

SOAH Docket No. 701-24-03555.IDEA
TEA Docket No. 053-SE-1023

Before the State Office of Administrative Hearings

**Student., by next friends Parent. and Parent.,
Petitioner**

v.

**Fort Bend Independent School District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student. (Student), by next friends Parent. and Parent. (Parents and, collectively, Petitioner), brings this action against the Fort Bend 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 educational program was not reasonably calculated to provide student a FAPE in light of student unique circumstance.

II. DUE PROCESS HEARING

The due process hearing was scheduled for December 11 – 13, 2024, via the Zoom videoconferencing platform. The parties only used one day for the hearing. It began and concluded on December 11, 2024. Petitioner was represented throughout this litigation by attorneys Martin Cirkiel and Julianna Swann with Cirkiel Law Group, P.C. Parents attended the hearing. Respondent was represented throughout this litigation by attorneys Erik Nichols and Matthew Acosta with Spalding Nichols Lamp Langlois.***, Executive Director for Student Support Services for the District, attended the hearing as the party representative.

The parties submitted 105 joint exhibits, and all were admitted. Petitioner submitted 16 separately disclosed exhibits, and 15 were admitted. Petitioner withdrew exhibit 15 and exhibit 17 was not admitted due to Respondent's objections. Petitioner offered the testimony of a District student resource officer, the District Executive Director for Student Support Services, Student's parent, and Student's Parent.

Respondent submitted 43 separately disclosed exhibits, and all were admitted without objection. Respondent offered the testimony of Student's special education

teacher/case manager. The hearing was recorded and transcribed by a certified court reporter. The Decision in this case is due on February 21, 2025.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following IDEA issues for decision in this case within the two-year statute of limitations timeframe:

FAPE

1. Whether the District failed to provide Student with a FAPE during the relevant timeframe.
2. Whether the District failed to develop an appropriate individualized education program (IEP) and behavior intervention plan (BIP) for Student.
3. Whether the District failed to properly implement Student's IEP and BIP.
4. Whether the District failed to educate Student in the least restrictive environment.

Evaluation

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

Bullying

Whether the District failed to protect Student from bullying and failed to provide a safe and non-hostile educational environment.

Training

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

Procedural violations

1. Whether the District significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, including whether the District predetermined its decisions.
2. Whether the District failed to convene an admission, review, and dismissal (ARD) committee meeting.

B. RESPONDENT'S LEGAL POSITION AND ADDITIONAL ISSUES

Respondent generally and specifically denied Petitioner's factual allegations and legal claims and denied responsibility for providing any of Petitioner's requested relief. Respondent requested dismissal of all claims that arose under statutes other than the IDEA. Respondent asserted the statute of limitations affirmative defense.

IV. PETITIONER'S REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to provide damages including for following areas, but not limited to, loss of equal access to educational opportunities, mental health costs in the past, mental health costs in the future, reimbursement of educational services in the past, reimbursement for educational services to be paid in the future, and reimbursement of past and future out-of-pocket expenses incurred by the Petitioner but for the acts and omissions of the Respondent.

2. Order the District to provide an independent educational evaluation (IEE).
3. Order the District to provide for therapeutic summer camp for Student in 2025 and 2026.
4. Order the District to provide Student individual, group, and family therapies to be used on an as needed basis.
5. Order the District to reimburse Petitioner for compensatory education for the 2023-2024 school year.
6. Order the District to reimburse Petitioner for compensatory education for the 2024-2025 school year and thereafter, by way of reimbursing Petitioner for their portion of School Board taxes while they live in the District or if and until they return to the District.
7. Order the District to reimburse Petitioner for out-of-pocket costs for academic, non-academic, related and supplementary services for the 2023-2024 and 2024- 2025 school years.

V. FINDINGS OF FACT

1. Parents requested a full individual and initial evaluation (FIIE) for special education from the District on January ***, 2021. The District sent Notice of the evaluation on April ***, 2021. On May ***, 2021, the District received a physician's report from Student's private physician, which indicated Student had other health impairments (OHI) in the areas of attention deficit hyperactivity disorder (ADHD) and ***.¹
2. The District completed the FIIE on June ***, 2021. The purpose of the evaluation was to determine if Student had a speech, language or learning deficit and/or physical, mental, emotional condition that required special education services for student to be successful in the educational setting. The evaluation included multiple sources of information, including a review of Student's educational records, input from Parents, results of criterion referenced assessment, play-based observations, and video observations.

¹ Joint Exhibit (JE) 1 at 1, 4; JE 2 at 2.

Student's parent reported that when told "no," Student displayed intense tantrums.²

3. The FIIE concluded Student met the criteria for the condition of emotional disturbance (ED) based on inappropriate types of behavior or feelings under normal circumstances and a tendency to develop physical symptoms or fears associated with personal or school problems. Additionally, Student met the criteria for speech impairment in the area of language.³
4. The evaluation concluded Student presented with deficits related to social skills, verbal communication, nonverbal communication, and some autism associated characteristics. However, Student did not meet the criteria for autism, because student deficits were explained by ED. Student also did not meet the criteria for OHI – ADHD because it was medically managed. The evaluation determined if autism and ADHD become a concern in the future they should be re-assessed.⁴
5. Student was enrolled in the District for student ***year in the fall of 2021. Student enjoys***.⁵

2021 – 2022 School Year – ****

6. Student's ARD committee met on August *** 2021, for an initial meeting. Student's parent attended and agreed with the IEP. The committee determined Student was eligible for special education services based on the criteria of ED and speech impairment. Student's IEP included student academic and behavioral present levels; measurable goals for behavior, social skills, and speech; student instructional setting was general education with in-class special education support for *** minutes per week, per subject, and Student was scheduled to receive speech therapy for *** minutes each week for the first 7 weeks of the 9-week grading period in the special education setting. Student

² JE 3 at 1; JE 14 at 4.

³ JE 3 at 16, 17.

⁴ JE 3 at 16-17.

⁵ Transcript (Tr.) at 20, 22.

fell in the average range on cognitive testing, could ***correctly and could not answer correctly when asked to***.⁶

7. Student's IEP included the following accommodations: 1- to 2-step instructions, a behavior intervention plan (BIP) for tantrums and noncompliance, reminders to stay on task, repeated review, and visual cues. Student received***.⁷

8. Student's behavior goal and social skills goal were as follows:

Behavioral: By the end of the school year, using verbal reminders and visual supports, Student will follow teacher directives and classroom expectations. Success will be measured using teacher observations at a rate of ***%.

Social Skills: By the end of the school year, using verbal reminders and visual supports, Student will demonstrate measurable progress in interpersonal skills. Success will be measured using teacher observations at a rate of ***%.⁸

9. On December ***, 2021, Parents emailed the District and accused the District of bullying Student and allowing other students to bully student by picking on student and stealing student things.⁹
10. Student's ARD committee met on January *** 2022. The purpose of the meeting was to propose a change to Student's schedule of services, discuss compensatory services, and address Student's parent's concerns. Student's educational placement for English and math changed to the include direct services in the resource setting for 150 minutes per week, per subject. Student

⁶ JE 14 at 1, 7, 16; JE 16.

⁷ JE 14 at 7, 26.

⁸ JE 16 at 3-4.

⁹ Petitioner's Exhibit (PE) 3 at 39-42 chronologically and bates stamped 146-149.

continued to receive English and math in the general education setting with in-class special education support for *** minutes per week per subject. Student's parent requested in-person speech therapy.¹⁰

11. During the ARD committee meeting, Student's parent shared concerns about Student being bullied in the classroom and the District noted they were investigating, Student's teacher had not observed bullying, class seating was rearranged, and the school counselor would get involved. Student's IEP goals remained the same. The meeting ended in agreement.¹¹
12. Student's ARD committee met on March *** 2022, to review Student's progress in speech therapy and address Parents' concerns about autism. Parents attended, and the meeting ended in agreement. Student was making progress in speech therapy and student behavior and social skills IEP goals. It is unclear exactly when academic IEP goals were added; however, it was between January 2022 and March 2022. The committee reviewed supports in the autism supplement and Student received some of the interventions.¹²
13. The District monitored the following academic IEP goals beginning March ***, 2022:

English 1: By the end of the 2021-2022 school year, ***when needed, repeated review, Student will identify *** by pointing to in a field of 3 letter choices. Success will be measured by teacher observations, daily work, and test at a rate of 60% accuracy.

English 2: By the end of the 2021-2022 school year, ***Student will write ***

¹⁰ JE 18 at 1, 7-8.

¹¹ JE 18 at 7-8.

¹² JE 20 at 6.

, Success will be measured by teacher observation and writing samples at a rate of 60% accuracy.¹³

14. Student's ARD committee met on May ***2022, for an annual review. Student continued to qualify for special education services under the criteria of ED and speech impairment. Student's instruction schedule remained the same. Student ***and did not understand***. Student was easily distracted and, when corrected, Student put student head down and refused to participate. However, Student would quickly join back in when student BIP supports were appropriately implemented. Student's parent asked about tantrums and the District informed District informed Student was improving in this area.¹⁴
15. During the ARD committee meeting, Student's teacher noted Student struggled academically in all areas. Student had trouble with *** and was unable to read. Student ***most days but was unable to retain the numbers consistently. Student struggled with***. Student comprehension skills were good. Student reading improved some since January. Student early literacy score progressed from *** level to *** level. Student's IEP goals, BIP, accommodations, and autism supplement interventions remained the same. The meeting ended in agreement.¹⁵
16. At the end of ***Student earned marks of "progressing" in most of student academic subjects on student report card and Student was below level in reading. However, student exact reading level is unclear from the record. Student's teachers commented Student had improved academically over the year, was social, and had friends. Student's Parent agreed Student had no behavior issues in ***¹⁶
17. By the end of the school year, Student could only stay in student***. Student mastered student three social skills objectives. For math, Student still

¹³ JE 56 at 1.

¹⁴ JE 22 at 1, 4, 15.

¹⁵ JE 22 at 5, 7-8, 18, 16, 27.

¹⁶ JE 38 at 102; JE 57 at 2; Tr. at 144.

worked on *** with a***. For English, Student struggled to ***only remembered them for a short period of time, and could only ***but had difficulty staying on the line or between the lines. Student's achieved *** accuracy on student English 1 goal and ***accuracy on student English 2 goal. Student's IEP accommodations were implemented by student teachers.¹⁷

2022 – 2023 School Year –* Grade**

18. Student's Parent emailed the District on September ***, 2022, and notified them Student was made fun of daily by other students because of student clothes and other things. The District replied that the incident on that day was a single incident, and Student had not been bullied or picked on this year.¹⁸
19. The District completed an occupational therapy (OT) evaluation on January ***, 2023. Student had delays in, Student was within normal limits for range of motion of both upper and lower extremities and had no motor dysfunction. The evaluator determined Student's handwriting challenges were due to delays in letter recognition, ***Student did not qualify for OT services because Student can access student instructional materials and environment in order to participate.¹⁹
20. Student's ARD committee met on February***, 2023, to discuss Student's OT evaluation and student current progress in school. Student still struggled academically. Student struggled***. For example, when asked to write ***In math, Student scored intervention level of a middle of the year assessment. Student could count ***

¹⁷ JE 57; JE 58; JE 85; JE 93 at 11, 12, 13, 14,15.

¹⁸ JE 3 at 44-45.

¹⁹ JE 10 at 1, 4.

***Student was doing well socially and followed routines and expectations.²⁰

21. The ARD committee increased Student's special education in-class supports to *** minutes weekly in English and math and student direct instruction for those subjects in the resource setting increased to *** minutes weekly. A cooling off period, manipulatives, and reduced written tasks as needed were added to Student's accommodations. Student's parent attended the meeting, and it ended in agreement.²¹
22. The District conducted a counseling evaluation on April ***, 2023, due to Student's reticence to come to school in the mornings. Parents indicated Student struggled to regulate student emotions, was frustrated when Student cannot read or do math, *****
23. In the counseling evaluation, Student's teachers noted they have academic concerns for Student. They indicated that Student struggled with transitioning to coming to school after being dropped off, remaining focused, ***, had difficulty following directions, had difficulty beginning and completing assignments, and had tantrums. The evaluator did not recommend counseling as a related service.²³
24. Student's ARD committee met on April *** 2023, for the annual review. Student met the same eligibility criteria and the ARD committee noted that Student continued to struggle academically. Student could not identify or***. Student's English *** goal was updated to:

²⁰ JE 23 at 8-9.

²¹ JE 23 at 3, 6, 8-9; JE 24 at 1; JE 25 at 1.

²² JE 11 at 1, 3.

²³ JE 11 at 3-4, 10.

English ***: By the next annual ARD, using a modified curriculum, and visual supports, when given exercise with phonics and word recognition, Student will demonstrate basic knowledge of ***. Success will be measured by teacher observations, daily work and test at a rate of 60% accuracy.²⁴

25. The ARD committee discussed that Student's behavior improved after Student had a job assigned to student in the mornings; but Student was still easily distracted, did not always follow the teacher's directions, and would***. Student's BIP remained the same.²⁵
26. The ARD committee changed Student's instruction schedule to the following: all of student direct instruction for English and math in the resource setting, and social studies and science in the general education with in-class support. The committee added modified curriculum and oral administration of graded assignments and tests. The District offered an in-home and a parent training evaluation, but Student's parent declined due to scheduling at this time. Student's parent attended the meeting, and it ended in agreement.²⁶
27. During Student's ***year, Student received mostly "***student report card, with some "developing." Student continued to be below grade level for student instructional reading level and student specific level was not provided. Student exhibited work refusal, tantrums, and***, but student case manager could calm student quickly.²⁷
28. By the end of the year, Student remained at the same percentage of accuracy rate on most of student IEP goals as Student was at the end of the previous school year. Student still struggled with identifying and remembering letter sounds, needed constant assistance with***. Student ***and would

²⁴ JE 27 at 1, 4-5, 14; JE 63 at 2.

²⁵ JE 27 at 15, 17-18.

²⁶ JE 27; JE 28.

²⁷ JE 42; Tr. at 207.

***. Student's teachers implemented student IEP accommodations. Student's case manager/special education teacher contacted Parents by phone frequently to discuss Student.²⁸

2023 – 2024 School Year – *Grade**

29. Student's ***grade teacher indicated Student would get frustrated with the other students and say they were "looking at student." The teacher addressed it with the other students.²⁹
30. One of Student's behavioral IEP objectives was to remain in student assigned area. Student's ***grade teacher *** so Student could move around and take fidget breaks. When Student moved outside of that space, student aide would intervene. Parents considered the use of this strategy inappropriate. The District's Executive Director for Student Support Services indicated this strategy is used to help students become familiar with staying in a specific area or staying within a boundary and the strategy can be used with all students as it is not just a special ed strategy.³⁰
31. Student's ARD committee met on September *** 2023, to discuss Student's current behavior. Student had become more *** aggressive towards adults and peers by***. Student ***and, on one occasion Student was more non-compliant with teacher directives, became aggressive when redirected, and would run out of the classroom. Student's disruptive behaviors increased since last school year. Student's proposed BIP was updated to include interventions for *** aggression, elopement, and verbal aggression. The proposed IEP included updated IEP goals for behavior and social skills.³¹

²⁸ JE 2 at 43-44; JE 62; JE 63; JE 90; JE 91; JE 93; JE 94; Respondent's Exhibit (RE) 14 5-9.

²⁹ Tr. at 122.

³⁰ JE 56 at 1; PE 1 at 100; Tr. at 128, 130-31, 213.

³¹ JE 30; JE 31 at 5, 14, 17-19.

32. Academically Student continued to struggle with reading and writing, was ***, but could verbally answer comprehension questions. Student still tested at *** level for reading and math. Student instructional setting, accommodations, and speech therapy remained the same and direct social skills were added for *** minutes per week provided by a special education teacher.³²
33. During the ARD committee meeting, Parents stated they have continued to bring up bullying and the District has not addressed it. The District administrator in attendance was unaware of the bullying from last year, but stated when claims were made this year, Student had investigated. Parents indicated Student's behaviors were all a response to bullying and Student's classroom teacher stated the behavior was not always a result of bullying. Parents left the meeting, declined to complete the ARD committee meeting, and it ended. Student's campus principal sent the bullying report forms to Student's Parent after the ARD committee meeting. Parents never completed the forms and wanted the District to rely on their emails about the incidents.³³
34. By October ***, 2023, Student had not made progress on student IEP goals from May ***, 2022. Student continued to struggle***. Student still struggled with identifying and retaining***. Student's teachers implemented student IEP accommodations.³⁴
35. The District developed a "****" system for Student to bring a *** to student teacher to request a break and then Student would go to student calm- down corner to pick an activity to calm down. Student only used the system two or three times and continued to have escalated behaviors after the system was implemented.³⁵

³² JE 31 at 5, 8.

³³ JE 31 at 15-16; RE 34; Tr. at 62.

³⁴ JE 65; JE 66; JE 95.

³⁵ PE 1 at 46; Tr. at 48, 112.

36. The District's Executive Director for Student Support Services initiated an investigation into the Parents allegations of abuse on October ***, 2023. The allegations were Student's teacher dragged student across the room and that someone put a pillow over Student's face. Student's special education teacher/case manager denied ever dragging Student. During a restraint of Student, a pillow was placed behind student head to prevent student from banging it against the wall. It was quickly removed because it did not stay in place and at no time was a pillow put over Student's face.³⁶
37. When Student's ARD committee reconvened on October***, 2023, Parents attended with an advocate. During the meeting, Student's special education teacher who worked with student since ***indicated Student's behaviors have increased since the last ARD committee meeting in September and Student had new and more aggressive behaviors like***. The District proposed a new full and individual evaluation (FIE) prior to the due date in June 2024 and Parents' advocate requested to include a counseling evaluation.³⁷
38. District behavior paraprofessionals had been coming to the campus to assist with implementation of Student's BIP. At the ARD committee meeting, the District recommended *** program for Student's placement which is located at a different ***school campus. The *** program is a small classroom setting that provides support in regulating behavior and has a ***. Parents declined the program due to the low socio-economic status of the surrounding area of the campus and requested a more affluent area or private school at District expense. The meeting was tabled.³⁸
39. On October ***, 2023, the District developed a campus student safety intervention plan for Student to address student ***

³⁶ RE 1; Tr. at 213, 218.

³⁷ JE 32 at 16-17.

³⁸ JE 32 at 17-18.

statements.³⁹

40. The District sent a Notice of Evaluation on October ***, 2023, that included testing in the following areas: language, physical, sociological, emotional/behavioral, cognitive/intellectual/adaptive behavior, educational/developmental performance, assistive technology, OT, and music therapy. Parent signed consent on the same day.⁴⁰
41. Student's ARD committee reconvened on October ***2023. Parents attended with an advocate again. Parents notified the District Student would not return to campus under the current administration because Student was not safe at the campus. The District continued to suggest the *** program and Parents continued to refuse the program. The committee discussed bullying, and the District notified Parents they were working on Student's perception of bullying. Parents expressed concerns Student had not made progress and requested compensatory services. The meeting ended in disagreement.⁴¹
42. On Student's first 9 weeks report card, Student received ***in science and social studies, a ***in English, and a ***in math. Student continued to be below grade level for student instructional reading level, again details were not provided. Student ***grade teacher indicated Student loves to help and assist with jobs in the classroom. Student also requires reminders to stay on task and guidance with using calming down strategies.⁴²
43. Between August ***, 2023 and October ***, 2023, Student had fifteen incidents on student discipline report. Student's behavior during all of the incidents involved ***During the same time frame, Student was restrained *** times. Student had *** aggression/refusal of directives, *** aggression, *** almost daily and many times multiple times each day. After restraints or times when Student ***, the nurse assessed student for

³⁹ JE 45; PE 6.

⁴⁰ JE 12; JE 13.

⁴¹ JE 32 at 14, 18-23; Tr. at 47.

⁴² JE 47.

injuries and Student either had no injuries or minor scratches/marks. District police officers were called a few times during Student's outbursts and Student was placed in the back of a police car on one occasion.⁴³

44. Between August 2023 to October 2023, Student's Parents emailed the District multiple times and alleged Student was bullied by other students and abused by District personnel.⁴⁴
45. Student's ***grade teacher received training for autism, mental health, phonics, and various other subjects during the summer and fall of 2023. Student asked the administration for training on restraints to learn how to protect Student and student other students from Student's *** outbursts. The requested training was originally scheduled in October, but Student ultimately attended in November 2023. Student's special education teacher/case manager's training was up to date, including restraint training.⁴⁵
46. During Student's time at the District, student special education teacher/case manager spoke with Parents multiple times, sometimes multiple times daily, about Student's academic and non-academic progress and incidents that occurred during student time at school. Student mentioned bullying to student caseworker one time, it is unclear when this was; however, the case manager notified District administration and never observed any bullying of Student from other students.⁴⁶
47. Student has not attended school in the District since late October or early November 2023. Parents sent student to ***beginning in August 2024. Student is legally considered homeschooled and accesses the ***program online. Student's parent stated Student can now write student name, is learning to read, can dress Student, is not getting in trouble in class, can pay attention, and is still at a *** grade

⁴³ JE 52; JE 68; JE 73, JE 74, JE 75, JE 76, JE 77, JE 78, JE 79, JE 80, JE 81, JE 82, JE 83, JE 84; JE 96; JE 98; Tr. at 50-51.

⁴⁴ JE 3.

⁴⁵ PE 1 at 13-20; 27-35; PE 2 at 34-36.

⁴⁶ JE 2; PE 4; Tr. at 215-16.

level.⁴⁷

VI. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 62; *Endrew F., ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

B. 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.

⁴⁷ PE 8; Tr. at 22, 33, 55, 176-77.

The District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 580 U.S. at 399.

C. EVALUATION UNDER THE IDEA

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

The evidence showed the evaluations completed by the District were appropriate and followed the IDEA requirements and Petitioner did not argue about the appropriateness of the evaluations, but rather the need for a reevaluation.

A school district must reevaluate a student if the school district determines that the educational or related service needs of the student, including improved academic achievement and functional performance, warrant a reevaluation or if the student's parents or teacher request a reevaluation. 34 C.F.R. § 300.303(a). The reevaluation must occur at least once every three years and not more than once a year, unless the parent and the school district agree otherwise. 34 C.F.R. § 300.303 (b).

In this case, Petitioner argues the District needed to reevaluate Student earlier than June 2024, and that the Parents repeatedly asked for an autism evaluation. Petitioner presented no evidence of Parents' request for an autism evaluation. Parents repeatedly referenced that Student had autism; however, they did not provide the District with a private autism evaluation or request an autism evaluation. By the fall of 2023, the credible evidence showed Student's BIP was not working to decrease student behaviors because Student was having episodes of verbal aggression, physical aggression, tantrums, and elopement practically daily and at times multiple times per day. Between May 2022 and October 2023, Student was only able to stay in student assigned area 50% of the time. A new functional behavior assessment (FBA) was needed to develop an appropriate BIP.

Additionally, Student's academic needs were not being met as evidenced by student inability to read, write, or perform basic math calculations and student lack of progress on academic IEP goals for over a year. The District should have realized Student's educational and/or related service needs necessitated an earlier reevaluation to determine if Student had any additional disabilities such as autism or a specific learning disability or needed any additional services or supports. Based on Student's lack of academic progress and the increase in the number and severity of student behavioral outbursts, the District needed to reevaluate Student prior to their offer at the ARD committee meeting on October ***, 2023. Petitioner met its burden on this issue.

D. FAPE

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

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

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

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *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 strengths, student parents' concerns for enhancing student education, results of the most recent evaluation data, and student academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). For Student, whose behavior impedes student learning and that of others, the District must also consider positive behavioral interventions

and supports and other behavioral strategies when developing student 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).

The evidence showed that the District's IEP included a description of the related services, supplementary supports and services, the instructional arrangement, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided; however, the IEP was not individualized based on student performance. All Student's academic IEP goals remained the same or essentially the same from March 2022 to October 2023 and Student made minimal or no progress on these goals. Academically, Student***. Identifying letter sounds, as in Student's English 1 IEP goal, is a fundamental skill for reading and Student only achieved *** accuracy on this goal by the end of student time in the District, which should have put the District on notice Student needed a new evaluation and more specific interventions.

Behaviorally, Student's BIP remained the same from August 2021 until the District's proposed update in the September *** 2023, ARD committee meeting, despite student behaviors increasing beginning in the middle of ***grade. Student only stayed in student assigned area 50% of the time, regressed in student ability to follow teacher directives, and still blurted out answers. The District attempted to address Student's increased behavioral issues with strategies such as the *** or consulting with District behavior specialists, but none of these approaches decreased the outbursts. The proposal to update Student's BIP confirms the BIP was not addressing student

behaviors. Instead of adding new strategies, the District should have proposed a new FBA, as addressed above, to develop an appropriate BIP, which was individualized for Student.

Student's IEPs included the autism supplement despite student not qualifying for special education with autism; however, these interventions were not allowing Student to progress and Student needed an updated evaluation to determine if Student had any other possible disabilities as addressed above. Student's lack of progress in all areas shows the goals were not individualized in light of student unique circumstances. Student time in the resource setting continued to increase and Student received modified curriculum, but Student was not acquiring basic skills in reading, writing, and math by the time Student left the District in the fall of 2023. This lack of progress was not explained by testimony or documentary evidence. Student's IEP was not specifically individualized in order for Student to receive an educational benefit. Petitioner met its burden on this prong.

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), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

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

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

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

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

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

Id.

The evidence showed Student was educated in the least restrictive environment. Petitioner argues Student's time locked in a closet, in student taped area, and in the back of a police car prove Student was not educated in student least restrictive environment. No credible evidence was presented that Student was locked in a closet and student time in student square and a police car were not student educational placements. Student began ***in the general education classroom with inclusion supports. For ***grade, Student was placed in the special education setting for 30 minutes a day for English and math and the District added classroom accommodations in an effort to help student be more successful.

In April 2023, student education setting was changed to all student direct instruction for English and math in the resource room with modified curriculum and general education for social studies and science with inclusion supports. Student's time in the resource setting increased for two reasons, student lack of academic progress and student increased behaviors. It is unclear what efforts were made to modify Student's curriculum in the general education setting for English and math prior to student receiving all student direct instruction for those subjects in the resource setting with modified curriculum; however, Student did not receive an educational benefit from the general education setting as outlined above and below. Additionally, student behaviors from spring 2023 to the fall of 2023 impacted the other students due to the level of classroom disruption caused by Student with student***.

In October 2023, the District proposed placing Student in the *** program with the goal of regulating student behaviors so Student could access student education. Parents

refused this program so we do not know if Student would have been successful. Student did attend ***and physical education in the general education setting. Petitioner failed to provide any evidence that Student was not educated in the least restrictive environment and did not meet its burden on this prong.

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.*

The evidence showed services were provided in a coordinated, collaborative manner by key stakeholders. One or both Parents attended all ARD committee meetings and attended with an advocate for the last two meetings in October 2023. Until October 2023, all ARD committee meetings ended in agreement. The District

updated Student's IEP using Parents concerns and suggestions. Parents communicated with District personnel almost daily for information on Student's days and District personnel communicated with each other to provide interventions to attempt to reduce student behaviors. By the end of Student's time in the District the Parents were frustrated with Student's lack of progress and their belief their bullying claims were going unanswered; however, their mere frustration does not prove the District excluded them in bad faith or refused to listen to them. Petitioner failed to meet its burden on this prong.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P.*, 703 F.3d at 813-14.

The evidence showed Student made minimal to no academic or non-academic progress. After ***the District continued to increase Student's time in the special education setting, added modified curriculum, and eventually proposed the *** program due to student lack of progress in the classroom setting. Student's reticence to attend school, tantrums, and work refusal were present from the time Student entered the District and student BIP interventions stopped working by the spring of student ***grade year. Student's behavioral outbursts increased to the point of student *** 2 – 3 times per day. Additionally, they increased in severity to include ***

Academically, Student remained at the same level of progress from May 2022 until the time Student left the District as addressed above. In English, Student remained at a rate of *** accuracy for student ability to identify ***. Lacking this basic skill meant Student left the District unable to ***. In math, Student could not consistently***. Additionally, student behaviors increased to the point Student needed to be *** multiple times ***. Student's ***grade teacher and student special education teacher/case manager both admitted Student made no progress. The credible evidence shows Student's behavioral outbursts worsened from the spring of 2023 to the fall of 2023 and the interventions the District tried were not successful. Petitioner met its burden on this prong.

5. FAPE conclusion

The weight of the credible evidence showed that Student's proposed educational program was not appropriate, was not individualized based on student needs, and Student failed to make academic and non-academic progress. Petitioner met student burden of proving the District denied Student a FAPE under the IDEA. A preponderance of the evidence showed that Student's proposed IEP was not reasonably calculated to address student needs in light of student unique circumstances. *Andrew F.*, 137 S. Ct. at 999.

E. IEP IMPLEMENTATION

When a parent brings a claim based on a school district's failure to implement an IEP, the *Michael F.* first factor (whether the program is individualized) and second factor (whether the program is administered in the least restrictive environment) are

generally “not at issue.” *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hanna W.*, 961 F.3d 781, 795-96 (5th Cir. 2020) (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)). Rather, a court or a judge in a special education case must decide whether a FAPE was denied by considering, under the third factor, whether there was a “substantial or significant” failure to implement an IEP; and under the fourth factor, whether “there have been demonstrable academic and non-academic benefits from the IEP.” *Id.* at 796 (citing *Bobby R.*, 200 F.3d at 349).

Petitioner alleged in the complaint that the District failed to implement Student’s IEP, but Petitioner did not present any evidence of any specific portion of the IEP the District failed to implement. The credible evidence shows the District implemented Student’s IEP with fidelity. Petitioner did not meet its burden to prove the District failed to implement substantial or significant portions of Student’s IEP.

F. 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); *Letter to Dear Colleague*, 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.

In order to prevail on a claim for a hostile, unsafe learning environment under the IDEA, Petitioner must show that the District engaged in harassing conduct that was so severe, persistent, and/or pervasive it created a hostile environment and interfered with Student's ability to receive a FAPE. *T.K. and S.K. ex rel. K.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 289, 317 (S.D.N.Y. 2011). Bullying may lead to a denial of a FAPE if school personnel were deliberately indifferent to, or failed to take reasonable steps, to prevent bullying that adversely affects or results in the regression of educational benefit or substantially restricts the student with a disability from accessing educational opportunities. *Id.*

Petitioner argues Student was bullied by other children and District personnel did not provide a safe, nonhostile education environment. Parents claim Student was picked on by other students for being behind academically and for how Student dressed. Additionally, Parents expressed their concerns about Student receiving bruises from ***. The only evidence of bullying was Parents' testimony, which was not corroborated by any other witness or documentation. No evidence was presented that any behaviors from other students or staff were sufficiently severe, persistent, or pervasive enough that the action or threat created an intimidating, threatening, or

abusive educational environment for Student or that it materially and substantially disrupted the educational process.

Student was *** multiple times by District staff and after each time Student was examined by the school nurse for injuries. ***. It is unclear what measures were taken to investigate the bullying as Respondent provided no documentation of any investigation reports and in the ARD committee deliberations the District noted the allegations were “investigated.” Student’s case manager/special education teacher who had been with student since ***never witnessed any bullying of Student. Student’s perception was that other students looked at student or made fun of student and Student reacted by***. Student’s reactive behaviors related to student perceived bullying should have been addressed with an evaluation, which the District failed to do in a timely manner as addressed above. Petitioner failed to meet its burden to prove Student was bullied or that the District failed to provide a safe, non-hostile education environment.

G. TRAINING

Petitioner argues the District failed to properly train staff to implement Student’s IEP. The IDEA requires that special education and related services be provided by “qualified personnel” who are appropriately and adequately prepared and trained, and who possess the content knowledge and skills to serve children with disabilities. 34 C.F.R. § 300.156(a). Student’s ***grade teacher and special education teacher/case manager had the required educational background for their jobs and were trained on restraints. Additionally, Student’s ***grade teacher

received training on autism, mental health, phonics, and various other subjects during the summer and fall of 2023. Petitioner presented no evidence to support this claim; therefore, Petitioner did not meet its burden on this issue.

H. PROCEDURAL ISSUES

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

1. Impeded Parents Opportunity to Participate

Petitioner alleges the District impeded their opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, including an allegation that the District predetermined its decisions. The evidence showed the District did not impede Parent's decision-making process or that this alleged violation caused a deprivation of educational benefit. As discussed above, one or both Parents attended all ARD committee meetings, two with an advocate, participated in the discussions about Student's program, and all meetings prior to September 2023 ended in agreement. Also, the District conducted a counseling and OT evaluation at Parents' request.

Predetermination occurs when a school district makes educational decisions so early in the planning process that it deprives the parents of a meaningful

opportunity to fully participate as equal members of the ARD committee. *E.R.*, 909 F.3d at 769.

No evidence was presented the District predetermined any of its decisions. Programming and placement decisions were discussed at the ARD committee meetings with Parents in attendance. Petitioner did not meet its burden on this claim.

2. Failed to convene an ARD committee meeting

The evidence showed the District did not fail to convene any ARD committee meeting. Student's ARD committee met nine times during student two and a half years in the District. Petitioner presented no evidence of a time they requested an ARD committee meeting and were denied the request. Petitioner failed to meet its burden on this issue.

H. PRIVATE PLACEMENT AT DISTRICT EXPENSE

Petitioner requested reimbursement for ***beginning in August 2024, and for out-of-pocket day services from October 2023 to present. Petitioner must meet a two-part test to secure reimbursement for private placement at the District's expense. First, Petitioner must prove the District's program was not appropriate under the IDEA. Second, Petitioner must prove placement at ***was appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370(1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993).

Petitioner met the first prong because as mentioned above, the District's program was not appropriate, and Student did not receive a FAPE. Student was not enrolled in an educational program from the time Student left the District in October/November 2023 until August 2024, and Petitioner presented no evidence of any educational program during this time; therefore, Petitioner is not entitled to any reimbursement for the out-of-pocket day service expenses.

Student fails to meet the second prong of proving ***is an appropriate placement. The only evidence presented about ***was from the Parents, which is not enough to determine if the placement is appropriate or not. Additionally, Parents only stated that the program is online, Student is developing reading and writing skills, and is not having behavior issues. No testimony or evidence was presented by anyone from the program to corroborate Parents' claims or to inform this Judge about the specifics of the program, what services Student received, or to explain Student's progress. Petitioner did not meet its burden of proving the private placement was appropriate.

VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer*, 546 U.S. at 62.
2. The District did not provide Student a FAPE during the relevant time period, and student IEP was not reasonably calculated to address student needs in light of student unique circumstances. *Rowley*, 458 U.S. at 188, 203-204; *Endrew F.*, 580 U.S. at 399, 403.

3. The District did not meet the obligation to conduct necessary and timely re-evaluations of Student. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303.
4. Petitioner did not meet student burden of proving that the District failed to implement Student's IEP. *O.W.* 961 F.3d at 795-96; *Bobby R.*, 200 F.3d 341.
5. Petitioner did not meet student burden of proving the District failed to protect Student from bullying or failed to educate Student in a safe, non-hostile education environment. *Shore Regional High Sch.*, 381 F.3d at 194; *Letter to Dear Colleague*, (OSERS Aug. 20, 2013); Tex. Educ. Code § 37.0832; *T.K.*, 779 F. Supp. 2d at 317.
6. Petitioner did not meet student burden of proving the District failed to properly train staff on how to provide special education services to Student. 34 C.F.R. 300.156(a).
7. Petitioner did not meet student burden of proving the District made a procedural violation. 34 C.F.R. § 300.513(2)(i-iii).

VIII. RELIEF AND ORDERS

A judge in a special education case has the authority to grant all relief deemed necessary, including compensatory education, 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). Compensatory education may be awarded by a judge after finding a violation of the IDEA. Such awards should place a student in the position they would have been but for the violation. *O.W.*, 961 F.3d at 800, citing *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).

Petitioner requested compensatory education services for the following: an IEE; costs of therapeutic summer camp for 2024 and 2025; counseling from October 2023 to October 2025; reimbursement for***; out-of-pocket day services for the acts and omissions of the District; professional services for speech, psychological, mental health, and other rehabilitative services; and an award for lost instruction for spring 2023 and fall 2024. Petitioner brought forward no expert testimony or evidence explaining the nature, scope, and duration of therapeutic summer camp, counseling, services for speech, psychological, mental health, and other rehabilitative services Student requires to remedy the denial of a FAPE in this case. Without this evidence, the Judge is unable to award compensatory services in those areas and the requests are denied. Reimbursement for private placement and out-of-pocket day services are addressed above and are denied.

The District's proposed IEP from September 2023 offered *** minutes per week of direct social skills training. While the proposed IEP was never implemented, based on the denial of a FAPE and Student's deficits in social skills based on student behaviors and student perception of bullying, Petitioner is entitled to compensatory services in social skills as set out below. Additionally, Student's IEPs were not individualized based on student abilities and Student left the District unable to identify ***, which hindered student ability to **. Petitioner is entitled to reading intervention as set out below.

Petitioner is further entitled to IEEs at District expense to remedy the District's failure to timely reevaluate Student as follows: an FIE that includes language, physical, sociological, emotional/behavioral,

cognitive/intellectual/adaptive behavior, educational/developmental performance and an FBA; speech evaluation; occupational therapy evaluation; counseling evaluation; and an assistive technology evaluation.

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

Full and Individual Evaluation

1. The District must deliver to Petitioner no later than 5:00 p.m. on March 7, 2025, a set of reasonable criteria for the selection of an independent educational evaluator to conduct a full and individual evaluation at District expense to include the following: language; physical; sociological; emotional/behavioral; cognitive/intellectual/adaptive behavior; academics (educational/developmental performance); and an FBA and make recommendations for interventions in the educational environment.
2. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on March 21, 2025. If Petitioner does not provide the name of an evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by April 1, 2025. Multiple independent evaluators may be used for the FIE if one provider cannot complete the entire evaluation.
3. Within 15 days of receipt of the written FIE report from the independent evaluator(s), the District shall convene an ARD committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP and development of a BIP, if necessary. If the evaluation is completed during the summer of 2025, the District shall convene the 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.

4. The District shall invite the independent evaluator(s) to the 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.

Speech Therapy evaluation

1. The District must deliver to Petitioner no later than 5:00 p.m. on March 7, 2025, a set of reasonable criteria for the selection of an independent qualified evaluator to conduct a Speech Therapy evaluation at District expense.
2. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on March 21, 2025. If Petitioner does not provide the name of an evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by April 1, 2025.
3. Within 15 days of receipt of the written speech therapy evaluation report from the evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP. If the evaluation is completed during the summer of 2025, the District shall convene the 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.
4. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate, if the evaluator agrees to participation. Participation of the independent evaluator shall be at District expense.

Occupational Therapy Evaluation

1. The District must deliver to Petitioner no later than 5:00 p.m. on March 7, 2025, a set of reasonable criteria for the selection of an independent qualified evaluator to conduct an OT evaluation at District expense.
2. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on March 21, 2025. If Petitioner does not

provide the name of an evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by April 1, 2025.

3. Within 15 days of receipt of the written OT evaluation report from the evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP. If the evaluation is completed during the summer of 2025, the District shall convene the 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.
4. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate, if the evaluator agrees to participation. Participation of the independent evaluator shall be at District expense.

Counseling Evaluation

1. The District must deliver to Petitioner no later than 5:00 p.m. on March 7, 2025, a set of reasonable criteria for the selection of an independent qualified evaluator to conduct a counseling evaluation at District expense.
2. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on March 21, 2025. If Petitioner does not provide the name of an evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by April 1, 2025.
3. Within 15 days of receipt of the written counseling evaluation report from the evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP. If the evaluation is completed during the summer of 2025, the District shall convene the 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.

4. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate, if the evaluator agrees to participation. Participation of the independent evaluator shall be at District expense.

Assistive Technology Evaluation

1. The District must deliver to Petitioner no later than 5:00 p.m. on March 7, 2025, a set of reasonable criteria for the selection of an independent qualified evaluator to conduct an assistive technology evaluation at District expense.
2. Petitioner shall select a provider who fits the reasonable criteria set by the District no later than 5:00 p.m. on March 21, 2025. If Petitioner does not provide the name of an evaluator to the District by that time and day, the District shall select an evaluator who meets its criteria by April 1, 2025.
3. Within 15 days of receipt of the written assistive technology evaluation report from the evaluator, the District shall convene an ARD Committee meeting to review the evaluation and implement any programmatic, training, and/or service recommendations and make any necessary modifications to Student's IEP. If the evaluation is completed during the summer of 2025, the District shall convene the 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.
4. The District shall invite the independent evaluator to the ARD Committee meeting, and the meeting shall occur at a time when the evaluator can participate, if the evaluator agrees to participation. Participation of the independent evaluator shall be at District expense.

Additional ARD committee meeting and evaluation parameters

1. The District convening an ARD committee meeting and providing any special education services listed above to Student is contingent upon Parents' agreement to attend and written consent for the initial provision of special education and related services.

2. A single ARD committee meeting may be held after receipt of all of the IEEs upon agreement of the parties. The District must provide proper notice of the ARD committee meeting consistent with the Texas Administrative Code §89.1050(d). If all the evaluations are completed during the summer of 2025, the District shall convene the 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.
3. If the IEEs ordered above are not completed by February 21, 2026, because Parents have not made Student available to the evaluators the District is relieved of its responsibility to fund the IEEs.

Social Skills Intervention

The District shall provide Student with compensatory instructional for social skills intervention up to \$2500. These services may be provided by a District teacher or a private provider as determined by Parents. The District shall pay the private provider directly within 30 days of receipt of the invoice. If services are provided by a District employee, the District shall pay the employee directly pursuant to District procedure for supplemental pay. Services must be completed by February 21, 2026. The District is not responsible for payment of any services not completed by that date.

Reading Intervention

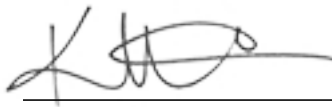
The District shall provide Student with compensatory instructional services for reading intervention/tutorials up to \$3500. These services may be provided by a District teacher or a private provider as determined by Parents. The provider must hold a teaching certificate in reading. The District shall pay the provider directly within 30 days of receipt of the invoice. If services are provided by a District employee, the District shall pay the employee directly pursuant to District procedure for supplemental pay. Services must be completed by February 21, 2026. The District is not responsible for payment of any services not completed by that date.

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 February 21, 2025.

ALJ Signature:

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

Kasey White

Presiding Administrative Law Judge

NOTICE TO THE PARTIES

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