

SOAH Docket No. 701-25-05627.IDEA
TEA Docket No. 097-SE-1124

Before the State Office of Administrative Hearings

**Student, by next friend Parent,
Petitioner**

v.

**Cypress-Fairbanks Independent School District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student, (Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against the Cypress-Fairbanks 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 issues in this case are whether Student continues to be

eligible for homebound services and whether Student's educational programs for the 2023-24 and 2024-25 school years were appropriate.

The Administrative Law Judge (Judge) concludes the District offered Student a free appropriate public education (FAPE) in the least restrictive environment when it proposed a campus-based program and that Student's educational programs for the 2023-24 and 2024-25 school years were reasonably calculated to confer educational benefit in light of Student's unique circumstances.

II. DUE PROCESS HEARING

The due process hearing was conducted March 4-5, 2025. The hearing was recorded and transcribed by a certified court reporter. Petitioner was self-represented by Parent, Respondent was represented by ***, General Counsel for the District. ***, Assistant Director for Programming and Instruction, attended the hearing as the party representative for Respondent.

The parties submitted 14 joint exhibits, which were admitted without objection. Petitioner offered 46 exhibits, 40 of which were admitted over any objection. Respondent offered two exhibits, which were admitted without objection. Respondent also offered one rebuttal exhibit.¹

¹ Respondent offered a March ***, 2019 letter from Dr. *** on cross-examination of Parent during rebuttal. Transcript (Tr.) at 585. The Administrative Law Judge agreed to accept the letter as rebuttal evidence. Respondent later uploaded seven pages, including Dr. *** letter (Respondent's Exhibit (RE) 3-3). RE 3 at 1-2 and RE 3 at 4-7 are beyond the scope of what was offered and only RE 3-3 is admitted.

The witnesses Petitioner called were Parent; Dr. ***, psychologist and independent evaluator; and ***, Student's private occupational therapist. Respondent called ***, ***, Student's former homebound teacher; ***, District physical therapist; ***, District occupational therapist; ***, District speech language pathologist; and ***, District diagnostician.

Both parties filed timely written closing briefs. The Decision in this case is due on May 7, 2025.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following issues from October 2023 to present for hearing in this matter:

1. Whether the District denied Student a FAPE by failing to continue homebound services consistent with Student's *** recommendation.
2. Whether the District denied Student a FAPE by failing to develop an appropriate individualized education program (IEP) that addressed Student's cognitive, speech, and physical disabilities, including Student's inability to ***, read, write, manage *** and ***, and *** needs.

B. RESPONDENT'S LEGAL POSITION

Respondent generally and specifically denies Petitioner's factual allegations and legal claims.

IV. REQUESTED RELIEF

A. PETITIONER'S REQUESTED RELIEF

Petitioner seeks the following items of requested relief:

1. An Order directing the District to follow Student's *** recommendation for homebound services for the remainder of the 2024-25 school year.
2. Immediate implementation of homebound services per Student's *** recommendation to ensure Student receives proper educational instruction tailored to Student's medical needs.
3. An Order directing the District to develop an appropriate IEP that provides academic instruction and related services to address Student's unique needs.
4. Assessments using appropriate tools and formal procedures to establish a comprehensive understanding of Student's educational needs to develop appropriate goals that meet Student's educational needs.
5. Appoint an independent monitor to oversee the District's compliance with the resolution agreement.

B. RESPONDENT'S REQUESTED RELIEF

Respondent requests a finding that the District provided Student a FAPE and a determination Petitioner is not entitled to the relief requested.

V. FINDINGS OF FACT

Background Information

1. Student is an *** student in the District. Student's home campus is *** School. Student lives with Student's parents and ***.²
2. Student is eligible for special education and related services as a student with an intellectual disability, speech impairment, and other health impairment ***.³
3. Student was born with multiple medical problems. Student was diagnosed with *** at birth as well as ***. Student has had two *** surgeries, the first when Student was approximately *** and the second in ***. Other diagnoses include ***, ***, and ***.⁴
4. Student receives medical care from numerous providers, including a primary care physician, ***, ***, ***, ***, ***, and ***. Parent has not allowed any direct communication between Student's medical providers and the District since the 2018-19 school year.⁵
5. ***

² Joint Exhibit (JE) 6 at 1; Petitioner's Exhibit (PE) 4 at 1.

³ JE 6 at 1, 4; JE 10 at 35-36, 40-41, 43.

⁴ JE 9 at 7; PE 4 at 2; PE 10 at 1-2; Tr. at 144.

⁵ JE 1 at 4-5; PE 40 at 1; Tr. at 18, 23-27, 29.

⁶ JE 5 at 6, 17, 28; JE 9 at 10; PE 11 at 3-4; PE 40 at 6.

6. A private neurodevelopmental assessment conducted in July 2023, when Student was *** years old, found that Student was making developmental progress with no regression noted. Student had expressive language skills at an age equivalent of *** months and receptive language skills that scattered up to an age equivalent of *** months. Visual problem solving/fine motors skills scattered up to an age equivalent of *** months.⁷
7. Student has attended school in the District since the 2017-18 school year. Student has received homebound services since that time and has never attended school in person.⁸

2023-24 School Year – *** Grade

8. Student's admission, review, and dismissal (ARD) committee, including Student's parents, convened for an annual meeting on September ***, 2023 to develop Student's program for the 2023-24 school year and to consider the information provided by Student's physician recommending a homebound placement.⁹
9. The ARD committee considered Student's present levels of academic achievement and functional performance (present levels) and Student's progress on Student's current goals. Staff working directly with Student took data and made observations to establish Student's present levels. Parent's input was added to the present levels.¹⁰

⁷ PE 11 at 1, 4.

⁸ JE 2 at 14; PE 4 at 2; PE 40 at 2; RE 1 at 38.

⁹ JE 1 at 24, 30, 40.

¹⁰ JE 1 at 31-32, 40; Tr. at 531.

10. Student's academic goals for the 2023-24 school year were created based on data collection, Student's present levels, and observations, using the *** grade Texas Essential Knowledge and Skills (TEKS), the required state curriculum standards, as a guideline. The State provides school districts vertical alignment on the curriculum for a particular grade and the curriculum is broken down all the way down to the prerequisite skill level. Student receives a modified grade level curriculum and the skill being taught is the grade level skill that has been modified down to the prerequisite level.¹¹
11. Proposed IEP goals were discussed and revised with input from Student's parents. A reading goal targeted identifying common or high frequency words. A writing goal to be implemented jointly with the teacher and occupational therapist focused on ***. One math goal targeted identifying up to ***. A second math goal, added at parents' request, targeted identifying ***. A science goal targeted identifying the object(s) related to the current ***. A social studies goal targeted identifying ***. Each academic goal had four benchmarks, one per reporting period, with increased criteria and reduced prompts further into the school year.¹²
12. To develop Student's speech goals for the 2023-24 school year, the speech therapist considered data and progress on Student's previous goals and consulted Student's speech therapist from the 2022-23 school year to determine Student's present levels. Student made progress on, but did not master, Student's speech goals for the 2022-23 school year. These goals were continued for the 2023-24 school year so Student could continue to work towards mastery. Student's IEP included five speech goals. The goals targeted using ***.¹³

¹¹ Tr. at 234-35, 264-65, 353-56, 364-65, 367, 382-83, 531.

¹² JE 1 at 40; JE 7 at 2-6.

¹³ JE 7 at 2, 6-8; Tr. at 489-90, 505-07.

13. Student's ***, Dr. ***, submitted a Homebound Services Medical Report dated August ***, 2023. Dr. *** did not check the box (yes or no) following the question 'Is this student confined to the hospital or home for medical reasons?' Dr. *** checked the box indicating Student would be confined four cumulative weeks throughout the school year or longer from August 2023–June 2024.¹⁴
14. The District accepted Dr. *** recommendation for homebound services even though she did not check the box indicating Student was confined to the home because Student was new to *** School and had a history of homebound placement. For the 2023-24 school year (September 15, 2023– May 31, 2024), Student's instructional schedule called for 60 minutes four times per week of direct homebound instruction by a special education teacher, 25 minutes two times per week of direct speech therapy services, and 30 minutes of in-class support one time every nine weeks for occupational therapy (OT).¹⁵
15. A September ***, 2023 Documentation of School Function completed by the occupational therapist recommended the level of OT services in the schedule. The occupational therapist supported Student's language arts goal related to writing. In writing, there are developmental steps. The first is prewriting skills, ***. The next developmental step is ***. Student was able to do prewriting skills and Student's new writing goal targeted ***. The occupational therapist created laminated worksheets to work on prewriting ***, provided ***, supported ***, created a tactile activity (***) for ***practice, and provided Parent resources for activities to try at home.¹⁶

¹⁴ JE 1 at 4; Tr. at 25.

¹⁵ JE 1 at 33; Tr. at 561-62.

¹⁶ JE 1 at 44, 50; Tr. at 436-41.

16. Parent disagreed that the IEP did not include a physical therapy (PT) goal and requested a PT goal to work on ***. Parent also disagreed with the proposed service times, requesting an increase in homebound time by *** minutes, speech for a total of *** minutes, and OT for *** minutes per ***. Parent accepted the IEP goals and services so that homebound instruction could begin and waived the five-day waiting period. The meeting ended in disagreement.¹⁷
17. Student's three-year evaluation was due on May ***, 2024. Student's ARD committee, including Student's parents, conducted a Review of Existing Evaluation Data (REED) on September ***, 2023. Further assessment was not required to determine Student's areas of eligibility. Parent disagreed with the language/levels indicated in the REED in certain areas (speech, physical, and educational performance) because, in Parent's opinion, it implied Student was functioning at a higher level than Student actually was.¹⁸
18. Based on the REED and Parent's requests for additional formal testing, Parent and school staff agreed to complete additional assessment in the areas of speech and language, physical (OT and PT), cognitive/intellectual, adaptive behavior, educational/developmental, and assistive technology to be completed by April ***, 2024. The ARD committee meeting ended in disagreement.¹⁹
19. Student's ARD committee reconvened on October ***, 2023 with Student's parents in attendance, to complete Student's annual review, including the schedule of services for the 2024-25 school year and State of Texas Assessment of Academic Readiness (STAAR) testing. To prevent a lapse in services at the beginning of the next school year, the committee agreed that Student's current schedule of services would continue until Student's next annual review date, September ***, 2024. An updated homebound form from Student's physician would need to be completed to determine whether Student would continue to receive homebound services.²⁰

¹⁷ JE 1 at 38-40.

¹⁸ JE 1 at 8, 30; JE 2 at 14, 16; JE 9 at 3-20.

¹⁹ JE 2 at 12-14, 16.

²⁰ JE 3 at 4, 15.

20. Parent asked the committee to consider additional areas of testing and to reconsider the reevaluation timeline, wanting it completed by November ***, 2023, rather than the previously agreed to date of April ***, 2024. Parent continued to disagree that Student's IEP did not include PT services. The committee discussed STAAR testing and the District recommended Student participate in *** testing with accommodations. Parent expressed concern with state assessments for a student with developmental and *** and was educated that this is a state requirement. The meeting once again ended in disagreement.²¹
21. Student's full individual evaluation (FIE) is dated April ***, 2024. The multidisciplinary team that conducted the evaluation consisted of a diagnostician, two speech language pathologists, an occupational therapist, and a physical therapist.²²
22. Speech and language abilities were assessed using formal and informal measures, including input from Parent and the homebound teacher. The auditory comprehension scale of the *** evaluates the scope of a child's comprehension of language. Student demonstrated the ability to: ***. Student had difficulty identifying ***.²³
23. The expressive communication scale of the *** is used to determine how well a child communicates with others. Student demonstrated the ability to: ***. Student had difficulty using different ***

²¹ JE 3 at 9-10, 13-15.

²² JE 10 at 1.

²³ JE 10 at 19-21, 23-26.

***.²⁴

24. The *** sounds in words subtest elicits the production of consonant sounds in the initial, medial, and final position of words. Student's total raw score of *** placed Student *** percentile when compared to other *** Student's age. The score fell in the *** range and confirmed articulation deficits.²⁵
25. The speech language pathologists also completed a communication sample to analyze functional communication skills. Student communicated primarily using ***. Student used gestures such as ***. Student ***. When labeling verbs, Student produced ***.²⁶
26. The speech evaluators found that Student had *** in receptive and expressive language and articulation. Student's receptive and expressive language deficits impacted Student's ability to understand information presented orally, effectively communicate Student's knowledge, wants and needs, ideas, and opinions, and engage in interactions with others. Student's articulation impairment impacted Student's ability to be clearly understood and may impact letter-sound correspondence during reading and writing activities. Student's spontaneous and imitative utterances were characterized by sound errors, including omissions and substitutions, which impacted intelligibility. Student continued to meet eligibility criteria as a student with a speech impairment.²⁷
27. The FIE assessed Student's cognitive and intellectual functioning. A formal assessment was attempted but could not be completed without prompting and deviating away from the standardization intended for the test, so a functional

²⁴ JE 10 at 21.

²⁵ JE 10 at 22-23.

²⁶ JE 10 at 23.

²⁷ JE 10 at 26, 37, 41.

evaluation focusing on strengths and weaknesses was completed instead. Student was able to complete a *** correctly. When asked to ***, Student complied several times. Student knew the ***.’ Student was able to verbally identify the ***. Student was able to sort *** without prompting.²⁸

28. Student’s verbal skills and understanding were measured using ***. When presented with ***, Student was able to identify the ***but did not know the ***. Student identified six of nine *** presented. Student correctly ***. Student was able to identify ***.²⁹
29. Student was working on TEKS and skills *** below Student’s peers, and required intense modification and supports to meet Student’s needs. Based on Student’s level of functioning and learning, combined with deficits in adaptive behavior skills and inability to ***, the evaluator found that Student continued to meet eligibility as a student with an ***. Student’s *** impacted all aspects of Student’s education, life, and learning process and Student functioned *** same aged peers. Student had difficulties with retaining and demonstrating basic concepts, ***, and age-appropriate communication skills. Student required extended periods of time to retain information, opportunities for frequent practice of skills, and support throughout the learning process.³⁰
30. The FIE considered Student’s present levels. Behavioral strengths were that Student is “very social” and smiles often and engages with adults. Behavioral needs were not always following instructions (requires visual supports) and respecting others’ personal space and privacy. Functional strengths in articulation included adequate oral structures for speech production and

²⁸ JE 10 at 27-28; Tr. at 542-43.

²⁹ JE 10 at 28.

³⁰ JE 10 at 28, 37.

producing ***. Articulation needs were not producing age-appropriate phonemes in spontaneous speech. Language strengths included following basic directions with ***. Language needs included increasing expressive vocabulary, increasing *** receptively.³¹

31. Academic strengths included identifying most ***. Student could identify ***.³²
32. The OT portion of the FIE recommended continued OT support to address Student's difficulties with written expression with one 30-minute session per nine weeks. Suggested interventions included continuing to embed handwriting practice into instructional lessons; providing ample opportunity to *** for motor memory; using a variety of modalities when ***; and exploring ***. Areas needing support if Student attended school in person included exploring having Student ***; and teaching self-help skills such as ***.³³
33. The PT portion of the FIE was conducted at Student's home over two sessions, one where the physical therapist observed the homebound teacher working with Student and a second session working directly with Student as

³¹ JE 10 at 36.

³² JE 10 at 33, 36.

³³ PE 40 at 13-14.

Student navigated areas in and around Student's home. Student remains *** during all instructional time at home. Student can transition ***. PT services were not recommended while receiving homebound instruction because Student had the necessary *** and educational support to access the curriculum and Student's educational setting. PT was recommended should Student attend school in-person and Student should be evaluated again in that setting to determine what supports Student may require to access the curriculum.³⁴

34. Student's ARD committee, including Student's parents, convened on May ***, 2024, to review the FIE. Parents were provided the FIE report on April ***, 2024. Evaluators reviewed and answered questions about the FIE. Parent disagreed with the FIE because Parent believed it was not an accurate depiction of Student and overestimated Student's abilities. The meeting ended in disagreement.³⁵
35. On May ***, 2024, Parent requested an independent educational evaluation (IEE) in all areas evaluated in the April 2024 FIE and numerous other areas. On May ***, 2024, the District granted the requests for an IEE in the areas of cognitive function (IQ), adaptive behavior, achievement, OT, PT, speech and language, and assistive technology. The record does not reflect that any of the IEEs have been considered by Student's ARD committee.³⁶

2024-25 School Year – *** Grade

36. Student's ARD committee convened on October ***, 2024 to continue the annual review meeting started on May ***, 2024. Student's parents attended with an attorney. Parents were provided the present levels, progress reports, proposed IEP goals, and report card prior to the meeting.³⁷
37. The ARD committee considered Student's present levels in academic areas (reading, writing, math, science, and social studies), functional areas, and speech. Parents disagreed with the present levels, asserting the statements

³⁴ JE 4 at 16; JE 5 at 6, 32; JE 10 at 27; PE 40 at 5, 12-13; Tr. at 407-12.

³⁵ JE 4 at 4, 13-17; Tr. at 125.

³⁶ PE 2 at 1-2; PE 3 at 1-2.

³⁷ JE 5 at 4, 17.

made Student sound much more competent and at a higher level than they believe Student is.³⁸

38. The ARD committee, with parental input, developed academic goals to be completed by the 2025-26 school year annual IEP meeting. The proposed goals were created based on data collection, present levels, and observations, using the grade level TEKS as a guideline. The proposed goals were developed by staff working directly with Student and written to address the next appropriate step in the learning process.³⁹
39. A reading goal focused on reading words when ***. A writing goal to be implemented jointly with the teacher and occupational therapist focused on practicing writing by ***. A math goal focused on identifying a ***. A science goal targeted identifying the ***. A social studies goal targeted ***. Each academic goal had three benchmarks with increased criteria and reduced prompts further into the school year.⁴⁰
40. Student's proposed speech goals were developed by considering the April 2024 FIE, Student's present levels, and the speech therapist's observations and personal knowledge from working with Student during the 2023-24 school year. Student's proposed IEP included four speech goals. The goals targeted understanding simple, concrete ***.⁴¹
41. Parent agreed to the new IEP goals but continued to disagree that there was not a PT goal. School personnel explained that Student could access

³⁸ JE 5 at 5-7, 17.

³⁹ JE 5 at 17; JE 8 at 4-9; Tr. at 366-67, 532-33.

⁴⁰ JE 8 at 4-7.

⁴¹ JE 8 at 7-9; Tr. at 493-94, 505-07.

homebound instruction without PT services and the need for these services would be reconsidered if and when Student attends school in person.⁴²

42. Dr. ***, Student's ***, submitted a Homebound Services Medical Report dated October ***, 2024. The *** listed the following conditions: ***. Dr. *** did not check the box (yes or no) following the question '***?' The narrative stated, "Patient with complex medical needs. ***" Dr. *** recommended placement at home for the 2024-25 school year and checked the box indicating Student would be confined four cumulative weeks throughout the school year or longer.⁴³
43. The ARD committee considered the homebound services form. The District did not accept Dr. ***'s recommendation because she did not indicate that Student is confined to the home. District members of the ARD committee concluded that Student's medical needs could be accommodated in the school setting and that a campus-based placement was Student's least restrictive environment. Based on Student's present levels, the District recommended a ***setting, which is a small group setting focused on functional, cognitive, and academic needs.⁴⁴
44. After receiving the 2024-25 school year homebound form, the District sought permission to speak with Student's *** to clarify her recommendation. Parent did not provide consent. Parent instead offered for the ARD committee to send its questions to Parent, and Parent would forward them to Student's ***.⁴⁵

⁴² JE 5 at 17.

⁴³ JE 5 at 45.

⁴⁴ JE 5 at 17-18; Tr. at 183-84, 221, 565.

⁴⁵ JE 6 at 17; Tr. at 31-32, 63, 67-68, 194-95.

45. For the remainder of the 2024-25 school year (October 30, 2024-May 29, 2025) and from August 18, 2025-October 29, 2025, Student's instructional schedule called for placement in a ***classroom for 395 minutes per day with *** in the general education classroom for 55 minutes per day with in-class support. For related services, Student would receive 25 minutes two times per week of direct speech therapy services and 30 minutes of in-class support one time every nine weeks for OT.⁴⁶
46. In considering Student's least restrictive environment, District staff anticipated an increase in progress with the proposed change in placement from homebound to attending school in-person. Benefits of a campus-based ***program included an increased number of hours per day of direct teaching and access to the full range of ***curriculum, generalization of skills in an authentic setting, opportunities for peer interaction and social growth, and intensive instruction designed to meet Student's needs. Students in a campus-based ***program work on a variety of skills throughout the day to help increase independence, including ***. Student would also have exposure to peer models to increase language abilities.⁴⁷
47. Student lacks *** and requires close supervision. Student's *** needs could be met in a ***classroom, which offers a low student to teacher ratio and significant adult support and supervision. Staff address the students' need for assistance with tasks like ***.⁴⁸
48. The ARD committee considered Student's individualized needs in developing Student's school-based program. The committee discussed starting with a shortened school day and having Student come in a little bit at a time during the day to avoid arriving and leaving at the same time as other students. The committee also proposed placing Student in the smallest ***class (approximately ***staff, plus Student). To mitigate the risk of ***, the committee discussed Student having an assigned space in the

⁴⁶ JE 5 at 8-9, 18.

⁴⁷ JE 5 at 13; Tr. at 448-49, 535-36.

⁴⁸ PE 40 at 10, 12; Tr. at 373, 501.

classroom, not rotating classrooms, ***.⁴⁹

49. Student's parents had significant concerns about Student's medical and safety needs being met in the school setting and asked for homebound services to continue. The meeting ended in disagreement.⁵⁰
50. Student's ARD committee reconvened on November ***, 2024. Student's parents attended with their attorney. Parent advised the committee that Parent disagreed with the IEP overall, including the goals and present levels, because they were "too high" and did not accurately represent Student.⁵¹
51. The District proposed a revised schedule of services calling for 180 minutes per day of instruction in a ***classroom. To avoid ***, the committee revisited Student's schedule and recommended Student not participate in ***.⁵²
52. The committee discussed that an individual health plan, to include ***, would be created with physician orders. Staff would be trained by the school nurse on ***. The school nurse would be brought in when Student is ready to come to campus to guide the committee on how to implement any ***. Student would also receive ***.⁵³
53. The meeting ended in disagreement. On November ***, 2024, the District issued a Notice of Decision/Prior Written Notice. Student's new schedule would begin on December ***, 2024. It would include 180 minutes per day of in-person instruction in a ***classroom and an abbreviated school day

⁴⁹ JE 6 at 17; Tr. at 195-201, 230, 537-38.

⁵⁰ JE 5 at 13, 15-16.

⁵¹ JE 6 at 4, 17.

⁵² JE 6 at 8-9, 13; Tr. at 197, 537-38.

⁵³ JE 6 at 5, 17; RE 2 at 2; Tr. at 200, 524, 538-39.

that would eliminate large group activities, ***. Student would receive speech therapy, OT, and special transportation (***).⁵⁴

54. Parent filed the instant case on November 20, 2024. Once the due process hearing was requested, Student continued to receive homebound services under stay put and Student's goals from the 2023-24 school year have continued to be implemented.⁵⁵
55. Dr. ***, a licensed psychologist, conducted an independent psychological evaluation of Student. The report is dated February ***, 2025. The psychological educational components of the April 2024 FIE and Dr. ***'s evaluation were generally aligned and reached similar conclusions. Some elements of the District's evaluation, including the narratives and present levels, indicated a higher level of functioning than he observed.⁵⁶
56. Dr. *** recommended a highly structured classroom that has a low student-teacher ratio, emphasizes the use of visual cues, and combines small group and individualized instruction. The curriculum and learning activities need to focus on functional, vocational, and independent living skills. A *** program offers the type of structure and programming recommended. Dr. *** declined to comment on whether Student should attend school in-person because *** issues are beyond the scope of his expertise.⁵⁷
57. On the whole, Student made progress on Student's academic goals. Student mastered each of Student's language goals and made considerable progress on both articulation goals.⁵⁸

⁵⁴ JE 6 at 15-16, 33-34; RE 2 at 1-2.

⁵⁵ Tr. at 458.

⁵⁶ PE 4 at 1, 11; Tr. at 286-87, 298-99.

⁵⁷ PE 4 at 9; Tr. at 184, 302-03, 320-21.

⁵⁸ JE 11 at 1-12; Tr. at 365-66; 492, 530-31.

VI. DISCUSSION

A. DUTY TO PROVIDE A FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a 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 has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

The District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs 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 IEPs implemented and proposed by the school district were "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

B. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d

286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Endrew F.*, 580 U.S. at 403.

C. FAPE

A judge 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, 765-66 (5th Cir. 2018).

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

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the District must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The District's obligation when developing Student's IEP is to consider Student's strengths, Student's parents' concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1).

The evidence showed that Student's IEP for the 2023-24 school year and proposed IEP for the 2024-25 school year were individualized on the basis of assessment and performance.

a. Cognitive Functioning

Petitioner alleges the IEPs were not appropriately individualized to address Student's cognitive deficits, including Student's inability to ***. At the same time, Petitioner argues that the District's assessment of Student's present levels overestimated Student's abilities and that both the implemented and proposed goals were "too high" given Student's level of cognitive functioning. Petitioner takes particular issue with the goals being tied to grade level TEKS.

Student has an *** and Student's academic skills are well below Student's grade level. Student requires significant modifications to the curriculum to access it and is being exposed to grade level curriculum by working on skills at the prerequisite level. Parent, however, believes that Student's curriculum should not be based on Student's grade level but on Student's cognitive level as identified in the July 2023 neurodevelopmental assessment that found Student's skills ranged from ***. The District's Assistant Director of Programming and Instruction explained this is a "very common misconception with parents." The State, however, requires every student to have access to the general education curriculum. Indeed, this requirement is set forth in the IDEA.

The United States Department of Education Office of Special Education and Rehabilitative Services (OSERS) summarizes this requirement as follows:

"Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child's IEP must be designed to enable the child to be involved in and make progress in the general education

curriculum. 20 U.S.C. § 1414(d)(1)(A). The term “general education curriculum” is not specifically defined in the IDEA. The Department’s regulations implementing Part B of the IDEA, however, state that the general education curriculum is “the same curriculum as for nondisabled children.” 34 C.F.R. § 300.320(a)(1)(i). In addition, the IDEA Part B regulations define the term “specially designed instruction,” the critical element in the definition of “special education,” as “adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum, *so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.*” 34 C.F.R. § 300.39(b)(3) (emphasis added).⁵⁹

OSERS has clarified this expectation. “... [A]n individualized education program for an eligible child with a disability under [IDEA] must be aligned with the State’s academic content standards *for the grade in which the child is enrolled* (emphasis added).”⁶⁰

Consistent with the requirement that Student have access to the general education curriculum, the IEPs developed by the District appropriately tied Student’s IEP goals to the grade-level TEKS. While Student is unable to perform grade level work, the curriculum Student receives has been modified down to the prerequisite level to account for Student’s cognitive deficits and current skill levels.

⁵⁹ See, *Dear Colleague Letter*, U.S. Department of Education, Office of Special Education and Rehabilitative Services (November 16, 2015) at 2.

⁶⁰ *Id.* at 1.

b. Academics

The evidence showed that Student's academic goals, including in reading and writing, were individualized on the basis of assessment and performance and Student's need for a modified curriculum at the prerequisite level. The goals were drafted by educators familiar with Student's skill levels considering Student's present levels, accumulated data, and observations. The goals were developed to be challenging but avoid frustration and considered what Student could reasonably be expected to attain in a year, with benchmarks with increased criteria and reduced prompts further into the school year.

Based on Student's present levels, Student's goals appropriately focused on prerequisite skills. In reading, Student's annual IEP goal for the 2023-24 school year targeted identifying ***. It was benchmarked to begin with *** over the review period. According to the homebound teacher, Student was able to recognize the words presented. Building on this skill, Student's proposed reading goal for the 2024-25 school year targets ***and is benchmarked for increased accuracy and reduced prompts as the skill develops. Petitioner failed to present evidence that Student's reading program was not individualized.

Having achieved the prewriting skills of ***, Student's writing goal for the 2023-24 school year focused on the next developmental step in the writing process—***. Student's annual goal targeted writing ***. The goal was co-implemented with the occupational therapist, who provided tools to support Student's learning in this area. Student's proposed goal for the 2024-25 school

year appropriately builds on Student's previous goal and focuses on ***. Petitioner failed to present evidence that Student's writing program was not individualized.

c. Physical Therapy

Parent disagreed that Student's 2023-24 school year IEP and proposed IEP did not include PT services and specifically challenges that Student's program did not appropriately address Student's physical disabilities, including Student's ***. Student, however, *** during the one hour of daily instructional time Student receives at home. The District thus appropriately found that Student did not require PT to access the curriculum or Student's educational setting while receiving homebound services. This may change when Student participates in a campus-based program, in which case additional evaluation and PT services were recommended. Even though the proposed IEP did not include PT, Student has yet to be evaluated in the school setting for these services. Petitioner did not present sufficient evidence to support this allegation.

d. Occupational Therapy

Likewise, Petitioner failed to present sufficient evidence that Student's program was not appropriately individualized in the area of OT. While Student's private occupational therapist testified as to Student's present competencies in the private setting, therapist did not make specific recommendations for the school setting. Due to Student's difficulties with writing, the District occupational therapist supported Student's writing goal during the 2023-24 and 2024-25 school years. The type and amount of services provided were consistent with the

recommendations in the September 2023 Documentation of School Function and the April 2024 FIE. The FIE also identified several additional areas needing support if Student attends school in person, including *** during instruction, ***.

e. Speech Services

Petitioner challenges the appropriateness of Student's speech program. Student has *** deficits in receptive and expressive language and articulation. Student's 2023-24 school year IEP included three language and two articulation goals targeting these deficits. The goals were developed considering Student's present levels and data and progress on previous goals, which indicated Student needed additional time to work towards mastery. The April 2024 FIE identified Student's current competencies and speech-related needs, including ***". In addition to two articulation goals, the proposed IEP has a goal on *** and a goal building on the 2023-24 school year goal targeting ***. The evidence showed Student's speech program was appropriately individualized and Petitioner presented no evidence to the contrary.

f. ***

Petitioner challenges the appropriateness of Student's IEPs in the areas of ***. During the 2023-24 school year, Student received 240 minutes per week (60 minutes four days a week) of instruction in core academic areas (reading, writing, math, science and social studies). Due to the limited duration of Student's sessions, Student's *** were met by Student's caregivers outside of instructional time and Student's IEP instead focused on academic, rather than ***.

Student's ***will have to be met by staff when Student attends school on campus. Student's proposed IEP calls for placement in a ***classroom where staff not only manage these needs, but students work on a variety of skills throughout the day to help increase independence, ***. As discussed by the ARD committee, Student will require an individual health plan to implement any ***from Student's physician and these orders will be implemented by staff trained by the school nurse.

In developing Student's proposed IEP for the 2024-25 school year, the ARD committee had the benefit of the April 2024 FIE. The FIE was conducted by a qualified evaluation team and information was obtained from the homebound teacher and Parent. The FIE contained current information about Student's present levels and thoroughly considered Student's eligibility, strengths, and educational needs. Indeed, Dr. *** testified that the psychological educational components of the independent testing he conducted and the testing in the April 2024 FIE were generally aligned and reached similar conclusions. While he testified that some elements of the District's evaluation, including the narratives and present levels, indicated that Student functioned at a higher level than he observed, his testimony was not specific as to which areas were different, making this statement of limited value in determining Student's present levels. In addition, Student's ARD committee has yet to consider Dr. ***'s report—or any of the IEEs offered by Petitioner—and only one IEE provider, Dr. ***, testified. Without the benefit of these reviews, the Judge gives the independent evaluations limited to no weight in resolving the issues.

Apart from Parent's assertions, Petitioner failed to present any evidence from

an educator or expert to support Parent's argument that Student's IEPs for the 2023-24 and 2024-25 school years were not appropriate. The evidence showed that the IEPs were reasonably calculated to provide an educational benefit and addressed Student's identified needs. As such, Petitioner failed to meet Parent's burden on this factor.

2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with peers without disabilities 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).

Students with disabilities must be educated with students without disabilities to the fullest extent possible and consideration of a student's least restrictive environment must include an examination of the degree of benefit the student will obtain from an inclusive education. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1049 (5th Cir. 1989). There is a presumption in favor of the educational placement established by the IEP. The party challenging the IEP bears the burden of showing why the educational setting is not appropriate. *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1991).

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).

A significant hole in Petitioner’s case was the absence of testimony from Dr. ***, the *** who completed the 2024-25 school year homebound form recommending continued homebound services, or even the testimony of another treating physician who could speak to this recommendation. Petitioner instead relies on a single piece of evidence—the one-page October ***, 2024 Homebound Services Medical Report from Dr. ***—to support Parent’s request for continued homebound services. While state regulations require that the ARD committee receive medical documentation from a licensed physician that the student is expected to incur full-day absences from school for a minimum of *** weeks for medical reasons, the ARD committee is charged with determining whether a homebound placement is the most appropriate placement for the student. 19 Tex. Admin. Code § 89.1005(e)(2)(A). For the ARD committee to approve a homebound placement, the committee must review documentation related to *anticipated periods of confinement to the home*, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide a FAPE to the student. *Id.* (emphasis added).

Importantly, *documentation by a physician does not guarantee the placement of a student in this instructional arrangement/setting*, as the student's ARD committee must determine whether the placement is necessary for the provision of a FAPE. *Id.* (emphasis added). In short, the homebound form is one piece of data that informs the ARD committee's decision-making. It is the student's ARD committee, not a medical provider, that considers the Student's least restrictive environment and makes the placement determination.

Even though the homebound forms for the 2023-24 and 2024-25 school years were substantially similar, because Student was new to the campus and had only received homebound services, the District elected to follow Dr. ***'s recommendation for the 2023-24 school year. However, accepting Dr. ***'s recommendation one year is not a guarantee this placement will continue given the ARD committee's obligation to determine whether the placement is necessary for the provision of FAPE. 19 Tex. Admin. Code § 89.1005(e)(2)(A). This is also consistent with the ARD committee's obligation to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b).

Because neither the 2023 nor 2024 forms indicated that Student was ***, when considering the 2024-25 school year request, it was reasonable for the District to infer that Student is not. Moreover, Parent's refusal to allow the District to seek clarification from Dr. *** about her recommendation undermined the ARD committee's decision-making ability as well as Parent's request for continued homebound services. Though Dr. *** indicated Student's *** may predispose Student to ***, the form on its face did not indicate that Student is confined to the home

for medical reasons. Given the lack of clarity on a central question in determining if homebound services are necessary, the District based its placement decision on the information it had.

The evidence also supports that the proposed placement in a *** classroom is Student's least restrictive environment. A homebound placement is highly restrictive. Student is educated by Student and has no access to peers. District witnesses explained the benefits of the program, including increased opportunities for peer interaction and social growth, allowing Student to benefit from the social-emotional learning that takes place in the classroom and giving Student the opportunity to see peers modeling language and socially acceptable behavior. Student will also benefit from increased instructional time and access to the full range of the *** curriculum.

The ARD committee considered Student's individualized needs stemming from Student's medical issues in proposing a campus-based placement and modified its initial recommendation given Student's parents' continued concerns with the placement. The District initially proposed a full school day to include *** minutes per day of *** instruction plus *** in the general education classroom for *** minutes per day. The District later revised its proposal to call for *** minutes per day of instruction and recommended Student not participate in ***. Numerous other ways to minimize the *** were also considered.

In finding that a campus-based placement in a *** classroom is Student's least restrictive environment, the Judge does not overlook that Student has legitimate health concerns that must be accommodated for the placement to be

successful. In proposing that Student attend school on campus, the District accepts responsibility for ensuring Student's safety and supervision needs are met given Student's level of dependence on adults. The proposed placement offers a low staff to student ratio to address Student's need for individualized instruction and the high level of supervision Student requires to ensure Student's safety and well-being, including assistance with *** while Student develops skills to become more independent in these areas.

The weight of the credible evidence showed the District's proposed IEP offered Student a FAPE in the least restrictive environment and a mainstream education to the maximum extent appropriate given Student's cognitive and medical needs.

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 record overall showed a somewhat contentious relationship between the parties, who have been in a state of disagreement over Student's program throughout the relevant time period. Still, the record evidences collaborative efforts between the parties. The District developed Student's programs for both the 2023-24 and 2024-25 school years over several meetings in an attempt to reach agreement with Student's parents. Documents were provided to Student's parents in advance of meetings. Student's parents actively participated in meetings and were provided opportunities to ask questions of District staff. Meeting deliberations document extensive discussions about many aspects of Student's program. Parents' input was included in the present levels and IEP goals were added or revised with their input.

As discussed, an area where collaboration broke down was Parent's refusal to allow direct communication with Student's medical providers. Parent instead wanted to run interference and have any communication go through Parent. A parent may not put a student's medical needs at issue while simultaneously denying a school district access to information from the student's medical providers. *Cf., Andress S.*

v. Cleveland Indep. Sch. Dist., 64 F.3d 176, 178 (5th Cir. 1995) (finding that a parent may not assert a student is entitled to special education services while simultaneously refusing to allow a school district to evaluate the student to determine what those services may be). Parent's refusal to provide consent not only deprived the District the opportunity to ascertain the contours of Dr. ***'s recommendation, but also denied it access to information that could make Student's campus-based program safer.

Petitioner failed to establish that the District excluded Parent in bad faith or refused to listen to Parent, and therefore failed to meet Parent's burden on this factor.

4. Academic and Non-Academic Benefits

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

Even with the limited amount of instructional time provided in the homebound setting, the evidence showed that Student made academic and non-academic progress consistent with Student's unique needs. Student made progress on Student's academic goals. Student is able to identify ***. This is progress for Student. Student also mastered each of Student's language goals and made considerable progress on both articulation goals.

Consistent with Student's level of cognitive functioning, Student requires extended periods of time to retain information and generalize skills. While Student's progress has been slow, Student is capable of learning, made both academic and non-academic gains, and overall benefited from Student's educational program. As discussed above, the District implemented and proposed IEPs that were reasonably calculated to confer educational benefit in light of Student's unique circumstances.

5. Conclusion as to the Four Factors

The weight of the credible evidence showed that Student's educational program was individualized based on assessment and performance, offered an educational placement in the least restrictive environment, that the District made appropriate efforts to ensure Student's program was coordinated in a collaborative manner by key stakeholders, and that the IEPs were designed to produce academic and non-academic benefits. *Michael F.*, 118 F.3d at 253. A preponderance of the evidence demonstrated that Student's IEPs were reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188-89, 203-04; *Endrew F.*, 580 U.S. at 399.

VII. CONCLUSIONS OF LAW

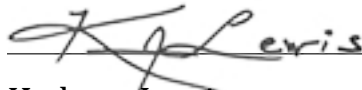
1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District did not deny Student a FAPE by failing to continue Student's homebound placement. 19 Tex. Admin. Code § 89.1005(e)(2)(A).
3. A campus-based placement is Student's least restrictive environment. 34 C.F.R. § 300.114(a)(2)(i)-(ii).
4. The District provided Student a FAPE during the 2023-24 school year and Student's IEP was reasonably calculated to provide educational benefit in light of Student's unique circumstances. *Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
5. The District offered Student a FAPE during the 2024-25 school year and Student's proposed IEP was reasonably calculated to provide educational benefit in light of Student's unique circumstances. *Michael F. by Barry F.*, 118 F.3d 245,

253 (5th Cir. 1997); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 580 U.S. 386, 403 (2017).

ORDER

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

Signed May 7, 2025.

A handwritten signature in black ink, appearing to read 'K. Lewis', is written over a horizontal line.

Kathryn Lewis

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).