also came up with a system for Student to do homework and other tasks that had to be completed outside of class during the school day, and with special education support. Student's *** grade team incorporated parent-provided information about Student's lack of independence with homework at home, rigid thinking about Parent's role as a support person, and reported tendency for dysregulation in this context, and they designed a way for Student to get Student's homework done that was responsive to Student's disability-based needs.

Finally, and perhaps most compelling, is the substance and tenor of the end-of-year parent and teacher input provided for the May 2022 FBA/BIP update. Both sets of adults highlighted social wins and small but significant gains in independence and academic engagement. There is no evidence to suggest that any of the adults on Student's team doubted Student's intellectual ability to engage with Student's modified curriculum or whether a majority general education placement was appropriate.

b. Individualization in 2022-23 (grade) academic services**

Importantly, the nature of Student's specialized pullout time changed upon arrival at *** (though Student's minutes did not). Student's November 2021 (** grade) IEP was intended to remain in place through the first quarter of ** grade. This naturally included the services Student received during Student's 90 minutes of daily specialized pullout services. At ***, per Student's IEP, Student split Student's 90 minutes roughly into thirds. Student received direct social skills instruction in ***, specialized math pullout, and specialized pullout for reading/language arts. However, when Student ***, with its fixed ***, ** scheduled Student's 90 daily special education minutes between the ***⁸⁴ social skills class and the special education ***.

This was a material change in Student's programming, as it removed the specialized pullout support for math and reading/language arts that Student's 2021-22 ARD committee had designed to dovetail with Student's placement in the general education setting with in-class support in those subjects. The evidence shows that in ** grade, Student was placed in the special education ***, but there is nothing in the record to suggest either of Student's teams (at *** or at ***) analyzed Student's math and English/language arts present levels - including writing and other non-reading elements of ELA – or planned to rearrange Student's specialized pullout support because they anticipated Student's needs would be different when Student ***. Nor does the record contain any evidence from which to infer that

Student was ready for less support in math and writing. Even if the ** grade *** was similar in content coverage to the ** grade reading/language arts pullout support, this change did not account for the missing math and writing

support that Student's IEP still required. Student's *** grade special education minutes still matched the *** grade IEP that remained in effect. The scheduling sleight of hand *within* the 90 minutes appears to be rooted in administrative convenience. Even assuming it was an oversight, the shift in Student's math and reading/language arts support did not relate to any changing needs on Student's part.

Similarly, by the time the *** grade team was working on Student's annual ARD, Student's lack of progress on Student's *** grade goals should have suggested that something wasn't working. However, *** repeated all three of Student's previous behavior goals in the next IEP and changed the wording of Student's writing goal (from "***"). Student's case manager indicated in the present levels section that she was repeating goals but increasing the rigor of the mastery criteria, but the evidence suggests otherwise. In fact, one goal reduced the percentage of successful trials required for mastery, while the other two added related services providers in support. These kinds of surface IEP changes were unlikely to produce meaningful progress - or, at best, trivial advancement - because the goals appeared to be carried forward without much discussion (at least in the record) of why Student needed to work on the same things two years in a row. *Juan P.*, 582 F.3d 576, 583.

⁸⁴ *** was the ***equivalent of*** in KISD ***.

c. Individualization in 2022-23 (grade) behavior support services**

Parent may not have emphasized (or detected) the reduction in Student's specialized academic support as a likely contributing factor in Student's decreasing ability to engage with Student's work, and Student's corresponding increased stress, withdrawal, and acting out in Student's classes. But Parent was intent on seeking help from the ** team regarding Student's behavior changes. Parent consistently attempted to generate ARD committee discussion about Student's increasingly extreme behaviors and their relationship to school throughout the 2022-23 school year. The District failed to respond.

Parent reported to teachers in August 2022, that Student was experiencing overwhelm at school and Student's after-school demeanor was changing. Parent expressed confusion about the homework demands at ** and attempted to explain Student's support needs and how ** had been handling work that had to be completed outside of class. Parent requested an ARD committee meeting in email exchanges with two different teachers. One or both teachers likely followed through on their promises to forward Parent's request to the special education department, because the special education secretary sent Parent an ARD invitation on September **, 2022. However, that invitation was for Student's annual ARD/IEP meeting scheduled for November **, 2022 – two months away. Parent, however, wanted a meeting early in the semester, as soon as Parent's concerns began to develop.

In October 2022, Parent reached out to Student's case manager about a perseverative loop that was developing over the “yes” and “yup” reminders. In this communication, Parent described a similar situation that had developed in a previous

school year and stated that Parent was hoping to avoid a repeat. In November 2022, Parent provided input for Student's annual ARD reporting that Student was ***, withdrawing from family, not sleeping well, and that Student's interest in learning and positive attitude towards school was waning.

The *** team was receiving Parent's input, but they were not responding to it. The record contains no evidence of a meeting, parent-teacher conference, or trial of a new or different approach before the November annual ARD. The team recorded the parent input into the November ***, 2022 IEP document but failed to address Parent's concerns with responsive action. The team did not meaningfully redevelop Student's behavior or academic goals. They did not attempt to add specialized academic pullout support back into Student's schedule of services. There is no evidence to suggest the team ever discussed a new evaluation, whether to learn more about what may be at work with Student, or parent or in-home training. Thus, Student's IEP was not individualized on the basis of Student's performance.

d. Use of evaluation to individualize programming

By the time the *** grade team put together Student's 2022-23 school year annual IEP, they had ample information about Student's functioning and performance across domains, as well as their difficulties serving Student, to suggest a need for a new evaluation. However, *** had just taken care of the requirement of a three-year reevaluation through the REED conducted the previous May. Declining to initiate new evaluation at Student's 2022-23 annual ARD would turn out to be a missed opportunity for *** to try to get ahead of a situation with a struggling ***-grader who was still relatively new to them. They would soon have another opportunity.

Parent reached out on December ***, 2022, in an email to the LSSP, which Parent prefaced with "So, I'm getting really worried about [Student]" Parent

proceeded to describe *** behaviors, refusal to leave the house, and Student's declining willingness to ***. This seemed to get the ***'s attention. The LSSP reached out to the campus diagnostician, who sent Parent a notice of proposed evaluation the same day.

In conducting an evaluation under the IDEA, a school district must assess the child in all areas of suspected disability, including Student's social, emotional, behavioral and communicative skills and needs. School evaluations must be comprehensive enough to identify all of a student's needs for services, not just those needs that are commonly linked to the student's eligibility or disability category. 34 C.F.R. § 300.304(c). For Student, whose behavior impedes Student's learning and, to a lesser extent, that of others, the District must also consider positive behavioral interventions and supports and other behavioral strategies when developing Student's IEP and BIP. 34 C.F.R.

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

A school district may not rely on a single measure or assessment as the sole criterion for determining an appropriate educational program; it must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, to determine the content of the child's IEP. This includes information that would help the child to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304 (b), (c).

Here, one problem was that the diagnostician seemed to focus more on a comment Parent made in Parent's email to the LSSP about the general education setting than the purpose and benefit of evaluation when a new educational need

comes up. Parent remarked that Student was “also not learning anything in school or doing Student’s work so it makes no sense to me to have Student in regular classes if Student’s not benefitting from it.” However, a lot of information about Student’s behavior, self-regulation, mood, independence and *** preceded Parent’s comment about “regular classes,” both in the December *** communications and throughout the semester and recent annual ARD process. The notice of evaluation characterized Parent’s reason for requesting an evaluation as because Student was “starting to show regression at home.” It identified the ARD committee’s reason as needing updated information for “suspected speech impairment, *** and occupational therapy. Notably, however, Student had already been identified as a student with a speech- language impairment and was receiving speech services in Student’s IEP.

The second problem was with the way the evaluation was initiated. There is no evidence to suggest Student’s ARD committee ever discussed it or contributed to the assessment plan. The record shows that the November ***, 2022 ARD committee accepted the fresh REED from the previous May and did not explore the need for a new evaluation - despite abundant information suggesting the team no longer had enough information about Student to individualize Student’s programming. Had the ARD committee mobilized for a conversation after Parent’s December communication with the LSSP, but before the diagnostician sent the notice to Parent, the multidisciplinary group might have helped the diagnostician shape the evaluation to produce meaningful information about Student’s unmet learning needs.

Similarly, there is no evidence to suggest ARD committee members were wondering if Student had ***. There was certainly discussion about Student’s

independence and ability to engage in Student's classes, but the overwhelming consensus was that Student's social and adaptive skills, perseveration and self-regulation skills, and withdrawal or being in Student's own world were in the way of Student's ability to absorb content or demonstrate Student's knowledge. The pre-ARD Google doc used by the teachers in November to consolidate their IEP input offers the only mention in the record of a possible placement change prior to Student's annual ARD. The math teacher commented, "Student needs an environment where Student can thrive," and the *** teacher added, "Possibly figuring out if gen ed is the best fit or if access is a better fit for Student." These comments are best interpreted as observations from general education teachers about an under-supported student trying to stay afloat in their classes. Significantly, these comments came from ***, for which in-class support wasn't added until the November ARD, and math, which was relying on Student's in-class support but lacking Student's former access to specialized math pullout as a supportive factor.

The evaluation team went to work on the narrow marching orders they had. The evaluations for suspected *** and OT needs occupied the bulk of the February 2023 FIE. Speech-language had a role, but not a prominent one (likely because the

speech-language therapist knew that Student was already eligible for services). The OT analysis concluded that Student was well-supported in Student's current program and making progress without OT support. This left Student's potential *** eligibility as the re- evaluation's only remaining purpose. The evaluator obtained scores on the WISC- V, which when combined with Student's adaptive behavior performance (this was consistently low throughout Student's testing history), yielded the criteria necessary to conclude Student had ***, and to add a special education eligibility for that category.

The IQ assessment reported scaled and standard scores, and the test publisher's corresponding category description of where Student fell on each subtest (*e.g.*, low, very low). It did not report percentiles, which could give the ARD committee or other readers a way to compare Student's results to two previous IQ tests that had concluded Student did not have ***. The evaluation provided anecdotal examples of what was asked of Student on each section (*e.g.*, Student "***"), but nothing that would help a classroom teacher adjust their delivery of instruction or expectations for work product. Otherwise, the only information provided with Student's scores was the test manufacturer's general description of the abilities tested in each subsection. Unable to describe from the information obtained what Student's scores said about Student, the evaluator wrote her conclusion using the nonspecific language about the test (Student "may" experience difficulties with problem-solving, "may" work more slowly than Student's peers," is "at risk" for reading comprehension problems, etc.).

In the following March, ***, 2023 evaluation review ARD committee meeting, the team accepted the evaluation results, added the *** eligibility and moved directly

to implications for placement. Per the deliberations, “Student will now be a student with ***, and the district process will start to see if [Student] qualifies for the *** program.”

As Student’s IEP was neither individualized on the basis of Student’s performance nor assessment data, the District failed to deliver this aspect of FAPE.

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 be based on students’ individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), non-public day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

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.

In a Goldilocks-type world of instructional arrangements, where there is a too-big, a too-small and a "just right" bowl of porridge or cozy bed, so too did Student experience three different placement relationships with the mainstream instructional environment. Least restrictive environment analysis is not just limited to the geographical, physical location of students with disabilities and their integration with and proximity to their peers. It is about where the student receives instruction, services, or the non-academic parts of the school experience; equally important is the extent to which Student is getting Student's functional, academic and social- emotional needs met.

a. 2022-23 (*) grade) placement**

*** grade at *** was the "just right" year for meeting Student's diverse, and sometimes competing, needs in the most mainstream environment possible for

Student, under Student's unique circumstances. Student had come up through *** school receiving Student's academics in the general education setting with Student's peers. *** placed Student in the general education classes *and* modified Student's curriculum. Student received in-class behavior and academic support, *and* pullout *** instruction, modified math support and modified reading/language arts support. That year, Student connected with Student's teachers and made a friend to kid around with in class. Student had fewer general education teachers with whom to form relationships and Student's case manager seemed capable of marshaling Student's different ARD committee members. On the record in this case, we do not know where Student's measurable academic growth occurred, nor how much, but we do know that Student seemed to be happy much of the time and Student's school-to-home stress balance seemed to be calibrated in a positive place.

Student's engagement in Student's *** grade academics required significant support, but teacher feedback did not question the benefits of Student spending most of Student's day in the general education setting. Student's *** grade teachers reported that Student was able to read independently for five minutes and then retell a story, participate in specials with Student's peers, and practice Student's greetings and responses in the general education environment.

b. 2023-24 (* grade) placement**

*** grade pushed Student out of Student's "just right" least restrictive environment and left Student in the mainstream *without* enough support. The evidence shows that while Student was likely experiencing typical *** grade culture shock in the larger, independence-oriented *** environment, Student was also disengaging academically. The changes in Student's pullout support

shifted the responsibility for keeping Student afloat in the general education setting completely to Student's general education and in-class support teachers. Student no longer had the opportunity to move between the general education classes and the pullout environment in a way that would facilitate meeting Student's needs for more direct support than an in-class support teacher could offer, including helping Student to complete Student's classwork during the school day and ensuring that the work Student was responsible for – in school and otherwise - was properly modified.

Had the *** team maintained the alignment of Student's 90 minutes of pullout to Student's academic needs as described by the IEP, Student may have eventually gained Student's footing in Student's general education class placements, or some of them. However, the record is silent on whether and to what extent the *** team may have considered maintaining or changing the plan as designed by ***, or if they were even aware of this early fault line in Student's schedule. Moreover, there is no evidence suggesting that Student's *** grade team ever discussed changing Student's schedule to shift more of Student's general education time to specialized pullout.

The lack of ARD committee responsiveness to Parent concerns as well as to teacher information about Student's declining engagement with Student's *** grade classes left

Student in general education classes with in-class support (only) for the entire 2022-23 school year. Thus, the District's placement decisions in the 2022-23 (***) school year did not align with Student's least restrictive environment, given Student's unique needs and individual circumstances.

c. 2023-24 (*) grade) projected placement**

*** maintained Student's 90 daily minutes of special education instructional time divided into two, 45-minute class periods focusing on *** and reading throughout the 2022-23 school year. This did not work as well for Student as the year before, when Student's 90 minutes included more time for academic support and less time for ***. But rather than designing Student's 2023-24 (***) grade) IEP to start by returning the missing specialized support time, the *** team adopted a placement scheme that would have allowed Student access to the general education environment and typical peers for only ***. In addition, Student's special education placement would change from specialized pullout classes meant to support the general education curriculum at a modified level to highly structured, self-contained classes offering curriculum through prerequisite skills.

The District justified this placement decision by Student's new *** eligibility. However, the ARD committee over-focused on the *** eligibility as the "key" that unlocks an *** placement – rather than what the student needs to learn and what support Student needs to learn it. The contents of Student's 2023-24 (***) grade) IEP looked more similar to the previous IEP than different. Student still had a reading comprehension goal, a math goal for ***, and a paragraph-level writing goal. *** content goals were added. Student's calming strategy/10 minutes without an emotional outburst goal was recycled for a third year, and the May 2023 ARD discontinued Student's only social skills goal, without replacement. The new schedule of services looked significantly different from its predecessor in that it provided that Student spend the majority of Student's day in self-contained special education settings with 90 minutes of general education time.

When *** designed Student's projected *** grade IEP, all the adults

acknowledged that Student was making no or de minimis academic progress in Student's current set-up, and the classroom teachers were all communicating similar messages about the disproportionate time Student required of their instructional time as compared to what they were able to dedicate to the rest of their students. However, they had not attempted different approaches or strategies in the general education environment despite many observations of Student's disengagement and inability to work independently. While Student had modified curriculum listed as an accommodation in Student's IEP, it is unclear whether the modifications that the general education and in- class support teachers were able to provide met Student's needs for learning and/or demonstration of what Student knew. Student's specialized pullout support in reading was no longer tied to Student's general education ELA class, and the same support in math had disappeared; this suggests that what *** had been doing to modify curriculum for Student was no longer happening at ***.

While there was reason to believe Student's heavy mainstream placement with the support Student had in place left Student too under-supported to meet Student's academic and functional learning needs, *** did not make an effort to introduce more support in the general education environment or to experiment with increased special education time in the specialized pullout environment to bolster, but not replace, Student's opportunities for learning alongside peers without disabilities. As a result, District placement decisions for the 2023-24 (***) school year erred in the too- restrictive direction and did not align with Student's least restrictive environment given Student's unique needs and individual circumstances.

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

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

As discussed above, the evidence showed Parent's consistent and overt attempts to bring Student's emotional/behavioral needs to Student's ARD committee, without success. When Parent was met with a long evaluation timetable and offered a placement change without other proposed solutions, Parent attended meetings and ultimately deferred to the professionals. Parent's motivation was to call Student's ARD committee to action and then Parent relied on KISD expertise when Parent provided Parent's consent to evaluate and signed in consensus after ARD/IEP meetings. Parent did not veto ARD committee action nor demand outcomes that went against the professionals' recommendations.

This case also demonstrates a considerable lack of coordination among the school professionals. The in-class support teacher could have been providing more

specialized observations of Student's academic needs than simply joining in with the general education teachers' comments about Student's inability to take steps on Student's own without an adult working 1-on-1 with Student. Student's *** case manager was tasked with gathering, consolidating, communicating, and entering the academic teachers' information into Student's IEP process and documents, but her role on Student's team was to oversee and deliver Student's behavior support services and *** instruction. Student had modified curriculum, but it was unclear who was making decisions about which aspects of the general curriculum were most important for Student or who was responsible for modifying materials and expectations. Most of the data available about Student's performance were generated by the general education teachers' grades and Student's performance on unmodified general curriculum benchmark activities. IEP progress reports contained grades, but no or little data about the skills Student's goals were targeting. Nobody at *** seemed to realize that Student's in-school modified work and expectations for completion should have yielded a homework set-up similar to what *** had been doing. Finally, administrative oversight of and support for the procedural requirements of the evaluation process was lacking, as demonstrated by the several times evaluation activities were proposed for Student without documented ARD committee discussion.

The lack of coordination among the professionals was also a factor impeding Parent's ability to participate meaningfully in Parent's child's IEP development. The District failed to deliver this aspect of FAPE.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P.*, 703 F.3d at 813-14. The evidence for the 2022-23 school year at *** showed regression in Student's behavior and engagement compared to Student's prior performance at ***. Student demonstrated flat or inconsistent progress on the skills and competencies expected by Student's IEP goals, to the extent this information was reported. There was substantial progress reporting that did not actually measure what Student's IEP said Student was supposed to be working on. This came in the form of general education grades, reflections of work completion expectations from general education teacher's gradebooks and District benchmark performance without an apparent connection to the modifications required by Student's IEP. Grades assigned by general education teachers were reported instead of IEP progress data.

In addition, as discussed at length above, during the 2022-23 school year, many of the adults around Student reported declines in Student's ***, connection and relationships with peers and teachers, Student's communicative output at home and at school, Student's mood, community and family engagement, and in Student's ***.

As such, Student experienced de minimis or regressive academic and non-academic impact during Student's 2022-23 school year (** grade) year in KISD.

D. REIMBURSEMENT FOR PRIVATE PLACEMENT

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private ***without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(10)(C)(ii); 34 C.F.R. § 300.148; *see also Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 at 369–71, 105 S.Ct. 1996; *Michael F.*, 118 F.3d at 248. To receive reimbursement, a disabled child's parents must prove that (1) an IEP calling for placement in a public school was inappropriate under IDEA, and (2) the private placement was proper under the Act. *Michael F.*, 118 F.3d at 248 (citations omitted).

1. Student's * grade IEP was inappropriate.**

As discussed above, the District failed to provide Student a FAPE during the 2022-23 (*** grade) school year. Because the IEP developed in the May ***, 2023, ARD meeting was the product of the deficiencies of the 2022-23 school year, Student's *** grade IEP was no more reasonably calculated to address Student's needs in light of Student's unique circumstances than its predecessor. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

2. * was an appropriate placement for the 2023-24 (*** grade) school year.**

A unilateral private placement does not need to meet state standards for public education programs to be "appropriate" for reimbursement purposes. 34 C.F.R.

§ 300.148(c). However, the private school needs to be “otherwise proper” under the IDEA. *Michael Z.*, 580 F.3d at 295. To establish that a private program is appropriate for tuition reimbursement purposes, parents must provide specific details concerning how the private program addresses the student’s unique needs. *John M. v. Brentwood Union Free School District*, 66 IDELR 129 (E.D.N.Y. 2015).

Petitioner has presented evidence that *** has a number of attributes that made it an appropriate placement for Student’s 2023-24 school year. First, though not required, the school organizes its courses around grade level TEKS, and places students in classes according to the grade level curriculum they are working on. This is an advantage for Student, both because the TEKS provide a clear rubric by which to measure Student’s acquisition of state-required content and skills, and also because, should Student return to public school, Student will come back with clear information about where Student is accessing state curriculum. This will greatly facilitate the development of a public school IEP if, or when, Student transitions back.

Next, *** provides an individualized learning plan and behavior intervention plan for Student that are designed to meet more than just Student’s academic needs. *** has a board certified behavior analyst on staff, who oversees the development and implementation of student BIPs. Student’s learning plan is developed and supported by Student’s teachers in collaboration with the school’s Director of Curriculum, Assessment and Instruction, who has public school teaching and evaluation expertise, and academic credentials in these areas. These features will also make for a smooth future transition back to public school, should this be the decision.

Finally, Student has demonstrated marked progress across domains in Student’s time at ***. In two years as a student there, Student has progressed

more than two years academically. Student's severe behaviors disappeared almost immediately upon enrollment and have not returned. *** also reports progress in Student's communication and social skills, and Parent reports that Student has friends and enjoys going to school.

Respondent argues that *** is inappropriate because it is more restrictive than KISD's *** program, in that it provides no opportunity for Student to receive instruction alongside non-disabled peers. In the context of the other substantial benefits that *** provides to Student, the Judge finds this argument unpersuasive. *See Warren G. v. Cumberland County Sch. Dist.*, 31 IDELR 27 (3d Cir. 1999) (An appropriate private placement is not disqualified because it is a more restrictive environment than that of the public placement); *Cleveland Heights-University Heights City Sch. Dist. v. Boss*, 28 IDELR 32 (6th Cir. 1998) (rejecting the district's contention that the private school was not appropriate because it did not meet the mainstreaming requirement of the IDEA) and *C.B. v. Special School District No. 1, Minneapolis, Minn.*, 56 IDELR 187 (8th Cir. 2011) (concluding that a Minnesota district could not avoid paying for a student's private placement in a school for children with Specific Learning Disabilities simply by pointing out that the school did not serve any general education students).

While at ***, Student has reengaged with, and made progress in, the general curriculum, and Student has made friends. Student's *** grade placement at ***, primarily in the general education setting with too little support, did not produce the same result. Student's projected *** grade placement change to the *** program with two general education ***, was not reasonably calculated to do so, either. Given the IDEA's emphasis on students having as mainstream an educational experience as possible, *** has better accomplished these aims in

Student's case than either of the two options at ***** School did or would have.

3. Reimbursement

If the private school placement after a FAPE denial is appropriate, judges “must consider all relevant factors, including the notice provided by the parents and the school district's opportunities for evaluating the child, in determining whether reimbursement for some or all of the cost of the child's private education is warranted.” *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303, 314–15 (5th Cir. 2017).

4. Notice

Respondent asserts that Petitioner should be denied an award of private school tuition because Parent did not notify the District that Parent was rejecting the *** placement at least 10 business days prior to withdrawing Student from KISD.⁸⁵ Parent provided Parent’s notice in a letter emailed to the District on August ***, 2023. Parent withdrew Student on the same day.

The cost of private school tuition reimbursement “may be reduced or denied” if parents do not inform the IEP team that they are rejecting the proposed placement and state their concerns and intent to enroll their child in private school at public expense. Parents must provide this notice either at the most recent ARD/IEP meeting, or at least 10 business days before removing the child from the public school. Judges may also reduce or deny reimbursement if they find the parent has acted “unreasonably.” 20 U.S.C. § 1412(a)(10)(C)(iii)(I) (bb); 34 C.F.R. § 300.148.

The relevant statutory provision, however, does not require a hearing officer to reduce an award under the conditions above. It merely provides that a court or hearing officer *may* reduce or deny the award on such grounds. *C.D. v Natick Pub. Sch. Dist.*, 78 IDELR 10 (D. Mass. 2020) (affirming the hearing officer’s reasoning

that in comparison to school failures that result in a denial of FAPE, a parent's administrative failure in missing a notice date should not necessarily cause a reduction or forfeit of reimbursement for educational services the school was supposed to provide). In *Natick*, the hearing officer also weighed other equitable factors, specifically, the general responsiveness of the district and the fact that the "Parents' hands were not entirely 'clean'" in that case (internal quotation marks added).

Here, Parent's notice timeline was not unreasonable under the circumstances. While Parent did not provide Parent's written notice to the District in the May ***, 2023, ARD meeting or at least 10 business days before withdrawing Student from KISD, Parent made good faith efforts to provide the required information as soon as practicable after Parent decided to send Student to ***. The first day of school for the 2023-24 school year was August ***, 2023. The week before, Parent left a phone message at the campus and spoke to the District special education office to let the District know of Parent's intentions. Parent's letter contained the appropriate information, and the District received it on the fourth school day of the new 2023- 24 school year.

⁸⁵ Respondent's Closing Brief (RCB) at 21-22.

Unlike the parents in *Natick*, Parent did not engage in the kinds of “unreasonable” parent behavior that has led courts to deny or reduce tuition reimbursement, such as refusing to attend ARD/IEP meetings or insist on fixed outcomes that ignore professional judgment. *See Blackmon*, 198 F.3d at 658; *White*, 343 F.3d at 380. To the extent Respondent asserts that Parent denied the District the opportunity to collaborate or address Parent’s concerns before enrolling Student at the ***, the Judge is not persuaded. The District had ample opportunity during the 2022-23 school year to address the concerns about Student’s behavior that Parent repeatedly brought to the table. Student’s case manager recorded parent information into the ARD documents, FIE materials and campus support request, but there was no action by the ARD committee until Student’s *** eligibility provided a way to move Student into another program.

Nothing prevented the District from inviting Parent to an ARD or other planning meeting after August ***, if KISD had wanted to try to come up with a better plan. Parent complied substantially and adequately with the notice requirement.

5. Responsibility for costs of the private placement.

Respondent asserts that Parent is not eligible for reimbursement because Student’s family collaborated on assembling the funding for Student’s tuition, and the payments to *** did not come out of Parent’s personal bank account. This misses the point of tuition reimbursement after a FAPE denial. A reimbursement of private school tuition under the IDEA is not an award of damages to compensate for harm the parent has to prove up; it is a reimbursement for services

that the District was supposed to provide but did not. Had KISD offered Student an appropriate IEP for the 2023-24 school year and Student remained enrolled there, the District would have funded and provided the educational services Student needed.

In this case, in the absence of an appropriate KISD program, Student received educational services from ***, which were billed to Petitioner and paid by family members. Petitioner's production of the enrollment contract and Student's status as a *** student is sufficient to establish that Student's 2023-24 educational services were funded, provided and paid. As the party responsible for Student's 2023-24 services, the District is not absolved of its responsibility to reimburse Parent simply because Parent has not produced a paid invoice or proof that the money came out of Parent's bank account. *cf. J.C. v. San Juan Unified School District*, 80 IDELR 261 (E.D. Cal. 2022) (the private school did not bill the parent for the services that were provided).

6. 2024-25 school year

KISD's responsibility for providing or funding Student's education ended when the inappropriate *** grade IEP expired. "To the extent tuition reimbursement is dependent on the failure to provide a FAPE, it may not extend to periods when no FAPE violation occurred." *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 799 (5th Cir. 2020). "Put differently, 'the right to private school reimbursement, once adjudicated, does not go on indefinitely, but only while the school district is noncompliant (or acknowledges its inability to comply) with its obligation to provide a 'free appropriate public education.'" *Id.* (quoting *Casey K. ex rel. Norman K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 400 F.3d 508 (7th Cir. 2005)).

While the District's responsibility for tuition reimbursement for the school year for which it designed an IEP that the parent correctly rejected as inappropriate (2023-24) makes sense, Respondent's argument for the District's right to attempt to design an IEP that might work is persuasive with respect to any school year after that. Under *O.W.*, the District has not denied Student a FAPE in the 2024-25 school year, because Student is not an enrolled KISD student, and even if not enrolled, Student's last public school IEP (for the prospective *** grade year at ***) would no longer apply. Student's second year away from the District is still a parental choice, but Petitioner can no longer claim that *** is a necessity because KISD is offering an inadequate program. On the contrary, the District has not offered, nor was it required to offer, an *** grade program (or beyond) to Student Under *O.W.*, a null set cannot be reimbursed.

Had Petitioner pleaded the need for an additional year or years of tuition as a compensatory matter (*i.e.*, to return Student to the trajectory Student would have been on if the District upheld its end of the bargain along the way), the analysis for 2024-25 tuition might be different. In any event, Petitioner did not plead a compensatory claim, so the Judge need not take it up here.

Petitioner has established that *** was an appropriate private school placement after KISD failed to offer Student a FAPE for the 2023-24 school year, and Petitioner is entitled to tuition reimbursement for that school year.

VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner met their burden of proving that the District failed to provide Student a FAPE during the 2022-23 (*** grade) school year, as Student's IEP

was not reasonably calculated to address Student's needs in light of Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

3. Petitioner met their burden of proving that the District failed to design an IEP for the 2023-24 (***) grade) school year that was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
4. Petitioner met their burden of proving that *** was an appropriate private placement for Student in *** grade, after a denial of FAPE in *** grade. *Michael Z.*, 580 F.3d at 295.

VIII. RELIEF AND ORDERS

The IDEA allows judges to grant such relief as they determine is appropriate in light of the purpose of the Act – which is to ensure children with disabilities receive a FAPE. *Burlington*, 471 U.S. at 369. The analysis above addresses FAPE for the 2022-23 and 2023-24 school years. However, Student has just completed a second successful school year at *** (2024-25), and *** is ahead.

Significant to the analysis of the appropriateness of Student's private placement are attributes of *** that will facilitate a successful transition back to public education, should Petitioner desire this in the future. As discussed above, the TEKS-based orientation, consistent measurement of where and how Student is accessing Student's curriculum, targeted attention to social-communication skills and self-regulation, and the use and monitoring of a BIP are not just program elements that suggest Student's educational needs can be met in the private school environment. These elements will articulate back to required components of a public

school IEP, thereby protecting critical information from getting lost and reducing the risk of a new team, on a new campus, overgeneralizing early impressions of a transitioning student they just met.

However, the Judge is also mindful that successful potential IEP development and future FAPE – should Petitioner desire to return to public school - will also hinge on current, quality evaluation. A weakness in the District’s responsiveness to Student’s changing needs in this case was missing opportunities to conduct meaningful, updated evaluation with the goal of *learning more about Student’s unique internal makeup of strengths and weaknesses* – and then to design Student’s educational services to align with Student’s profile as a learner. More robust evaluation for program development and less emphasis on evaluation to re-establish eligibility might have allowed KISD to better individualize and serve Student along the way.

As such, in addition to the relief described above and below, Petitioner is also entitled to a comprehensive Independent Educational Evaluation at public expense.

Given the broad discretion of the Judge in fashioning relief, the Judge makes the following orders:

1. Reimbursement for education expenses incurred by Parent

For the 2023-24 school year (** grade)

- **GRANTED:** *** tuition in the amount of \$***
- **DENIED:** expenses for lunches, fees, transportation (no expense records provided)

For the 2024-25 school year (** grade)

- **DENIED:** *** tuition and other educational expenses (no 2024-

25 KISD FAPE obligation)

2. Prospective private placement at District expense

- **DENIED:** for 2025-26 (** grade and beyond – prospective placement not permitted)

3. Independent Educational Evaluation

- **ORDERED:**

IEE provider criteria

The District shall deliver to Petitioner **no later than 5:00 p.m. on June 11, 2025**, a set of reasonable criteria for the selection of an independent evaluator or evaluators to conduct the following evaluations, including recommendations for the educational environment, at District expense:

- *Neuro-educational or neuropsychological evaluation* to include, but not limited to language, physical, sociological, emotional/behavioral, executive functioning, cognitive/intellectual, adaptive behavior, academics (educational/developmental performance).
- *Speech and language evaluation* to include, but not limited to pragmatic language, social skills.
- *Occupational therapy evaluation* to include, but not limited to sensory processing, activities of daily living/independence.
- *Counseling evaluation*
- *Assistive technology evaluation*

IEE provider selection

- Petitioner shall select a provider or providers who fit the reasonable criteria set by the District **no later than 5:00 p.m. on June 25, 2025**. Multiple independent evaluators may be used for the FIE.
- If Petitioner does not provide to the District the name of an evaluator or evaluators in any or all testing areas above by that time and day, the District shall select, according to its criteria, independent evaluators in all testing areas not selected by Petitioner **by July 14, 2025**.
- Petitioner and the District may extend the provider selection due dates by written, mutual agreement.

IEE completion

IEEs should be requested to be completed by **November 15, 2025**.

- If the IEEs ordered above are not completed or in progress by November 15, 2025, because Parents have not made Student available to the evaluators, the District is relieved of its responsibility to fund the IEEs.
- IEEs that are not complete, but are in progress on November 15, 2025, shall be considered timely and allowed to be completed in full per the evaluator's schedule.
- Petitioner and the District may extend the due date for the completed IEE report(s) by written, mutual agreement.

4. **Re-enrollment ARD committee meeting**

Should Petitioner elect to re-enroll Student in the District to begin attendance at a KISD school **during the 2025-26 school year**, or within **the first quarter of the Fall semester of the 2026-27 school year**, Petitioner is encouraged to notify the KISD Special Education Department, in writing, of their intent to re-enroll, at Petitioner's earliest convenience. Petitioner is encouraged to provide this notice to the District **at least 30 days before** the Student is expected to begin attending school in KISD.

Re-enrollment ARD committee meeting

- **Within 15 days of receipt** of Petitioner's written notice of Student's intent to re-enroll, the District shall convene an ARD committee meeting to review the IEEs and develop a new IEP (and BIP, if called for) for Student.
- If Petitioner provides the written notice during the summer of 2025 or the summer of 2026, the District shall convene the re-enrollment ARD committee meeting as soon as possible, but **no later than 5 school days after the school year begins** to ensure participation by all required ARD committee members.
- The District shall invite the independent evaluator(s) to the re-enrollment ARD committee meeting, and the meeting shall occur at a time when the evaluator(s) can participate, if the evaluator(s) agrees to participation. Participation of the independent evaluator shall be at District expense.

- The District shall invite representative(s) from the school Student is attending prior to Student's re-enrollment in KISD to attend the ARD committee meeting, or to otherwise collaborate with the KISD team to share Student's present levels, current support or interventions in place, and other information important for Student's educational planning or smooth transition to a KISD school.
- These ARD committee meeting provisions shall apply to facilitate Student's smooth transition back to public school and new IEP development individualized on the basis of assessment and performance, if Student re-enrolls in KISD **on or before September 15, 2026**. The District shall be relieved of these re-enrollment ARD committee meeting obligations *the earlier of*: 1) the conclusion of Student's re-enrollment ARD committee meeting, including multiple sessions or a single reconvened meeting after disagreement, if any, *or* 2) **on September 16, 2026**, if Student has not re-enrolled in KISD.

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

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

Signed May 28, 2025.

ALJ Signature:



Caroline Nelson

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).