

DOCKET NO. 086-SE-1124

**STUDENT,
B/N/F PARENT**
Petitioner

v.

**KATY INDEPENDENT
SCHOOL DISTRICT**
Respondent

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR THE

STATE OF TEXAS

DECISION OF THE HEARING OFFICER

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Student (Student), by next friend Parent, (the Parent or Parent), filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) on November ***, 2024. Respondent in the complaint is Katy Independent School District, (the District). The hearing was conducted on May 6, 7, and 8, 2025. The parties agreed to waive the resolution session and agreed to participate in mediation through the Texas Education Agency.

At all times during the proceedings, Student was represented by Mark Whitburn, attorney with Whitburn & Pevsner, PLLC. Respondent was represented by *** and ***, attorneys with the Office of the General Counsel for Katy ISD. The hearing was recorded and transcribed by Ann Berry, a duly certified court reporter.

Student's Claims

1. For the 2023-24 and 2024-25 school years, the District failed to design and implement an appropriate Individualized Education Program (IEP), failed to collaborate appropriately with Student's Parent, and failed to provide Student academic and non-academic benefits appropriate to Student's unique characteristics, circumstances, and needs.
2. The District denied Student a Free Appropriate Public Education (FAPE) in those school years by failing to take appropriate measures to ensure that when the Parent drives Student to school, Student can *** and into the school building.
3. The District failed to perform an appropriate Functional Behavioral Assessment (FBA) of Student and delayed sending a consent form for such an evaluation to the Parent until the 2024-2025 school year.
4. The District failed to assure that Student's teachers and staff have the required understanding or training to address Student's behaviors necessary to get Student into the school building in an appropriate manner.
5. The inability of the school staff to get Student into the school building has resulted in Student being counted as unexcused so frequently that the District retained Student a grade level.

Student's Requested Relief

1. An order that the District develop and implement an appropriate IEP for Student, including a new FBA and Behavior Intervention Plan (BIP), and train teachers and staff to address Student's unique needs, characteristics, and circumstances.
2. An order that the District reimburse Student's Parent for expenses for a private

placement made necessary by the District's failure to provide FAPE.

3. An order that the District provide compensatory educational services for the time that the District failed to provide support to Student to help Student get into the school building and rescission of Student's retention for 2024-2025 school year.

The Due Process Hearing

The due process hearing began as scheduled on May 6, 2025. The hearing was conducted using the virtual Zoom platform. The hearing was open to the public, and Student did not attend. Each party was allowed nine hours for the presentation of argument and evidence at the hearing.

The presentation of evidence concluded on May 8, 2025. At the close of the evidence, the parties made a joint motion, on the record, that the parties be allowed to submit written closing arguments and that the decision due date be extended a commensurate number of days to allow for receipt of transcripts and additional time for the parties to submit their written closing arguments. Finding Good Cause to extend the decision due date, the Hearing Officer granted the motion. The date for submission of written closing arguments was set for June 9, 2025, and the decision due date was extended to June 23, 2025.

FINDINGS OF FACT

Based on a preponderance of the evidence admitted at the hearing, the Hearing Officer makes the following findings of fact:

1. Katy Independent School District is a political subdivision of the State of Texas and a duly incorporated Independent School District.
2. Student is a ***-year-old in the *** grade at *** School. At all relevant times,

Student resided with Student's Parent within the jurisdictional boundaries of the District.

3. Student was determined eligible for special education services in 2023-2024 in the categories of Intellectual Disability (ID) and Speech Impairment. (J Ex 6 43). By that time, Student had been a special education student in the District for many years.
4. Student's speech ability is limited. Student is able to say ***, the ***, and the ***. Student can express wants and needs initially through ***, then after prompting with the use of single words. With modeling, Student ***. (J Ex 73 4).
5. Student started *** School at the beginning of the 2023-2024 school year. (Tr 2:358:23-25). In August 2023, soon after the start of the school year, Student began having difficulties *** and going into the school building. Student in prior school years had not shown this behavior and, in fact, had enjoyed going to school. Student's severe difficulties transitioning from the *** into the school building continue to the present day. (Tr 2:359:1-11) (Tr 1:43,44,45).
6. Student's placement during the 2023-2024 and 2024-2025 school years was in the *** class at *** School. (J Ex 6 43).
7. The Parent was timely provided with notices of procedural safeguards. (J Ex 6 1-39)(J Ex 8 1-10).
8. The annual ARD committee meeting notice was sent to the Parent on October ***, 2023 for an ARD scheduled on November ***, 2023. After attempting to schedule the ARD and sending more than a dozen notices to the Parent, the ARD convened at 10:00 a.m. on January ***, 2024. The Parent joined the meeting virtually at 10:27 a.m. The ARD conducted a REED and agreed that the District would conduct a full and individual evaluation (FIE) of Student. The FIE was scheduled to be completed by April ***, 2024. The ARD meeting was tabled and scheduled to reconvene in February. (J Ex 6 1-39) (J Ex 6-86).

9. After several notices to the Parent and rescheduling of the ARD date, the tabled January ***, 2024 ARD was reconvened on May ***, 2024. The ARD committee reviewed the FIE dated April ***, 2024. (J Ex 6-86).
10. The Parent attended the May ***, 2024 ARD meeting. During deliberations, the Parent asked that the ARD be tabled until parent could obtain legal counsel, that no meetings take place without parent's presence and that the proposed IEP not be implemented. The ARD was tabled at 10:56 a.m. (J Ex 87)
11. The tabled May ***, 2024 ARD reconvened on August ***, 2024. The Parent and parent's advocate virtually attended the reconvened ARD. (J Ex 6 88).
12. *** School staff that work with Student designed a phase system for assisting Student to exit the Parent's car upon arrival at the campus and enter the school building. The plan consisted of three (3) phases:
 - Phase 1: School SPED staff assist Student *** with visuals and reinforcers.
 - Phase 2: Parent walks Student to meet with staff halfway in front of the building.
 - Phase 3: Parent walks Student into the front office and checks Student in and staff will come to the front office to walk Student to class.(Tr. 1:71:15-72:20, 1:73:21-25, 1:74:2-16, 1:75:13-20).
13. After implementation of the phase system, Student continued to have difficulties transitioning into the school building, and Student regressed to the point of ***.
(Tr. 1:71:15-75:7) (Tr. 1:77:15-79:7).
14. Student sometimes arrived at school already using incentives in the phase system in *** such *** or having ***, thus neutralizing the effect of these incentives to encourage Student to ***. (Tr. 1:46:15-25).
15. The Parent at times disrupted the staff's attempts to get Student to *** by speaking to staff not involved with Student about unrelated issues or talking on parent's phone, causing Student to shift focus from *** to the Parent and to going home. (R EX 17 A, Q, U, W) (Tr. 1:80:4-18) (Tr. 1:116:21-25:117:1-21).

16. When school staff were unable to get Student *** due to Student's refusal or Student's ***, staff discontinued efforts, and the Parent took Student home. Student was counted absent for the day. (R Ex 17 A-R Ex 17 ZJ).
17. The District did not provide services and instruction in the home when Student refused to *** and returned home. (Tr. 2:497:15-25, 498:1-8).
18. During the *** grade (2023-2024 school year), Student attended school *** days and was absent *** days during the first six weeks, attended school *** days and was absent *** days in the second six weeks, attended school *** days and was absent *** days in the third six weeks, and attended school *** days and was absent *** days in the fourth six weeks. (J Ex 6 46).
19. In the 2024-2025 school year Student became more resistant to ***. Student threw items (***) at staff and engaged in *** behavior. Student arrived at school with *** and consistently *** on staff. Student pushed staff away as they attempted to assist Student with ***. Other behaviors included *** or ***. Staff used the following supports and reinforcers: visuals, first/then statements, and high value reinforcers (***). (J 8 20),(J Ex 8 64)(R Ex 17 A-Z).
20. The attendance problems resulted in substantial difficulties with academic progress. (Tr 1:51:3-23).
21. Student's 2024-2025 IEP addressed the behaviors of physical aggression, ***, and elopement. The IEP did not specifically include the behavior of school avoidance and was not specific about how to manage Student's behavior of *** and into the building, and the IEP did not include measurable annual goals or short term objectives for achieving success in getting Student *** and into the building. (J Ex 6 49-50).
22. The BIP included in the 2024-2025 IEP is based on an FBA conducted on February ***, 2021. There are three targeted behaviors in the BIP: ***, physical aggression, and leaving the classroom without permission. The behavior of *** and go into the school building is not in the BIP. (J Ex 6 103-106).

23. The District offered bus transportation as a means of getting Student to and from school . The plan did not include having staff familiar with Student ride on the bus with Student. The Parent refused the offer of bus transportation for Student. (J Ex 6 80).
24. The August ***, 2024 ARD committee recommended extended school year (ESY) services for the Student. The Parent did not agree to allow the Student to attend ESY. (J Ex 6 80).
25. The August ***, ARD and the January ***, ARD committees recommended in home training. The Parent refused the offer of in-home training. (J Ex 6 84).(J Ex 8 68) (Tr. 3:568:7-25, 569:1-9).
26. The August ***, 2024 ARD concluded in disagreement with the Parent's advocate stating the areas of disagreement. (J Ex 6 95).
27. The annual ARD committee meeting for Student's special education and related services for the 2025-2026 school year was convened on January ***, 2025. At the January 14, 2025 ARD the Student was determined eligible for special education services in the categories of Intellectual Disability (ID), Speech Impairment and OHI for ***. (J Ex 8 13).
28. Student's IEP for services from January ***, 2025 to January 2026 adds the goal of transition (*** to the building upon arrival at school) and objectives for meeting the goal to Student's IEP. The goal specifically addresses getting Student *** and into the school building. (J Ex 8 39).
29. The BIP in the January ***, 2025 IEP is based on the FBA conducted in February 2021. The date of this FBA is February ***, 2021. The behaviors identified were ***, physical aggression, and leaving the classroom without permission. The behavior of *** and into the school is not addressed in the BIP. In January 2024, the Parent requested a new FBA be conducted. In January 2025, the Parent asked when the new FBA would be completed. ***, Director for Specialized Programs, explained that with continued attendance, it would be anticipated to have the FBA and BIP completed by spring break (March 2025). (J Ex 8 64).

30. For the fall of 2024 Student was present *** days and absent *** days during the first six weeks, present *** days and absent *** days during the second six weeks, and present *** days and absent *** days during the third six weeks. (J Ex 8 15).
31. Student has *** credits currently. In order to be reclassified in the *** grade Student needs an additional *** credits. (J Ex 8 63).
32. The advocate believes that Student needs 500 hours of compensatory time to make up for the time missed and that ESY is being offered in lieu of compensatory services. (J Ex 8 67).
33. Teachers in each of Student's academic courses all reported that because Student was not present for instruction in ***, there were not sufficient data collected to provide an adequate progress update for the first (9-***-24), second (11-***-24) and third (12-***-24) six weeks. (J Ex 8 18-19).
34. Student's many absences have prevented the collection of sufficient data to provide an adequate progress report of Student's functional skills, ***, functional communication, social skills, and behavior. (J Ex 8 19-20).
35. Student has not been consistently present in the classroom to implement strategies for behavior goal 3-***. (J Ex 8 20).
36. An FBA dated February 2024 was performed by ***, Student's classroom teacher. The FBA added the new behavior of task avoidance and indicated that the behavior occurred when Student was transitioning from *** to the building on arrival at school. The FBA was never presented to or approved by an ARD committee. (J Ex 34). *** did not present the FBA to the ARD because she was nervous due to the attendance at the ARD of ***, the Parent's advocate. (Tr 1:175:21-25).
37. An Independent Education Evaluation (IEE) was performed by ***, a licensed psychologist and licensed specialist in school psychology. *** conducted her evaluation of the Student between December ***, 2024 and April ***, 2025. *** observed Student one time at school, but did not observe Student ***. *** was contracted to perform an FBA, but failed to do so. (P Ex 2 7-9).
38. The psychological evaluation by *** provided recommendations for the District to

implement for the Student. (P Ex 2 7-9).

39. The Student is served in the ***, a self-contained *** class. After reviewing the Student's competencies and present levels of educational performance, the ARD determined that the Student's disability affects Student's involvement and participation in the general education curriculum. (J Ex 8 28).
40. As of January ***, 2025, Student had been absent *** days in the 2024-2025 school year. *** reviewed the 90% rule in Texas. Students are to be present for 90% of the seat time in order to earn credit. (J Ex 8 62).
41. The ARD proposed in home and community based training. The Parent stated that the issue is that Student gets to school but does ***. Parent believes that the training needed is on the school understanding how to get Student into the building. The Parent's advocate stated that getting Student *** does not equate to in-home and community based training. The Parent's stance continues to be that there is no need for in-home and community based training. (J Ex 8 67).
42. Nothing in the BIP adopted by the January ***, 2025 ARD directly addressed getting Student *** and into the school building. (J Ex 8 71-75).
43. The District made numerous efforts to get Student *** and into building, but did not have consistent success during school years 2023-24 and 2024-25. Even when the Parent followed the District's plans for using incentives to get Student to *** and enter the school building, Student often refused school.
44. The District never offered a consistent explanation for Student's school avoidance behavior and never obtained an assessment from a qualified psychologist or child behaviorist to determine the reasons for the behavior.

DISCUSSION

I. The Nature of the Dispute

This dispute arises from a significant change in Student's behavior that began after

Student started *** school. The evidence shows that Student attended school regularly as a special education student through *** grade. In August 2023, however, shortly after Student began school at *** School, Student began to experience severe school avoidance. Since that time, despite efforts by both the Parent and the District's staff, Student has frequently refused to *** and enter the school building at *** School. Student's absences from school over the past two school years have been so numerous that both parties acknowledge Student has been unable to make any meaningful educational progress.

Student asserts several claims under IDEA. Student's main claim is that for the 2023-24 and 2024-2025 school years, the District failed to design and implement an appropriate Individualized Education Program (IEP) that would provide Student academic and non-academic benefits appropriate to Student's unique characteristics, circumstances, and needs. Student specifically claims that the District denied Student FAPE by failing to include in the IEPs, and to implement, appropriate measures to ensure that Student can *** and into the school building. In connection with this claim, Student argues that the District failed to perform an appropriate Functional Behavioral Assessment (FBA) of Student, delayed sending a consent form for such an evaluation to the Parent until the 2024-2025 school year, and further failed to develop a new Behavior Intervention Plan (BIP) to address Student's refusal to enter the school building. Student also claims that the District failed to collaborate appropriately with Student's Parent to address this behavior. The key issue underlying each of these claims is whether the District failed to make appropriate assessments of Student's behavior and appropriate changes to Student's IEPs in order to adequately address and manage Student's refusal to attend school.

II. The Governing Legal Standards

A. Burden of Proof

Student has the burden of proof to establish the inappropriateness of the educational plan proposed by the District. As the Supreme Court has explained, “(t)he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Applying this principle, the Fifth Circuit held that, “the IDEA creates a presumption in favor of a school system’s educational plan, placing the burden of proof on the party challenging it.” *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5th Cir. 2003). Consequently, Student bears the burden of proof to overcome the presumption that the plan proposed by the District was appropriate. *See id.*

B. FAPE

The IDEA requires that all children with disabilities who are in need of special education and related services are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. Nothing in IDEA requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of the IDEA and who, by reason of that disability, needs special education and related services is regarded as a child with a disability. 20 U.S.C. §1414(a)(3)(a)(B).

The purpose of the IDEA is to ensure all children with disabilities have available to them a Free Appropriate Public Education (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). A school district is responsible for providing a student with specially designed

personalized instruction with sufficient support services to meet the student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188- 189, 200-201, 203-204 (1982). (*Rowley*).

The IDEA requires more than a diagnosis of a disability. It requires that a child exhibit symptoms of a qualifying disability and exhibit them to such a degree that they interfere with the child's ability to benefit from the general education setting. *Alvin Indep. Sch. Dist. v. A.D.*, 46 IDELR 221 (5th Cir. 2007); *Student v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Filed Aug. 10, 2007).

C. Standards of IEP Appropriateness

The Fifth Circuit has addressed the meaning of the *Rowley* standard in light of the Supreme Court's decision in *Endrew F. v. Douglas Cnty. Sch. Dist. No. 15-827*, 580 U. S. 386, 400-01 (2017). The Fifth Circuit concluded that while *Rowley* sets the floor of opportunity for an eligible student, the *Endrew F.* decision does not displace or differ from the Circuit's own standard set forth in *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). Accordingly, the appropriateness of the IEP proposed by the District must be analyzed in accordance with the holding in *Michael F.*

The Court in *Michael F.* determined that a student's IEP is reasonably calculated to provide meaningful educational benefit when:

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

Cypress- Fairbanks ISD v. Michael F., 118 F.3d 245, 251 (5th Cir. 1997)

A school district's obligation when developing a student's IEP is to consider the student's strengths, the student's parents' concerns for enhancing the student's education, results of the student's most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1)(i). While the IEP need not be the best possible one nor must it be designed to maximize the student's potential, the school district must nevertheless provide the student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

To meet its substantive obligation under the IDEA a district must offer an IEP that is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. The adequacy of a given IEP turns on whether it is appropriate to the unique characteristics, needs, and circumstances of the child for whom it was created. *Endrew F. v. Douglas Cnty. Sch. Dist., No. 15-827*, 580 U. S. 386, 400-01 (2017).

III. Student Proved That Student's IEP Was Not Appropriate.

The IEPs at issue in this matter are the ones the District developed on August ***, 2024 and January ***, 2025. Specifically at issue are the behavior goals and the behavior improvement plans included in the IEPs. Other than the District's failure to address and include goals and objectives for addressing Student's school avoidance as a behavioral issue, the education and related services provided for in Student's IEPs were appropriate. However, the evidence at hearing shows that the District's services to Student in connection with the school avoidance behavior were inadequate. Consequently, for the reasons and based on the evidence summarized below, Student's educational program under the IEPs did not comply with the

legal standards of appropriateness set forth in *Endrew F.* and *Michael F.*

A. Individualized On the Basis of the Student's Assessment and Performance

The evidence shows that Student has been a special education student in the District for many years and that until the fall of 2023, Student attended school regularly and did not refuse to enter school buildings. Beginning in the fall of 2023, however, soon after Student started ***, Student began to refuse to attend school. Student's Parent drove Student and Student's sibling to school in the Parent's car. Upon arriving at the unloading point, Student *** and walk into the school building. The parties agree that unless Student enters the school building and goes to class, the special education and related services to which Student is entitled cannot be provided and, as a result, student cannot learn and make educational progress.

The District does not dispute that Student's refusal to enter *** school is directly related student's disability. For this reason, as both parties acknowledge, it was and is the District's responsibility to assess student's behavior and the reasons for it and to make and implement an appropriate plan to address it effectively. This responsibility falls to the District regardless of how Student's behavior is characterized (transition, task avoidance, school avoidance, school refusal, or another label). The behavior must be addressed by Student's ARD and in the Student's IEP. The District does not contend otherwise.

The District argues instead that Student's IEPs, which included an FBA and a BIP that had been developed based on that FBA, were adequate to address Student's behavior and, therefore, no IEP change was needed. However, the FBA that the District was using was developed in 2021, well before the appearance of the school avoidance behavior, and therefore

could not possibly have been used to develop a plan to address such behavior in the BIPs included with the IEPs for the 2023-2024 or 2024-2025 school years.

The District nonetheless argues that the 2021 FBA and BIP were adequate to address Student's school avoidance because they addressed Student's "task avoidance" behavior. The District contends that Student's school avoidance is just another type of task avoidance, which was already addressed in Student's IEP via a BIP.

The evidence does not support the District's argument. It shows that the District did not take any steps to obtain an assessment from a qualified psychologist or behaviorist to determine why Student was *** and go into the school building. Without an assessment by a qualified professional of the reasons for Student's behavior, the District's position that the behavior is simply a type of task avoidance is just an assumption, not a conclusion derived from a proper FBA or other appropriate assessment or evaluation of Student.

The District correctly points out that some of the specific behaviors used by Student when resisting the District's and the Parent's efforts to get Student *** and into the building were similar to those addressed in the BIP (e.g., ***). But that does not mean that the reasons for Student's refusing to attend school are necessarily the same as the reasons Student avoided tasks assigned to Student during school instruction.

In fact, the evidence suggests strongly that the reasons for Student's school avoidance behavior likely differ from the reasons for Student's task avoidance. First, Student engaged in task avoidance in prior school years, but Student did not refuse to enter school buildings until after starting ***. The District offered no credible evidence to explain why Student had previously not refused to enter school buildings. Second, if Student's new school avoidance behavior was simply another form of task avoidance behavior, then one would reasonably

expect that the methods of the existing BIP that had been used successfully to address the task avoidance would also successfully address the school avoidance behavior. But the evidence shows clearly that such methods did not succeed in getting Student *** regularly enter *** school. Moreover, for many months over two school years, those methods produced little to no consistent success in getting Student *** and into the school. Given this lack of success with methods from Student's existing BIP, the District should have concluded that Student's school avoidance behavior, whatever it might be labeled, needed to be assessed by a qualified professional. Yet even then, the District did not pursue an FBA or other evaluation by a qualified professional in order to determine why the behavior was happening and what to do about it.

The failure to amend an IEP to appropriately address a special education student's school refusal behavior can result in a denial of FAPE if it causes the student not to make meaningful educational progress. In *Chavez v. Bd. Of Educ.*, 614 F.Supp. 2d 1184 (D.N.M. 2008), for instance, the court noted with approval the Administrative Appeals Officer's ruling that the school district denied the student FAPE by failing to amend the IEP to address school refusal behaviors and ordered that an FBA be conducted to determine the causes of the student's school refusal. In this case, Petitioner established that the Student has not made meaningful progress because the District failed to amend Student's IEP to appropriately address student's school refusal behavior. As in *Chavez*, Petitioner therefore sought a new FBA and a new BIP designed to get Student to enter *** school building.

In response to Petitioner's claim that the District should have performed a new FBA and developed a new BIP to address Student's school avoidance behavior, the District correctly points out that an FBA is not necessarily required for compliance with IDEA. In *J.B. v. Frisco*

Indep. Sch. Dist., 528 F. Supp. 3d 614 (E.D. Tex. 2020), the court recognized, “Failure to conduct an FBA, therefore, does not render an IEP legally inadequate under the IDEA so long as the IEP adequately identifies a student's behavioral impediments and implements strategies to address that behavior.” *J.B.*, 528 F.Supp.3d at 639, citing *M.W. ex rel. S.W. v. New York City Dep't of Educ.*, 725 F.3d 131, 140 (2d Cir. 2013). The court in *J.B.* noted, “An FBA is generally considered ‘a systematic set of strategies that are used to determine the underlying function or purpose of a behavior so that an effective behavior management plan can be developed.’” *J.B.*, 528 F.Supp.3d at 639, citing *Banks v. St. James Par. Sch. Bd.*, No. 2:65-CV-16173, 2017 U.S. Dist. LEXIS 219372, 2017 WL 2554472, at *5 (E.D. La. Jan. 30, 2017). Instead of a strict requirement that a school conduct an FBA for a student whose behavior interferes with their learning or the learning of others, the ARD Committee must “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” *J.B.* 528 F. Supp.3d at 639, citing 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). If a school fails to conduct an FBA or BIP at all, “a student may be provided with a FAPE if the designed program adequately addresses the student's needs.” *J.B.* 528 F.3d at 639-640. As identified in *J.B.*, “even when an FBA or BIP are not conducted at all, courts have found a student may be provided with a FAPE if the designed program adequately addresses the student's needs.” *Id.* at 639. On the other hand, IDEA does require IEP teams, in developing IEPs, to consider behavior management whenever a student's behavior is interfering with the child's ability to benefit from his educational programming. Specifically, the IDEA states that the IEP team must consider the student's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning of that or of others." 34 CFR 300.324(a)(2)(i).

FBA's are commonly used by school districts to fulfill their duties to assess and manage such behavioral issues. The purpose of an FBA is to isolate a target behavior and develop a hypothesis regarding the function of the target behavior. A target behavior is one that interferes with a student's ability to progress in the curriculum and to achieve the student's IEP goals. Once the target behavior is identified and the hypothesis developed, a positive behavior intervention plan can be prepared to address the target behavior with strategies and interventions, if necessary, or the target behavior can be addressed using a more informal approach. *Broward County Sch. Bd.*, (SEA FL 05/07/10). A new or modified BIP therefore is the common way, although not the only way, to document the plan.

Here, Student was exhibiting a behavior-- *** and go into the school building -- that impeded Student's learning. As this was a new behavior for Student, an FBA, or some kind of a psychological and behavioral assessment, was warranted at the time. Although IDEA does not require a written BIP in all cases, failure to reduce the BIP to writing may result in a denial of FAPE if the district is in fact not implementing a systematic behavior program. *See, e.g., School Bd. Of Indep. Scho. Dist. No. 11 v. Renollett by Renollett*, 45 IDELR 117 (8th Cir. 2006). To date, the District has failed to determine the function of the target behavior and has yet to develop a plan of successful positive interventions to address the behavior so that Student will enter the school building and the classroom. Until Student is able to return to school, Student will not be able to meet any of the educational goals and objectives in Student's IEP.

The District nonetheless seems to argue that it is not liable because its staff made numerous efforts to get Student to into the school building. The evidence does indeed show that the District made those efforts. After Student demonstrated severe school avoidance behaviors, refusing almost every morning to *** to enter the school, District staff members

employed various incentive-based strategies suggested by the existing BIP to address the issue. It is also true, as the District argues, that sometimes the Parent was not consistent in doing parent's part to make sure the incentives were used as the District intended.

But even when the Parent did parent's part to make sure the incentives were used at the times and in the ways intended, Student still did not regularly leave the Parent's car and enter the school. And when the efforts of the District and the Parent continued to be unsuccessful, the District persisted with the same or similar methods without ever performing any proper professional assessment regarding Student's behavior. In fact, the District never performed a psychological assessment of this specific behavior; it merely assumed it was a form of task avoidance and accepted hearsay input from Student's neurologist that the school avoidance was behavioral and not a medical issue. As far as the ARD Committee was concerned, the operative FBA was dated February 2021, and that FBA simply did not address the school refusal behavior at all. Even if ***, the Student's classroom teacher, is credited with having completed an FBA in April 2024, it was never presented to the ARD Committee or to Student's Parent, and almost no District staff members appear to have been aware of it. Moreover, *** is neither a licensed psychologist nor an expert in child behavior, and she offered no explanation for Student's school avoidance behavior or why this behavior began only after Student started *** school. The BIP in the 2024-2025 IEP also did not specifically address the school avoidance behavior. (J Ex. 34). When there is an avoidance or refusal behavior, the essential issue is why the individual is refusing or seeking to avoid that something. (Tr 1:212:12-19). That is precisely what a Functional Behavior Assessment is designed to determine. (Tr 1:212:12-19). *** recognized that Student's school refusal behavior of *** significantly interfered with Student's ability to make progress in the educational environment

because Student has missed so much school that Student has not received an education. (P Ex. 2-6; Tr 2:304:3-305:5).

Furthermore, the District failed to assess appropriately whether anxiety might be a root cause of Student's school refusal behaviors. Petitioner's expert on anxiety disorders, ***, was the only expert who actually observed Student *** when Student's Parent was attempting to drop Student off. *** detected clear signs of anxiety at that time. However, the District never undertook an analysis of this issue.

The District argues that its evaluators did assess for anxiety when conducting their evaluation of Student. (*See, e.g.*, Tr 2:485:22-487:12). However, with this suggestion the District overlooks a key distinction. The District's evaluation was designed to determine whether Student fell into a general disability category of emotional disability. It was not designed to determine whether Student felt intense anxiety under very particular and specific circumstances. (Tr 2:504:17- 512:13). In fact, the evaluation did not take any observations or data regarding school refusal into account. (Tr 2:504:17-512:13). The District's LSSP only referenced one line from *** about difficulties in getting Student *** in the FIE, precisely because she was focused on eligibility issues and not a specific context. (Tr 2:512:14-516:5). The District's LSSP expressly indicated that to assess anxiety or the like in a specific context, would require an FBA. (Tr 2:516:6- 517:8). That is precisely what the District did not do.

The District also emphasizes that it offered to give the Parent in-home training and to provide bus transportation to Student. But these offers were based on assumptions or hopes of success, not on assessments of Student's behavior or needs. While it is possible they could have helped, it is also possible they would have failed miserably and made the problem worse.

In any event, they were not adequate substitutes for a strategy founded on an assessment by a qualified professional. The Parent therefore was entitled to refuse them, and parent did.

Many of the District's other evidence and criticisms of the Parent's role in Student's school avoidance behavior suffer from this same defect: They do not explain or justify the failure of the District to fulfill its obligation to pursue and obtain an assessment of Student's behavior by a qualified professional. Without such an assessment to guide the District and the Parent in addressing Student's refusal to enter the school building, the efforts of the District were not grounded in an understanding of the target behavior and, therefore, were not appropriate under IDEA.

For these reasons, Student's IEPs and overall educational programming did not provide Student a FAPE during the relevant time periods and were not consistent with the requirements of *Endrew F.* and *Michael F.* that the IEPs be individualized on the basis of Student's assessment and performance.

B. Provided in a Coordinated and Collaborative Manner by Key Stakeholders

At all times, the Parent was provided with proper notice of ARD meetings and procedural safeguards. The deliberations of the ARD meetings indicate that the Parent fully participated in the ARD meetings and that the District considered and fully discussed parental concerns during ARD meetings. The IEPs were developed by the required members of the ARD committee, including the Parent who was accompanied by an advocate. The 2023-2024 ARD meeting began in January 2024 and finally concluded in disagreement in August 2024. The Parent filed for this due process hearing in November 2024. However, despite the

collaborative effort, the Parent was never in agreement with the proposed IEP and at every ARD convened for developing the 2023-24 IEP the Parent indicated disagreement with some of the key provisions of the proposed IEP.

After several attempts were made to schedule a meeting to develop the 2024-2025 IEP, the ARD met on January 14, 2025. An IEP for Student was developed. The Parent signed in disagreement with the IEP, and the meeting concluded on January 14, 2025.

Although the evidence shows serious disagreement between the Parent and the District, it does not establish that the District failed to collaborate with the Parent.

C. Least Restrictive Environment

The evidence shows that Student can receive an educational benefit in Student's placement in the *** at *** School as called for in Student's relevant IEPs and is an appropriate placement in the least restrictive environment. For Student, a structured, school-based setting is not only appropriate but is necessary to ensure educational benefit. Student presents with significant cognitive and adaptive behavior deficits that require an alternative curriculum, specialized instruction, and a substantially lower student-to-teacher ratio than is available in a general education environment. (J Ex 6 45).

As previously noted, Student's Parent brought Student to school every day that Student was not ill. However, the District did not take the measures necessary to ensure that Student could *** to the classroom. Although the District developed a plan to attempt to get Student to *** and go into the building, the plan was only minimally successful and was eventually discarded by the District. As a result, Student did not attend school during the majority of the time during the 2023-2024 and 2024-2025 school years. The District thus did not provide the tools necessary for Student to receive instruction

in the *** classroom. As a result, the school forced Student into the most restrictive environment—a home setting in which the District did not provide instruction or services at all.

D. Positive Academic and Non-academic Benefits Demonstrated

The credible evidence at the hearing showed that the District failed to provide Student positive academic or non-academic benefits. As explained above, the evidence shows, and the parties agree, that Student failed to make progress during the 2023-2024 and 2024-2025 school years. In fact, as Student has managed very little attendance at school and the District has offered no instruction or services elsewhere, Student has made almost no progress at all. (See J Ex. 45, showing Student has made essentially no progress during the 2023-2024 and 2024-2025 school years because of absences).

The District’s proposed provision of special education services to Student under the relevant IEPs was reasonably calculated to, and would likely, result in meaningful education benefits to Student. However, because the District failed to assess and address Student’s school avoidance behaviors, Student attended school less than fifty percent of the time during the 2023-2024 year and only six days during the first semester of the 2024-2025 school year. Student may have achieved academic progress, and met the goals and objectives set forth in the proposed IEP, if Student had attended school on a regular basis.

While the special education staff initially made valiant attempts to encourage Student to *** upon arrival at school, without an assessment and understanding of what motivated and triggered Student’s school avoidance behavior, Student’s IEPs were not and could not be successful.

The evidence supports Student’s claim that Student was denied FAPE because Student’s IEPs failed to demonstrate positive academic and non-academic benefits.

IV. Conclusion

Applying the totality of the *Michael F.* factors to the IEPs at issue here, the evidence showed that

the IEPs offered by the District to Student for the school years 2023-2024 and 2024-2025 were not appropriate. Although they were individualized based on Student's assessment and performance, meaningful educational progress could not be delivered to Student because of the inability of the District to sufficiently address the Student's behavior of school avoidance, specifically Student's refusal *** upon arrival at school and go into the school building where Student's IEPs could be fully implemented and Student could receive special education and related services.

The IEPs were developed in a sufficiently coordinated and collaborative manner by the key stakeholders, but they failed to provide Student with a program that was reasonably calculated to deliver meaningful academic benefit in light of Student's excessive absences. Based on the four factors of *Michael F.*, the evidence established that the District failed to offer Student a FAPE during the 2023-2024 and 2024-2025 school years.

CONCLUSIONS OF LAW

1. Student met Student's burden of proving that Respondent failed to propose an appropriate IEP for Student for the 2023-2024 and 2024-2025 school years. 34 C.F.R. §300.320.
2. Student met Student's burden of proving that the District denied the Student FAPE in the 2023-24 and 2024-25 school years by failing to take appropriate measures to determine the cause of Student's school avoidance behavior and develop a plan to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and Discussion, Petitioner's claims that Student was denied FAPE by the District in the 2023-24 and 2024-25 school years are MERITORIOUS.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. No later than October 30, 2025, a full psychological examination, FBA, and report concerning the Student must be conducted by a professional, licensed psychologist with experience dealing with students who have Student's disabilities and who are experiencing school avoidance behavior. The examination shall be at District cost. The purpose of the examination shall be to determine to the extent feasible the reason or reasons for the Student's school avoidance behavior and to propose changes to the Student's Behavior Intervention Plan to address the behavior. The examiner shall present the report to the Student's ARD committee no later than November 6, 2025.
2. No later than November 21, 2025, the District shall convene an ARD committee and develop IEP goals and objectives and a Behavior Intervention Plan to address Student's school avoidance behavior, focusing on consistently getting Student to exit the vehicle in which Student arrives at school and into the school building.
3. The ARD committee shall offer Student one hundred twenty (120) hours of compensatory education, to be used before the start of the 2026-27 school year, to make up for Student's lack of educational progress during the 2023-2024 and 2024-25 school years..
4. All other relief not expressly granted is hereby denied.

SIGNED on June 20, 2025.

Sandy Lowe
Special Education Hearing Officer
For the State of Texas