

SOAH Docket No. 701-24-02646.IDEA
TEA Docket No. 040-SE-1023

**Before the
State Office of Administrative
Hearings**

—
**Student, by next friends Parents,
Petitioner
v.
Frisco Independent School District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

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

The Administrative Law Judge (Judge) concludes the District denied Student a FAPE and student did not make progress with the program as it was developed.

II. DUE PROCESS HEARING

The due process hearing was conducted May 6-7, 2025. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by Andrea Koch with the Shields Law Firm. Parents also attended the due process hearing.

Respondent was represented by Jennifer Carroll and Naomi Harper with Walsh Gallegos Kyle Robinson & Roalson P.C. Mark Huffman, in-house counsel for the District, was also present. ***, Executive Director of Specialized Learning Services, and ***, Managing Director of Early Childhood Special Education, Evaluation and Compliance, attended the hearing as party representatives for Respondent.

The parties offered 28 joint exhibits, which were all admitted. Petitioner disclosed 82 separate exhibits, withdrew 22 of the disclosed exhibits, and offered 19 exhibits, which were admitted over any objection. The remaining disclosed exhibits were not offered. Petitioner called as witnesses ***, school counselor; ***, special education teacher; Student's parent; ***, an expert in school psychology, psychology, behavior analysis, and crisis intervention;

and ***, an expert in special education and educational diagnostician.¹ Respondent disclosed 23 separate exhibits, withdrew five disclosed exhibits, and offered 16 exhibits, which were admitted over any objection. The remaining disclosed exhibits were not offered. Respondent called as witnesses ***, ***, ***, Assistant Principal; and ***, an expert in school psychology. Both parties filed written closing briefs in a timely manner. The Decision in this case is due June 30, 2025.

III. ISSUES

Petitioner raised the following IDEA issues from the 2021-22 and 2022-23 school years for decision in this case:

1. FAPE: Whether the District denied Student a FAPE during the relevant time period;
2. FAPE: Whether the District denied Student a FAPE by failing to develop, review, and revise an appropriate individualized education program (IEP);
3. Evaluation: Whether the District failed to timely evaluate Student in all areas of suspected disability and need;
4. Parental Participation: Whether the District denied Student's parents the right to meaningfully participate in the decision-making process for the education program;
5. Least restrictive environment: Whether the District failed to educate Student in the least restrictive environment;
6. FAPE: Whether the District denied Student a FAPE by failing to ensure student was educated in a safe and non-hostile environment; and

¹ The testimony of Student's *** grade teacher, ***, was introduced through deposition, because *** repeatedly avoided the parties' efforts to secure *** appearance at the hearing, including avoiding the service of a witness subpoena. Transcript (Tr.) at 329-330.

7. FAPE: Whether the District denied Student a FAPE by failing to provide necessary related services.

IV. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. An independent educational evaluation (IEE) in all areas of suspected disability and need;
2. An independent medical and psychiatric assessment;
3. An order requiring the District to facilitate participation of the IEE evaluators in the admission, review, and dismissal (ARD) committee meeting for Student;
4. Training by IEE evaluators of District staff working with Student on Student's individual needs;
5. A *** plan for Student;
6. After Student re-enrolls in the District, a plan for classroom video to be reviewed weekly;
7. A transportation plan for Student;
8. An order requiring the District to appoint a parent liaison for Student's parents;
9. An order requiring the District to create a daily communication log for Student;
10. An IEP facilitator for Student's ARD committee meetings;
11. An order requiring any communication related to child abuse or injury of Student at school to go through the school nurse;
12. Parent training up to \$1,500 per year for two years;
13. *** for Student for the next two summers at a cost up to \$***;
14. Respite services for Student's parents;
15. Applied Behavior Analysis services for Student;
16. Compensatory education services;

17. Staff training on bullying;
18. Staff training on ***;
19. Private placement at District expense; and
20. Any other appropriate relief.

V. RESPONDENT'S COUNTERCLAIM

Respondent filed a counterclaim to prove the appropriateness of its evaluation.

VI. FINDINGS OF FACT

1. Student is a *** year-old child who lives in the District. Student was first enrolled in the District in the 2019-20 school year for *** grade. Student continued in the District for the 2020-21, *** grade, and 2021-22, *** grade, school years. Student did not attend school in the District during either the 2022-23 or 2023-24 school years.²
2. Student is eligible for special education in the categories of autism, speech impairment, and specific learning disability for ***.³
3. On October ***, 2019, the District completed Student's full and individual initial evaluation (FIIE), establishing Student's eligibility for special education services. The FIIE included parent input; teacher input; review of records; vision and hearing screening; a home language survey; a parent communication checklist; a teacher communication checklist; an autism spectrum rating scale; and classroom observations. Formal assessments used in the FIIE tested for language fundamentals, pragmatic language; communication skills; reading skills; phonological processing; autism;

² Joint Stipulations of Fact (JSF) 1-3.

³ Joint Exhibit (JE) 8 at 1.

behavioral skills; executive function; educational achievement; and intelligence.⁴

4. The evaluators determined Student had a pragmatic language impairment that adversely impacted student's educational performance and that student met special education eligibility criteria for a speech impairment.⁵
5. Student was identified with deficits in social communication and social interactions and restrictive and repetitive patterns of behavior. Student had deficits in social and emotional reciprocity, coordinating verbal and non-verbal communication consistently, and developing and maintaining relationships. Student displayed repetitive motor movements, adherence to routines, excessive questioning, focus on interests to an unusual degree, and sensory sensitivity. The evaluators recommended the ARD committee consider Student for special education eligibility as a student with autism.⁶
6. The evaluators also indicated Student displayed deficits with inattention, hyperactivity, impulsivity, and executive functioning. The evaluators considered these deficits to be associated with autism and not characteristics of a behavioral disorder.⁷
7. The evaluators determined Student had deficits in *** and long-term retrieval and a normative weakness in ***. Student met the eligibility criteria for a specific learning disability in *** based upon a pattern of strengths and weaknesses.⁸
8. On November ***, 2019, the District convened an ARD committee meeting, during which Student's initial IEP was developed.⁹

⁴ JE 1.

⁵ JE 1 at 12.

⁶ JE 1 at 34.

⁷ JE 1 at 34.

⁸ JE 1 at 35, 38.

⁹ JSF 4.

2021-22 School Year, * Grade**

9. On September ***, 2021, the District obtained parental consent for an IEP amendment to add accelerated instruction to Student's program to address below standards results on the math and reading State of Texas Assessment of Academic Readiness (STAAR). *** hours of instruction in both math and reading were added to Student's program to be delivered in *** minute sessions twice a week.¹⁰
10. During the 2020-21 and 2021-22 school years, Student *** at school, struggled with *** conflict, and made *** statements in class. The school counselor met with Student on multiple occasions to help student address these issues and the counselor and teachers communicated with Student's parent frequently about these issues. The counselor recommended the family obtain outside counseling services for Student.¹¹
11. On October ***, 2021, as substantiated by a District investigation, Student was the victim of bullying at school, when another student *** and called student names. To address the finding of bullying, the District made a plan to keep Student and the bully apart, for Student to meet with the school counselor, and for the bully to be disciplined.¹²
12. On October ***, 2021, Student's ARD committee convened for student's annual meeting. The committee continued Student's special education eligibility in the areas of autism, speech impairment for pragmatic language, and specific learning disability in the area of ***.¹³
13. The ARD committee documented Student's present levels of academic achievement and functional performance (present levels) to include deficits in the ability to socialize and cope in stressful situations; deficits in the ability to

¹⁰ JE 5.

¹¹ Petitioner's Exhibit (PE) 17; PE 18; PE 21; PE 22; PE 24; PE 33; PE 35; PE 48; PE 52; Transcript (Tr.) at 38-39, 46-48, 185-187.

¹² JE 11; Respondent's Exhibit (RE) 2.

¹³ JE 8 at 1.

progress without supports; grade level performance in reading, writing, and math; grade level performance in science and social studies; a pragmatic language impairment impacting student's ability to interact appropriately with peers and adults; grade level functional and self-help skills; and deficits in social skills impacting student's ability to cope in stressful situations. Student was noted to be able to engage appropriately with peers and the therapist by taking turns during speech therapy sessions and to demonstrate appropriate conversational interactions with peers in the social skills group. Student continued to struggle with student's conversational and peer interaction skills in the general education setting. Student also continued to struggle with managing anxiety during stressful situations and work demands.¹⁴

14. The ARD committee noted Student *** on the *** and *** portions of the STAAR in May of 2021 and student was provided accelerated instruction to address these results.¹⁵
15. The ARD committee adopted a speech IEP goal related to Student managing stressful situations and work demands and a social skills IEP goal related to using coping strategies when a stressful situation made student anxious. Student's services included *** minutes per week of social emotional special education support in general education for both math and reading, *** minutes per week of social skills group instruction in the special education setting, and two direct *** minute speech therapy sessions per nine weeks.¹⁶
16. The ARD committee removed the academic goals for math, reading, and writing that were present in Student's 2020-21 school year IEP. The committee also removed the 450 minutes per week of special education academic support Student was receiving in general education for math, reading, and writing. According to District staff, Student benefitted from the academic special education supports provided in general education during the 2020-21 school year.¹⁷

¹⁴ JE 8 at 2-3; JE 7.

¹⁵ JE 8 at 4.

¹⁶ JE 8 at 6-7, 15.

¹⁷ JE 3 at 3-7, 11.

17. The ARD committee completed a review of existing evaluation data (REED), recommending formal cognitive and achievement assessments and informal data gathering in the areas of speech and language, emotional, and behavior. The committee determined the formal assessments would be completed by October ***, 2022. Parents consented to the proposed evaluations at the meeting.¹⁸
18. The school counselor was not in attendance at the ARD committee meeting.¹⁹
19. Following the October 2021 ARD committee meeting, Student continued to struggle with negative self-talk, inappropriate comments to peers, and *** in class. Student's special education teacher set up a meeting with Parents in February 2022 to discuss these behaviors. Following the meeting, Student increased the behavior of making inappropriate comments and student's teacher reached out to Parents on March ***, 2022 to set up an additional meeting.²⁰
20. During the fall of 2021, Student struggled to complete school work and *** multiple quizzes and tests. Parents reached out to the District for assistance with these academic struggles.²¹
21. On March ***, 2022, as student was leaving the classroom to take a break, Student stated that *** maybe student's classmates would listen to student. Student was ***.²²
22. On April ***, 2022, the District held a disciplinary hearing and determined Student's *** on March ***, 2022 violated the District's Student Code of Conduct and that Student would be placed in a disciplinary alternative education program for 45 school days. Prior to initiating the disciplinary placement, the District indicated Student's ARD committee would convene

¹⁸ JE 8 at 20; JE 9 at 9, 18.

¹⁹ Tr. at 54.

²⁰ PE 32; PE 33; PE 34; PE 37; PE 38; Tr. at 132, 137.

²¹ JE 32; Tr. at 206-207.

²² JE 13; PE 69 at 52; Respondent's Exhibit (RE) 5 at 1.

to determine whether the conduct was a manifestation of Student's disability.²³

23. On April ***, 2022, the District convened Student's ARD committee to conduct a manifestation determination review and review Student's IEP. The committee reviewed Student's present levels noting student's autism limits student's ability to socialize and cope in stressful situations; student had no deficits in reading or math; student had no deficits in science or social studies; student had made progress with social communication, but continued to have deficits in pragmatic language; student had no deficits with functional skills; and student's behavior, social, and emotional skills were noted to be typical except for student's social skills during stressful situations.²⁴
24. The ARD committee established that Student continued to be eligible for special education in the categories of autism, speech impairment for pragmatic language, and specific learning disability in ***. The committee noted in the meeting deliberations, that during the current school year, Student had been the victim of bullying; had ***; was recommended for *** by an outside provider; was *** in class; was making inappropriate comments to others; and was engaging in negative self-talk.²⁵
25. The ARD committee added an IEP goal to address *** in class and a behavior goal for responding appropriately to peers and adults. The accommodations of checking in and out with the case manager and positive reinforcement were added to student's services. The committee increased student's social emotional special education support to *** minutes per week in math and *** minutes per week in reading and increased student's social skills group instruction to *** minutes per week.²⁶
26. The ARD committee decided to add additional assessments to Student's reevaluation in the areas of formal speech and language; formal in-home

²³ JE 17.

²⁴ JE 18 1-2.

²⁵ JE 18 at 4-5.

²⁶ JE 18 at 4-5, 9.

parent training; formal emotional and behavior to include a counseling evaluation; and a functional behavior assessment. The committee determined the entire reevaluation would be completed by September ***, 2022. Parents consented to the additional evaluations at the meeting.²⁷

27. The ARD committee determined Student's conduct on March ***, 2022 was caused by or was directly and substantially related to student's disability. The committee rescinded the proposed disciplinary placement and maintained Student's placement on student's home campus.²⁸
28. The ARD committee created a safety plan for Student. The plan included ensuring Student did not have *** at home; checking Student for *** at school; sharing the plan with Student's teacher and building principals; social skills instruction from student's IEP; weekly visits with the school counselor; and connecting Student's family with community *** resources.²⁹
29. For the remainder of the 2021-22 school year, Student continued to regularly struggle with ***, *** in class, and making ***.³⁰
30. On May ***, 2022, the District convened Student's ARD committee to address student's *** results in *** and *** on the STAAR. The committee added 30 hours of accelerated instruction for Student in both math and science. Parents received notice of the meeting, but did not attend.³¹
31. Student's grades for the 2021-22 school year were ***.³²

²⁷ JE 18 at 5; JE 20; JE 21.

²⁸ JE 18 at 6.

²⁹ JE 19.

³⁰ PE 48; PE 52; Tr. at 222-224.

³¹ JE 24.

³² JE 26.

Events Following the 2021-22 School Year

32. From April ***, 2022 through September ***, 2023, Student received private counseling from *** at Parents' expense of ***.³³
33. On August ***, 2022, Parents informed the District that Student was withdrawing from the District.³⁴
34. For the 2022-23 school year, Student attended ***, an on- line program. No evidence was presented related to Student's academic work while attending this program or about the program curriculum.³⁵
35. From October 2022 to December 2022, *** provided Student tutoring in math and reading at Parents' expense of ***. *** provided Student tutoring from February 2023 through May 2023 at Parent's expense of ***. Student has continued to receive tutoring from *** at an additional parental expense of ***.³⁶
36. While student was not attending school in the District, Parents signed Student up for *** for physical activity and socialization and *** for peer interactions.³⁷
37. On October ***, 2022, *** completed an evaluation of Student. She conducted an interview with Parents, review of documents from the District, social responsive scale by Parents and a teacher, and sensory profile. The formal assessments used in Her evaluation tested Student in the areas of anxiety, adaptive behavior, autism, social language development, problem-solving, and neuro-psychological.³⁸

³³ PE 76; Tr. at 227-230.

³⁴ RE 9.

³⁵ Tr. at 235.

³⁶ Tr. 232-236.

³⁷ PE 80; PE 81; Tr. at 247-249, 253-254.

³⁸ PE 59.

38. *** determined Student's pragmatic language impairment inhibited student's ability to understand and take into account others' points of view; student experienced symptoms of anxiety, including thought intrusion, ***, excessive checking, repetitive actions, worries about wrong doings; student's conceptual, social, and practical adaptive behavior were ***; student had deficits in noticing visual cues; student had a deficit in expressing the reciprocity necessary for building friendships; student had significant difficulty carrying out critical, logical thinking; student's thinking was rigid and inflexible; and student's social responses were odd, restrictive in range, and inappropriate to the context. She concluded Student had verbal and nonverbal deficits in social communication, which negatively impact student's reciprocal social communication; and student had a pattern of developmental differences in the areas of language, social relating, and emotional responding consistent with autism.³⁹
39. *** diagnosed Student with autism, social pragmatic communication disorder, sensory integration dysfunction, and generalized anxiety disorder. She recommended continued counseling to teach Student self-regulation and mindfulness strategies to cope with student's impulsiveness and anxiety; parental training to assist with handling Student's ***; weekly social skills groups at school; provision of a quiet location Student can retreat to process a difficult situation; participating in sensory integration activities; teaching peer interaction skills; using schedules and visual supports; teaching self-management strategies; and using behavior management strategies related to addressing the function of the behavior.⁴⁰
40. *** concluded the District's 2021-22 school year IEP for Student was not appropriate because it was not based upon the FIIE; failed to adequately address student's behavior and socialization needs; failed to include special education counseling; did not contain any academic goals; was not developed with the input of an occupational therapist; did not contain measurable goals;

³⁹ PE 59 at 3, 6, 9, 10, 13.

⁴⁰ JE 59 at 16-19.

was not based upon data gathering; and did not contain a behavior intervention plan.⁴¹

41. Parents paid *** for her evaluation and testified her evaluation satisfied their request for an IEE.⁴²
42. Following her evaluation, *** began providing counseling and therapy for Student.⁴³
43. *** reviewed Student's educational records from the District prior to testifying at the hearing. Based upon her review, she concluded the District failed to timely evaluate and address Student's documented classroom behavior; failed to address Student's documented academic needs; did not address student's emotional struggles with negative self-talk and ***; did not include necessary special education counseling; failed to provide for generalization of social skills in the general education setting; and did not educate Student in a safe and non-hostile educational environment.⁴⁴

VII. DISCUSSION

A. DUTY TO PROVIDE A FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C. § 1400(d). The District has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), .201; Tex. Educ. Code § 29.001.

⁴¹ Tr. at 300-304.

⁴² PE 77; Tr. at 240, 254.

⁴³ Tr. at 298.

⁴⁴ Tr. at 348-349, 353-354, 358-359.

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

B. BURDEN OF PROOF

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

C. FAPE AND APPROPRIATE PROGRAM

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

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

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

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

1. Individualized on the Basis of Assessment and Performance

Petitioner contends the District failed to timely develop and revise Student's program to address student's identified needs. In particular, Petitioner takes issue with the goals and services in the October 2021 IEP and the District's response to events during the 2021-22 school year. The District's obligation when developing Student's IEP was to consider student's strengths, student's parent's concerns for enhancing student's education, results of the most recent evaluation data, and student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description

of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, .320, .323(a).

a) Autism and Academic Services in October 2021 IEP

The District's 2019 evaluation identified Student with autism, a pragmatic language impairment, and a specific learning disability in ***. Student had deficits in social communication and social interactions, social and emotional reciprocity, coordinating verbal and non-verbal communication consistently, and developing and maintaining relationships. Associated with student's autism, Student had deficits with inattention, hyperactivity, impulsivity, and executive functioning. Student also displayed repetitive motor movements, adherence to routines, excessive questioning, focus on interests to an unusual degree, and sensory sensitivity.

Taken together, the deficits associated with Student's autism can have a significant impact on student's functioning in an educational setting. However, as *** testified, the District's October 2021 IEP did not reflect or address these identified deficits. The IEP only contained two goals, both of which related to coping appropriately with stressful situations. The present level statements indicate that, as a result of student's pragmatic speech impairment and autism, Student struggled

with interacting appropriately with peers, handling anxiety from work demands, and making progress without supports. Yet, in October of 2021, the District developed an IEP that reduced the in-class special education support from 450 minutes per week to just 60 minutes per week. Moreover, the IEP contained no goals related to student's inappropriate peer interactions in a classroom setting, student's inattention and executive functioning deficits, or student's adherence to routines and excessive questioning. Absent goals in these areas or assignment of Student to a program serving students with autism, it is unclear what, if any, services were provided by the District staff providing the 60 minutes per week of in-class support.

The District did continue to provide weekly social skills instruction. However, the IEP reflects that Student was unable to generalize to a classroom setting the skills practiced during these weekly sessions. Inexplicably, the District did not propose goals or services related to Student generalizing the social skills in a classroom setting.

Student is identified with a specific learning disability in *** and student failed to meet standards *** on the STAAR. Yet, the District developed an IEP entirely devoid of services and goals related to *** and even indicated in the present levels that student's *** skills were on grade level. Instead of addressing student's specific learning disability, the District removed all of Student's academic support, which they had indicated was helping Student make progress. Almost immediately after the academic services were removed, Student began to struggle academically. When Parent reported these struggles, the District did nothing to restore the needed academic services.

b) Student's Behavior

For Student, whose behavior impeded student's learning and that of others, the District was required to consider positive behavioral interventions and supports and other behavioral strategies when developing student's IEP and behavior intervention plan. 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). Throughout the relevant time period, Student made regular trips to see the counselor, made multiple ***, struggled with peer conflict, and made *** in class. A student who regularly visits the counselor and repeatedly makes *** most certainly is engaging in behavior that is interfering with student's learning. *Id.* Both *** and *** concluded Student's behavior was interfering with student's learning and the District failed to adequately address this issue. Despite Student's obvious and documented struggle with student's emotional well-being, the District failed to timely consider the related service of counseling or to add goals related to counseling and Student's emotional well-being.

Student also regularly *** in class. This behavior became so prominent that the District set up multiple meetings with Parents. Yet, the District never developed a behavior intervention plan and waited until April 2022 to even adopt goals related to Student's behavior. Again, none of the behaviors should have been a surprise to the District. Student has autism and all of the behaviors student displayed during the 2021-22 school year were identified in the District's evaluation. Even in April 2022, following Student's *** and the meetings with Parents initiated by District staff, the present level statements

developed by the District indicate student's behavior, social, and emotional skills were typical except for student's social skills during stressful situations. The evidence clearly shows this statement to be inaccurate.

While the District was not required to develop the best possible IEP for Student, the District was nevertheless obligated to 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). Here, the District failed to meet this obligation when it developed an IEP for Student for the 2021-22 school year that did not address student's autism-related needs, student's academic needs, and student's behavior. Not surprisingly, Student struggled with the inadequate IEP.

c) IEP for the 2022-23 School Year

Petitioner included the 2022-23 school year as part of the relevant time period for this case. Student, however, did not attend school in the District during this school year. Thus, the Judge must separately determine whether the proposed IEP for this time period offered Student a FAPE and was reasonably calculated to provide Student an educational benefit. *Spring Branch Indep. Sch. Dist. v. O.W., by next friend Hannah W.*, 961 F.3d 781, 789 (5th Cir. 2020); *Endrew F.*, 580 U.S. at 403.

At the ARD committee meeting in April 2022, the District did make changes to Student's IEP and program that would carry into the 2022-23 school year. The

committee started by noting Student had been the victim of bullying; had made ***; was recommended for *** by an outside provider; was *** in class; was making inappropriate comments to others; and was engaging in negative self-talk. The committee added two behavior IEP goals, increased student's in-class support to *** minutes per week and student's social skills instruction to *** minutes per week. However, the committee again failed to address Student's specific learning disability in *** through IEP goals or restoration of the academic supports provided in prior school years. The committee also failed to address student's emotional well-being or add counseling as a related service, or to develop a program that fully recognized the significant needs related to Student's autism. The evidence demonstrated, for the remainder of the 2021-22 school year, the changes made at this ARD committee meeting did not lead to significant improvement for Student. Therefore, the Judge concludes the District's proposed IEP for the 2022-23 school year was not designed to provide meaningful educational benefit. *V.P.*, 582 F.3d at 583.

2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with non-disabled peers to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This

provision is known as the “least restrictive environment requirement.” 34 C.F.R. § 300.114(a)(2)(i), (ii).

In the complaint, Petitioner alleged the District failed to educate Student in student’s least restrictive environment. To evaluate this claim, the Judge must consider:

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).

Here, during the 2020-21 school year, Student was fairly successfully educated in general education classes with special education support for academics and pull outs for speech and social skills. On the other hand, Student struggled in the general education setting during the 2021-22 school year. However, as detailed above, student’s difficulties were attributable to the District withdrawing in-class special education support for academics, discontinuing academic goals, and neglecting Student’s emotional well-being and autism-related needs. In other words, the District appropriately placed Student in the general education setting but failed to provide the supports necessary for student to succeed in student’s least restrictive environment.

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

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

Here, Parents expressed concerns about Student's academic performance and emotional well-being during the relevant time period. The record reflects the District at times minimized parental concerns, but did reach out to Parents to address some of the behaviors that arose. The District did also ensure that Parents participated in ARD committee meetings and had an opportunity to express their concerns. Thus, while the District did not always address Parents' concerns, the record does not

support a conclusion that the District acted in bad faith to exclude Parents or refused entirely to listen to them. *Id.*

Curiously, the District did not include the counselor in the October 2021 ARD meeting or solicit her input on Student's program until April 2022. The evidence showed Student regularly went to her office for support during both the 2020-21 and 2021-22 school years, she documented student's ***, and she was in regular communication with Parents. A District staff member having this much involvement in a student's program surely is a key stakeholder that should be consulted in the development of services and invited to all ARD committee meetings.

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. Student's progress must be evaluated in terms of the appropriateness for student's particular circumstances. *Endrew F.*, 580 U.S. at 403. Student's particular circumstances include identification under autism, speech impairment, and specific learning disability. As detailed above, during the relevant time period, the District failed to adequately address the limitations associated with student's autism and entirely neglected student's learning disability. As a result, during the 2021-22 school year, Student regularly made ***; struggled with peer conflict; regularly *** in class; consistently made ***;

and frequently engaged in negative self-talk. Taken together, all of these struggles are evidence Student did not receive non-academic benefit from student's program. Student did pass all of student's classes during the 2021-22 school year. However, student's significant emotional and behavioral struggles and the District's failure to assure progress appropriate to student's unique circumstances, outweigh the fact student passed student's classes. As such, the Judge concludes Student did not benefit from student's program. *R.P.*, 703 F.3d at 813-14.

5. Appropriate Program Conclusion

For both the 2021-22 and 2022-23 school years, the District failed to develop a program for Student that was reasonably calculated to provide student educational benefit based upon student's unique needs. *Endrew F.*, 580 U.S. at 399, 403. Student's IEP and program were not developed using the District's own evaluation. The District failed to include key stakeholders from the District in the development of Student's program, and student did not receive the requisite benefit. A review of the overall educational program shows the District denied Student a FAPE and student did not make progress with the program as it was developed. *Michael F.*, 118 F.3d at 253.

D. BULLYING AS A DENIAL OF FAPE

A school district's failure to stop bullying may constitute a denial of a FAPE. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194 (3d Cir. 2004); *Dear Colleague Letter*, 113 LRP 33753 (OSERS Aug. 20, 2013). Bullying means a single significant act or a pattern of acts by one or more students directed at another student that exploits an

imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct. Conduct is bullying if it has the effect of or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property. Bullying must be sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student, materially and substantially disrupts the educational process, or infringes the rights of the victim at school. Tex. Educ. Code § 37.0832.

Here, both parties agree Student was the victim of bullying on October ***, 2021. Respondent contends this was an isolated incident that was properly addressed and remedied by the District. Petitioner, on the other hand, alleges the Student was repeatedly victimized by bullying and the District allowed Student to be subjected to a hostile educational environment, resulting in a denial of a FAPE. Bullying may lead to a denial of a FAPE if school personnel were deliberately indifferent, or failed to take reasonable steps, to prevent bullying that adversely affects or results in the regression of educational benefit or substantially restricts the student with a disability from accessing educational opportunities. *T.K. and S.K. ex rel K.K. v. New York City Dept. of Educ.*, 779 F. Supp. 2d 289, 316 (S.D. N.Y. 2011). The bullying need not be outrageous, but sufficiently severe, persistent, or pervasive to create a hostile environment for the student with a disability. Petitioner must show the bullying is likely to impact a student's opportunity for an appropriate education. *Id.* at 317.

Here, the evidence demonstrated the District was not deliberately indifferent to Student's safety. Rather, the District took prompt and reasonable steps to investigate the October 2021 bullying allegation. When the District substantiated the allegation, it took reasonable steps to separate Student from the bully, discipline the bully, and provide counseling for Student. Petitioner claims Student was subjected to ongoing pervasive and persistent bullying, and not just the one incident substantiated by the District. However, Petitioner failed to present evidence to substantiate the claim of ongoing persistent bullying. Additionally, Petitioner presented no evidence indicating Student's educational opportunities were impacted by bullying at school. Petitioner failed to show Student was subject to a hostile environment from severe, persistent, or pervasive bullying. *Id.* Petitioner failed to show Student was denied a FAPE as the result of any alleged bullying. *P.S.*, 381 F.3d at 194.

E. PROCEDURAL REQUIREMENTS AND APPROPRIATE EVALUATION

Liability for a procedural violation only arises if the procedural deficiency: (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or (iii) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2)(i)-(iii); *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003). Here, in addition to the FAPE claims, Petitioner argues that the District committed a

procedural violation of the IDEA by failing to timely and comprehensively evaluate Student. Respondent, on the other hand, filed a counterclaim to prove the appropriateness of the District's evaluation. The specific dispute is whether the District failed to timely evaluate Student's emotional needs during the 2021-22 school year.

The IDEA requires a school district to conduct a reevaluation of a student with a disability when it determines the student's educational needs warrant such a reevaluation. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1). A school district must also conduct a reevaluation at least once every three years, unless the school district and the student's parent agree it is unnecessary. 34 C.F.R. § 300.303(b)(2). In this case, the District conducted Student's initial FIIE in the fall of 2019, making a mandated reevaluation not due until the fall of 2022. However, Petitioner argues Student's educational needs warranted evaluations during the 2021-22 school year.

The record reflects that during the relevant time period, Student regularly visited the counselor because of emotional struggles in class, and the counselor recommended the family seek private counseling services for Student. Also, during the April 2022 ARD committee meeting, the District noted that during the 2021-22 school year, Student had been the victim of bullying, had made ***, was recommended for ***, and was engaging in negative self-talk.

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

Both *** and *** determined, after reviewing Student’s records from the 2021-22 school year, that the District did not timely evaluate Student’s emotional and behavioral needs. The evidence demonstrated, throughout the 2021- 22 school year, Student’s emotional struggles were interfering with student’s learning and were evidence student’s educational needs warranted an evaluation prior to fall of 2022. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1). The District failed to timely meet its obligation to evaluate student’s social and emotional status. 34 C.F.R. § 300.304(c)(4). Despite the fact that Student was regularly visiting the campus counselor and the District recommended private counseling for Student, the District waited until April of 2022 to even propose a counseling evaluation. Again, the District failed to timely conduct this related service evaluation. 34 C.F.R. § 300.304(c)(5). The Judge concludes the District’s failure to timely evaluate Student’s social and emotional needs impeded Student’s right to a FAPE and resulted in a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2)(i)-(iii).

VIII. CONCLUSIONS OF LAW

1. The burden of proof is on Petitioner as the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District failed to provide Student a FAPE during the relevant time period, and student's IEPs were not reasonably calculated to address student's needs in light of student's unique circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE- 1*, 580 U.S. 386, 403 (2017); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997).
3. Petitioner did not meet their burden to show Student was denied a FAPE as the result of bullying. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194 (3d Cir. 2004).
4. Petitioner met the burden of proof to show Respondent failed to timely assess Student in all areas of suspected disability and need and that the procedural violation resulted in a deprivation of educational benefits. 20 U.S.C. § 1414(b)(3)(B); 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2)(i)-(iii); 34 C.F.R. § 300.304(c)(4), (5).

IX. RELIEF AND ORDERS

Judges in special education proceedings have broad discretion in fashioning relief under the IDEA. Relief must be appropriate and further the purpose of the IDEA to provide a student with a FAPE. *School Comm. of Town of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359, 369 (1985). In this case, Petitioner requested 20 separate items of relief. These items can be divided into 7 categories: private placement at District expense; compensatory education services; evaluations; program changes; communication plans; parent training; and staff training.

A. PRIVATE PLACEMENT

Petitioner is requesting reimbursement related to Student's placement at *** and for private services from *** and ***. Petitioner must meet a two-part test in order to secure reimbursement from the District for these private services. First, Petitioner must prove the District's proposed program was not appropriate under the IDEA. Second, Petitioner must prove private placement is appropriate. *Burlington*, 471 U.S. at 370; *Florence Cnty. v. Carter*, 510 U.S. 7 (1993). Here, Petitioner did meet the burden of showing Respondent denied Student a FAPE during the relevant time period. However, the Judge is unable to determine whether *** was an appropriate placement for Student. Petitioner presented no evidence related to the curriculum of the program or Student's specific work while attending. Similarly, Petitioner did not present evidence about the specific education- related components of *** or *** and what specifically Student accomplished in these programs. Since Petitioner did not show the appropriateness of the private services, the Judge, therefore, DENIES reimbursement for ***, ***, and ***.

B. COMPENSATORY EDUCATION SERVICES

Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a

student. *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005) (quoting *G. ex rel. R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 309 (4th Cir. 2003)). The ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid*, 401 F.3d at 524.

Here, as a result of the District's inadequate IEP and program during the 2021-22 school year, Student struggled academically; ***, *** in class; made inappropriate comments to others; and engaged in negative self- talk.

All of student's struggles inhibited Student from benefitting from student's education. As *** pointed out, Student's struggles are likely attributable, at least in part, to the District removing all of the academic goals and services in October of 2021. To remedy the District's failure to meet Student's academic needs, Parents obtained academic tutoring for Student from *** and ***. The tutoring services obtained by Parents were necessary to remedy an educational deficit created by the District's failure to provide a FAPE to Student during the 2021- 22 school year. *Reid*, 401 F.3d at 523. Therefore, the District is required to reimburse Parents for the tutoring provided to Student during the 2022-23 school year. Since the relevant time period for this case does not extend beyond the 2022-23 school year, the Judge declines to order reimbursement for tutoring services provided after this time period.

Also during the 2021-22 school year, the District neglected Student's emotional well-being. Student was making threats of self-harm and regularly visiting the counselor, but the District failed to add services to student's program. Instead, Parents were again left to obtain private counseling services. To remedy the failure to address Student's emotional well-being during the 2021-22 school year, the District is required to reimburse the counseling services provided by *** during the 2022-23 school year. *Id.* Again, the Judge declines to go beyond the relevant time period for compensatory reimbursements.

C. INDEPENDENT EDUCATION EVALUATION REIMBURSEMENT

Petitioner is seeking reimbursement for *** evaluation. In fall of 2022, she conducted a full reevaluation of Student. However, the evaluation violation the Judge determined in this case specifically related to the District's failure to evaluate Student's social and emotional needs and student's need for special education counseling. By the time *** had conducted her evaluation, *** had already begun providing Student counseling and the Judge is ordering reimbursement for these compensatory counseling services. Since *** evaluation was not specifically associated with a denial of FAPE in this case, the Judge declines to order reimbursement for it.

D. CHANGES TO STUDENT'S PROGRAM

The IDEA's central mechanism for remedying perceived harms is for parents to seek changes to a student's program. *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 483 (2d Cir. 2002). Here, in the complaint, Parents requested multiple changes to the District's program for Student. Having concluded the District's 2021-22 and 2022-23 IEPs did not adequately address Student's individual needs, the Judge agrees with Parents that changes to Student's program are necessary before student can be successful in the District again. However, the changes requested by Parents are based upon, at least in part, a now almost three year old evaluation done by *** and at hearing, she did not give detailed testimony related to student's current program requirements. Because children's needs have the potential of changing significantly over time, the IDEA requires updated evaluations every three years. 34 C.F.R. § 300.303(b)(2). The Judge, therefore, is reluctant to order changes to Student's program that may now be based upon out of date evaluation data.

A judge in a special education proceeding does have the authority to grant all relief deemed necessary to ensure the student receives the requisite educational benefit denied by the school district's failure to comply with the IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991); *Burlington*, 471 U.S. at 369. In this case, the Judge concludes it is necessary for the provision of FAPE to Student moving forward for the District to propose a comprehensive reevaluation of Student to facilitate student's potential reenrollment under a new proposed, revised IEP. *Id.* The Judge is requiring the District to convene an ARD committee meeting for this purpose.

As an evaluation and educational professional who has continued to work with Student, *** has valuable information about Student's current functioning and abilities. As such, the District is required to invite her to the reevaluation planning ARD committee meeting. However, the Judge cannot require Parents or *** to participate in the meeting and the orders reflect this limitation.

E. OTHER REQUESTED REMEDIES

Petitioner requested other remedies including a *** plan, weekly classroom video review, a transportation plan, appointment of a parent liaison, a daily communication log, an IEP facilitator, reports of *** to go through the school nurse, parent training, therapeutic day camp, respite services, applied behavior analysis services, and staff training. Petitioner presented little, to no, evidence on these remedies and, more importantly, did not show how they were necessary to remedy a denial of FAPE or the provision of FAPE going forward. Therefore, the Judge DENIES Petitioner's request for these remedies.

Based upon the foregoing findings of fact and conclusions of law, it is **ORDERED** that the District will reimburse Parents *** for tutoring services;

It is further **ORDERED** that the District will reimburse Parents *** for counseling services;

It is further **ORDERED** that, within 10 school days, the District is to propose an ARD committee meeting for the purposes of developing a plan for a comprehensive reevaluation of Student. If Parents choose to attend the meeting, it shall be scheduled at a mutually agreed upon date and time, but no later than 20 school days; and

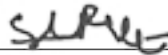
It is further **ORDERED** that the District is to invite *** to the ARD committee meeting and reimburse her for her participation in the meeting.

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

Signed June 30, 2025.

FILED
701-24-02646
6/30/2025 11:36 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

ALJ Signature:



Steve Elliot

Presiding Administrative Law Judge

ACCEPTED
701-24-02646
6/30/2025 12:16:28 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

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).