DOCKET NO. 131-SE-1223

STUDENT,	§	**BEFORE A SPECIAL EDUCATION**
B/N/F PARENT & PARENT.	§	
Petitioner	§	
v.	§	**HEARING OFFICER FOR THE**
	§	
ARLINGTON INDEPENDENT	§	
SCHOOL DISTRICT	§	**STATE OF TEXAS**
Respondent	§	

DECISION OF THE HEARING OFFICER

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Student (Student), by next friend the Parent(s), filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Act of 2004 (IDEA) on December 28, 2023. Respondent in the complaint is Arlington Independent School District (the District). The hearing was conducted on November 6-9, 2024. Prior to the hearing the parties participated in mediation through the Texas Education Agency but were unable to resolve the dispute.

At all times during the proceedings, Student was represented by Janelle Davis, attorney with Janelle Davis Law PLLC. Respondent school district was represented by Andrea Mooney and Amy Foster, attorneys with Eichelbaum Wardell Hansen Powell & Munoz, P.C. The hearing was recorded and transcribed by Ann Berry, a duly certified court reporter.

Petitioner's Claims

Whether the District has failed to provide Petitioner with a Free Appropriate Public Education (FAPE), including:

1. Whether the District violated Student's rights under IDEA as a matter of law due to the failure to meet the Student's unique needs.
2. Whether the District failed to provide Student with FAPE by failing to establish an appropriate individual education plan (IEP) including failing to develop specific and measurable goals to determine and ensure meaningful benefit.

3. Whether the District denied Student a FAPE by failing to appropriately implement Student's IEP and failing to ensure that Student's instructors meet the necessary qualifications under the IDEA.
4. Whether the District's refusal to protect the meaningful participation of Student's Parents has resulted in a denial of FAPE.
5. Whether the District failed to timely evaluate Student in all areas of disability to determine if Student was a Student with a disability in need of specialized instruction, special education services, and related services.
6. Whether the District failed to timely conduct a re-evaluation of Student as required under the IDEA.
7. Whether the District has violated its own local policies, and both state and federal law, regarding communications between the District's employees and Student's Parents.

Petitioner's Request for Relief

1. Find that Student's rights to a FAPE have been violated.
2. Order an independent educational evaluation (IEE) for all areas of known or suspected disability, to include but not limited to, cognitive and achievement, speech, and occupational therapy, at District expense.
3. Order an ARD to be held to establish specific and measurable goals after an IEE is completed.
4. Order compensatory education and related services specific to Student's academic and other progress.
5. Order that the District pay compensatory damages to the Parents for the District's failures that have led to a denial of FAPE.
6. Order that the District add the Parent's May ***, 2023 statement of disagreement with the developed IEP to the IEP document via the esped portal.
7. Order reimbursement of any out of pocket expenses the Parents have incurred for private services or therapies or fees related to such services and therapies.
8. Any and all other remedies that Petitioner may be entitled to under the law.

Respondent's Counterclaim

Respondent filed a counterclaim. In that counterclaim, Respondent requested a declaration that its Full and Individual Evaluation of Student in 2023 was appropriate.

The Due Process Hearing

The due process hearing began as scheduled on November 6, 2024. 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 (9) hours for the presentation of argument and evidence at the hearing.

Presentation of evidence concluded on November 9, 2024. At the close of the evidence, the parties requested that they be allowed to submit written closing arguments. An Agreed Motion For Continuance and Extension of The Decision Due Date was filed on November 12, 2024. The motion was granted by the undersigned hearing officer on November 13, 2024. Written Closing Arguments were timely filed by both parties on December 19, 2024. The decision due date in this case is February 3, 2025.

Statute Of Limitations

Respondent asserted the defense of statute of limitations to some of Petitioner's claims. Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2). In this case, the Parent requested a due process hearing on December 28, 2023. Therefore, any claims arising before December 28, 2021 are barred by limitations unless Petitioner is able to prove an exception to the application of the limitations period.

IDEA recognizes only two exceptions. The two-year limitations period will not apply if the parent was prevented from requesting a due process hearing due to either:

- Specific misrepresentations by the school district that it had resolved the problem that forms the basis of the due process hearing request; or

- The school district withheld information from the parent that it was required to provide under IDEA. 20 U.S.C. § 1415 (f)(3)(D); 34 C.F.R. § 300.511 (f)(1)(2).

Petitioner argues that the first exception applies. But Petitioner did not produce evidence at the hearing to establish that the District made any specific misrepresentation to Petitioner about any of the matters arising prior to December 28, 2021 that are the basis of Petitioner's claims in the due process hearing request. Petitioner therefore has failed to meet Petitioner's burden to prove an exception to the application of the limitations period. The two-year limitations period therefore applies. Accordingly, any claims by Petitioner that arose before December 28, 2021 are time-barred. For this reason, limitations bars Petitioner's claim that the District violated its Child Find obligations by failing to identify Student as eligible for special education before November 2019 when student eligibility was first considered by the District.

FINDINGS OF FACT

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

1. Arlington Independent School District (ISD) is a political subdivision of the State of Texas and a duly incorporated Independent School District.

2. Student is enrolled in the *** grade at ***in Arlington ISD. At all relevant times, Student resided with Student's Parents within the jurisdictional boundaries of the District. (R-6, 001).

3. Student is eligible for special education and related services as a Student with a Specific Learning Disability (SLD) in reading comprehension. (J-1-001).

4. Student had previously been eligible as a Student with Speech Impairment, but was dismissed from speech services in March of 2023. (J-6-022) (R-19).

5. The Parent had no knowledge of special education before Student's ***grade teacher presented special services to parent as an option to help Student in the spring of 2019. (Tr Vol 1 116:8-12).

6. The District sent forms for the Parent's signature granting consent for an FIE in the fall of 2019 and received consent for an FIE on November ***, 2019. The Parent also signed acknowledgment of receipt of procedural safeguards on November ***, 2019. Student's FIE was completed on February ***, 2020; the reason for referral was "at parent request." Student was administered the Woodcock-Johnson IV in Oral Language, Cognitive, and Achievement, the Arizona 3 for Speech, an Articulation form, the CELF-5, the Multidimensional Anxiety Scale for Children-2, The BERS-2, the BASC-3, and other reviews of data, Parent and teacher questionnaires, and a Student interview. (R-17 001) (J-4-001) (R-18).

7. Copies of the Procedural Safeguards were also provided to the Parents on September ***, 2020; October ***, 2020; February ***, 2021; September ***, 2021; March ***,2022; December ***, 2022; January ***, 2023; January ***, 2023; May, 2024; September ***, 2024; and October ***, 2024. Prior written notices were attached to each ARD Report, and Notice of Proposals to Evaluate were provided, and consent was obtained. Petitioner stated in an email in December 2023 that parent printed the Dispute Resolution Handbook "1.5 years" prior and testified that parent had read the handbook when parent sent that email and that parent had been reading the procedural safeguards "for years." (J-12 02; J-11 001; J-10 021; J-9 001; R-16 001; J-8 025; R-15 001-006; J-7 005; J-6 0028; R-14 001; R-12 004 (Notice of FIE); J-5 029; R-9 001-002) (J-1 - J-13) (R-89, Tr Vol. 1 295:20-25; R-89; Vol. 1 296:1-4l; Vol 1 296:7-12).

8. Student received education services as a virtual student during the 2020-2021 school year. At the time it was in the Student Code of Conduct that all Students must wear a facial mask on campus in order to prevent the spread of COVID. Student's Parent's refused to allow Student to attend school on campus wearing a mask, claiming a religious exemption and that Student might have a panic attack if Student wore a mask even though Student has never been diagnosed with anxiety or had a traumatic brain injury or a seizure. (Tr Vol 1 151:1-25) (Tr Vol 1 260:1-5, 261:1-5, 262:1-12).

9. Student struggles with STAAR, yet Student's Parents have consistently refused the District's offers of accelerated instruction pursuant to House Bill 4545 which requires districts to provide such instruction to any student that fails any STAAR ***exam. Principal***, whose background is in reading, explained that it is not unusual for Students with reading comprehension issues to struggle with the English ***exams, and it would "absolutely" be considered positive for such a student to come within one

question of passing. ***explained Student's STAAR scores in light of the raw conversion chart provided by TEA. Student was one question from passing the Spring 2023 English *** did not participate in the retake of that ***exam. (Tr Vol 2 404:7-25) (Tr Vol 389:1-17) (R-37, R-47) (Tr Vol 2 388:16-22) (Tr Vol 2 389:18-25).

10. At all relevant times Student has been educated by qualified instructors who met state criteria in accordance with TEA standards, including a co-teacher in the "***" program, which is a District program that allows the employment of a special education teacher *** (Tr Vol 2 404:11-14) (Tr Vol 2 484: 1-24) (P-58 031595) (R-1 001-002).

11. In the 2021-2022 school year, Student passed each class, each grading cycle. Student's final grades were ***in Math, *** in Science, ***in***, and ***in English. (R-23-002).

12. A Review of Existing Evaluation Data (REED) was conducted on March ***, 2022, indicating that additional formal or informal evaluation was needed in speech, formal intellectual evaluation, and formal achievement testing in the areas of reading, writing, and math. Emotional, behavioral, and adaptive behavior were not areas where additional evaluation was recommended based on available data. The REED was discussed in an annual ARD held the same day with the Parents in attendance. A Review of Additional Evaluation Data was marked "yes" to "additional evaluation is needed" with the comment "three year re-evaluation" and "New speech, cognitive, and academic evaluations are requested." The REED was reviewed, and both Parents signed the ARD in agreement, and in acknowledgement of Prior Written Notice indicating the request for re-evaluation due by 2/***/2023 was provided. The Parent signed acknowledgment of receipt of procedural safeguards on March ***, 2022. (R-16 001) (J3-002-005) (J8-001).

13. Student passed each class in each grading cycle in *** grade. Student received a final grade of *** in English, ***in***, ***, and***. (R 22-002).

14. Student passed math in *** grade, but failed the final exam in math.

15. On October ***, 2022, then ***Principal ***implemented a plan to streamline communication with

the Parents due to their numerous, frequent, voluminous, and combative communications about their children to employees in the District. Staff were directed to "continue to send typical info regarding the kids to the parents as you do with all of your parents." In an email, ***requested the Parents to direct special education concerns to the Dean of Instruction, and all other concerns to student, and Student would then help gather information from staff and provide responses. According to***, this communication plan was intended to eliminate redundant efforts of multiple people responding to the same question, reduce the chance of overlooking concerns and of uncertainty as to who should respond, and allow staff to focus on students*** explained that "no one was directed" to not contact the Parents. The Dean of Instruction also responded to the Parent's concerns. (R-56, R-68, R-83, R-96, R-98, R-99, R-106) (R22-002) (R-100).

16. The record contains copious examples of continued communication with the Parents after the communication plan was implemented, including the exchange of special education information and answering Parent's questions. (R-72, R-73, R-74, R-75, R-76, R-77, R-78, R-79, R-101, R-102, R-104, R-105, R-107, R-111, R-113, R-118, R-119, R-120, R-121) (P-44 007785-007786) (P-46 010423-010425).

17. A review ARD was convened and a REED conducted on January *** 2023. At the ARD, it was agreed to pull forward the previous REED since the FIE was due on February ***, 2023. The Parent provided consent for re-evaluation on February *** 2023. A copy of the procedural safeguards was sent to Parents on January ***, 2023. (R-14 001) (J-2, J-7) (J-7:002) (R-119:005) (R-89:004) (Tr Vol 3 699:24-25, 700:1-4).

18. The re-evaluation was discussed at length between the Diagnostician and the Parent via email. Areas of evaluation after the REED was conducted were updated to reflect what Parent wanted— including the addition of dyslexia evaluation, clarification that written expression would be assessed, and clarification that Parents "were not looking for a diagnosis of ADHD." (R-118, R-119).

19. Student's annual ARD took place over five meetings, with the first meeting scheduled for March ***2023. As the committee did not finish the ARD in the first meeting, the ARD met again on March

*** 2023, April *** April ***and May***, 2023. The April ***, 2023 FIE was discussed over the course of two ARD meeting sessions in April and May. The Dean of Instruction testified that the reason the annual took 5 meetings was because the Committee did not "move on to the next portion" of the IEP "until we got to a point where either there weren't any more questions from the Parents or the Parents were okay to move to the next part." (J-6 022-024; Tr Vol 3 482:7-17) (Tr Vol 2 590:20-24).

20. The FIE was completed on April ***, 2023. The evaluation was conducted by ***LSSP, Suzanne Sharum, Diagnostician, and***, Occupational Therapist. It included formal and informal measures including: teacher information, records review, Parent information, WJ-COG IV, WJ-IV Ach, WJ-OL, FORT-5, C-TOPP, teacher reports, Handwriting Without Tears assessment, and Parent reports. A review of records in emotional/behavioral functioning indicated that Student was previously found ineligible for ED or OHI-ADHD; that the Parent stated Student does not have a medical diagnosis and does not take medication; and that teacher input did not indicate any significant behavioral, emotional, or social concerns. On the Math cluster of the WJ-IV Achievement, Student's subtests in calculation ***math facts fluency ***and applied problems (***averaged to an ***(low average). Student uses calculators in the regular education environment, but could not use calculators on the assessment. Student's written language cluster averaged to a *** which is average. The evaluation continued to show a reading comprehension deficit, consistent with Student's previous identification of SLD-reading comprehension. The GORT-5 and C-TOPP were administered, which did not confirm dyslexia, but did confirm the reading comprehension deficit. The Occupational Therapy evaluation did not result in a recommendation of occupational therapy as a related service. (J-1) (J-6 022; Tr Vol 2 590:20-24) (J-1 002, 008-009, 019-025, 037).

21. ***, speech language pathologist, testified that parent input in the 2023 FIE was that Student no longer presented with a need for speech services for articulation, and no longer met eligibility requirements as a Student with a speech impairment. The ARD committee dismissed this eligibility. (Tr Vol 3 775:1-25-776:1-10) (Tr Vol 777 6-12).

22. Student's FIE did not support eligibility in SLD-Math. Student's math achievement test was "low

average," and Student's in-class performance was successful with the use of calculators. (Tr Vol 3 710:8-11).

23. At the annual ARD, Student's math teacher reported that Student was "one of student top Students," was "doing great," and understood the concepts, which indicated that Student is "solid in math." (Tr Vol 710:2-3, 15-21).

24. Student's goals were measurable and were developed with significant input from Parents. For example, Student's 2023 Annual ARD, which took place over 5 sessions, devoted the "majority" of one such meeting "reviewing measurable goals." ***that the Parent insisted that a goal needed "both percentages and trials…not one or the other" and that a "long time" was spent discussing that issue. Student's 2023 Reading goal was discussed for most of an ARD meeting, where upon Parent's insistence, the proposed goal was changed to include both trials and percentages. The goal was implemented as written, was appropriate and addressed the area of deficit. (Tr Vol 2 483:1-25; 486:1-25; 487:1-20) (J-12 102).

25. The annual ARD ended in disagreement regarding eligibility for SLD-Math. ***agreed, at Parent request, to review the protocols of the FIE and worked out a time to meet to go over the protocols in detail. On May ***, 2023, ***and ***met with the Parent for over 2.5 hours and "went over every question and every answer" and any other question the Parent had regarding the protocols. This meeting was set up via email, where Parent's questions were answered through email and in advance of the meeting, which occurred after the communication plan was implemented. (Tr Vol 3 711:3-21; 713:1-10; 714:20-25; 715: 1-9).

26. An Independent Education Evaluation (IEE) was requested by the Parent during the May ***, 2023 ARD and was granted. The District sent the Parent a list of IEE providers, and informed the Parent that the IEE appointment cannot be made until the provider is identified and has negotiated a contract through the District. (R-93 005-006).

27. On March ***, 2024, ***PhD., LSSP, BCBA, was identified by the Parent as the IEE provider. ***was not an AISD vendor and had not gone through the proper steps outlined in the IEE criteria.

The outside evaluation, conducted on March ***, and amended on September***, 2024, shows that the testing had commenced before ***was identified to, and contracted by, the District. (R-19) (P-2 001).

28. ***diagnosed Student with the following diagnoses and IDEA eligibilities.

Diagnosis	**IDEA Eligibility**
reading disorder	SLD
math disorder	SLD
autism	autism
social pragmatic language disability	speech and language impairment
executive functioning disorder	OHI
attention hyperactivity disorder	OHI

(P-2 051).

29. On January ***, 2024, the District filed a counterclaim for a hearing to defend its FIE if the hearing officer allowed the Parent's IEE claims to go forward. (Respondent's Counterclaim).

30. Student passed all classes in the 2023-2024 school year, including***. Student had a yearly average of***, ***in English, and***. (R-19).

31. The record reflects extensive communication between the Parents and District staff in the 2023-2024 school year. Parents were contacted by both phone and email. (R-110-R-113-R-114) Vol 2 462:21-25. 464:1-25, 465:1-21; Vol 2 470:3-18; Vol 2 403:2-25) (R-86, R-117).

32. In an attempt to resolve this dispute and continue collaboration with Parents, the District offered the Parents a second mediation on December *** 2023 with a TEA mediator. After not receiving communication from the Parent, the District reached out to the Parent. The Parent did not respond to the offer to mediate and filed this request for due process hearing on December 28, 2023. (R-88).

33. During the spring semester, the District made multiple attempts to schedule Student's Annual ARD meeting in order for the Parents to be able to participate. To meet IDEA timelines, the ARD was due by May ***, 2024. Parents were contacted on April ***, 2024 and were offered three dates; the Parents initially were willing to attend on May ***, but later informed the District through advocate ***that they were no longer willing to attend and offered dates that were not mutually agreeable. ***indicated that the District could open the ARD on May ***, 2024 in order to remain within IDEA

timelines, and informed the District that the Parents would not be in attendance. (R-84 003, R-85, R-122) (J-5 022).

34. On May ***, 2024, District offered to reconvene on August *** in an email to the Parents' advocate; a second email was sent May ***, 2024 to the Parents asking about the same dates, with no response; on August ***, 2024, the District offered meetings on September ***, or October ***, 2024; Parents initially agreed to the October ***, 2024 date, but later canceled. On September ***, 2024, Parents indicated availability on either October ***, and the District then sent an ARD notice for October *** 2024 at 10:15 a.m. and sent two reminders. The Parents did not confirm that they would attend the scheduled ARD. (J-5) (R-122, R-123-R-133).

35. Petitioner's counsel provided Respondent's counsel with the outside evaluation by ***on October *** 2024, one business day prior to the scheduled ARD meeting, despite the evaluation being conducted in March 2024. The evaluation was reviewed, at length, with the Parents during the October ***, 2024 meeting. (J-5 023-024).

36. The May ***, 2024 Annual ARD reconvened on October *** 2024. The ARD meeting began at 10:15 a.m., as scheduled. Parents and their advocate, ***, arrived late at 10:32 a.m. The ARD committee reviewed the outside evaluation by ***with all members of the committee including Parents and their advocate. Student's eligibility was reviewed considering the outside evaluation, the District's evaluations, and Student's classroom data; the ARD committee determined that Student continued to be eligible in Reading Comprehension, but did not have a suspicion of autism. Student did not require specialized math supports outside of the general education, and the District requested consent to receive medical information regarding OHI. (J-5-023-024).

37. At the October ***2024 ARD, Student's English teacher of student co-taught class reviewed the current ELAR goals in Student's IEP, described how the goal was measurable, and testified that it was a specific and measurable goal of "when given frequent teacher checks, scaffolding, extra time…Student will read passages and identify the main idea in text while using supporting details." (J-5 012) (Tr Vol 3 647:1-19).

38. At 12:45 p.m. ***stated the Parents did not want to participate any longer in the meeting, and announced they were leaving. The District offered a 10-day reconvene ARD, which was declined;

the Parents were urged to stay. The Parents and advocate left the meeting at 12:45 p.m. (J-5 024).

39. Student's first six-weeks report card for the current school year reported grades of *** in English, ***, ***, and ***Student's only two absences for this grading cycle were during***. (R-20).

DISCUSSION

I. The Nature of the Dispute

Petitioner asserts several claims under IDEA. Petitioner claims that the District failed to establish an appropriate individual education plan (IEP) including failing to develop specific and measurable goals to determine and ensure meaningful benefit; the District failed to implement Student's IEP; the District failed to ensure that Student's instructors met the necessary qualifications under the IDEA; the District failed to timely evaluate and identify Student in all areas of disability; the District failed to timely conduct a re-evaluation of Student as required under the IDEA; the District refused to protect the meaningful participation of Student's Parents; and the District violated its own local policies, and both state and federal law, regarding communications between District employees and Student's Parents.

II. The Governing Legal Standards

A. Burden of Proof

Petitioner has the burden of proof on all Petitioner's claims against the District, including the claim that the educational plan adopted by the District in May 2023 was inappropriate. As the Supreme Court has explained, "(t)Student 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, Petitioner 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 in conformance 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 recent 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. Petitioner Failed To Prove That Student's May ***, 2023 IEP Was Not Appropriate.

The IEP at issue in this matter is the one the District proposed for Student on May ***, 2023, which is based on Student's most recent Full and Individual Evaluation (FIE) prior to filing of this litigation.

A. Individualized On the Basis Of Student's Assessment And Performance.

The first *Michael F.* factor requires that an IEP be "individualized on the basis of current assessment and performance." This is consistent with the *Endrew F.* ruling that "[a] focus on the particular child is at the core of the IDEA. The instruction offered must be '*specially* designed' to meet

a child's '*unique* needs*'* through an '*individualized* education program.'" *Endrew F.* at 992. A district need not provide its disabled students with the best possible education, nor one that will maximize the student's educational potential. *Michael F.,* 118 F.3d at 247 *(citing Rowley,* 458 U.S. at 188-89). "Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or de minimis; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement." *Houston Indep. Sch. Dist. v. ex rel. Juan P.,* 582 F.3d 576, 583 (5th Cir. 2009). In developing the IEP, a district is required to consider (1) the student's strengths, (2) the student's parent's concerns for enhancing student's education, (3) the results of the student's most recent evaluation data, and (4) the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). The IEP must include a statement of the student's present levels of academic achievement and functional performance (PLAAFP) which includes how the student's disability "affect's the child's involvement and progress in the general education curriculum." 34 CFR § 300.320(a)(1).

The Fifth Circuit has rejected the idea that an education "administered primarily via general education accommodations in the ordinary classroom setting" does not provide "special education and related services." *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 799 (5th Cir. 2021). The Fifth Circuit notes that an IEP provision calling for a special education teacher who provides no direct services, but rather "consults" with the general education team to "monitor progress" and keep track of grades, was an indicator of individualization. *Id.* at n.14.

An IEP must contain a statement of "measurable annual goals" that are designed to "meet" the "needs" that "result from the child's disability" and to "enable the child to be involved in and make progress in the general education curriculum." 34 CFR § 300.320(a)(2)(i). The IEP must describe how progress toward the goal will be measured and describe when periodic progress reports will be provided. 34 CFR 300.320(a)(3)(i)-(ii).

Student's IEP was developed based upon multiple sources of evaluation data, Parental input, and teacher input. Evaluations were reviewed and discussed, and a plan devised according to Student's needs. (J-6 022-025; J-5 022-026). When provided an outside evaluation (the report by Dr. ***) one business day before an ARD, the committee reviewed that evaluation in advance of the meeting and discussed the outside evaluation with the Parents and the Parent's advocate. (Tr Vol 3 714:9-12; Vol 1 309:24-25, Vol 1 310:1-8). Student's IEP shows accommodations and supports for Student's learning disability in

reading comprehension. Student receives support in the general education setting, and has a contact teacher who monitors Student's progress and assists with the implementation of accommodations for special education students. (Tr Vol 3 913:10-25, 914:1-16). A "contact teacher" is the point of contact with teachers and parents for special education students---this person collects the data, shares data, and updates progress reports, and serves as a "support system" for a special education student. (Tr Vol 2 593:1-17).

Student's goals were measurable and were developed with significant Parental input. For example, Student's 2023 Annual ARD, which took place over 5 sessions, devoted the "majority" of one such meeting "reviewing measurable goals." Goals and objectives for reading were drafted and accepted with significant Parent input. (Tr Vol 2 483:1-17; Vol 3 485:23-25-486:1-25-487:1-20).

Student's current *** teacher of student co-taught class reviewed the current ELAR goal in Student's IEP and testified that it was a specific and measurable goal of "when given frequent teacher checks, scaffolding, extra time… will read passages and identify the main idea in text while using supporting details."

At a series of five ARDs held on March ***2023, March***, 2023, April ***April *** and May *** 2023, Student's present levels of academic and functional performance were reviewed. The ARD Committee determined Student would benefit from special education services in Student's general education ELAR class. IEP goals and objectives were created for reading comprehension. Student's ARD Committee determined these services were needed for Student to be able to read a passage and make inferences and use evidence to support understanding with accuracy. The evidence supports the District's determinations.

Parent's argument that Student is in need of special education services in math was not supported by credible evidence. Student's FIE did not indicate a Specific Learning Disability in math and Student's math teacher testified that Student understood grade level math concepts. The Parent's argument that Student's grades did not accurately reflect Student's ability or understanding of math concepts because Student was allowed to redo failed assignments until a passing grade was achieved is not supported by the evidence. Allowing Student to redo assignments until the assignment was successfully completed actually provided Student with the ability to be retaught the material and to review the concepts that Student had not understood until Student gained an understanding of the material by achieving a passing grade.

Parent's concerns about Student's failing to pass the STAAR exams are not without merit. However, Student was 2 questions from passing the ***in 2023. (R-37; Tr Vol 2. 392:16-22). Students without disabilities also fail to pass STAAR exams, and the Student in this case had the opportunity to participate in accelerated instruction provided by the District for any student failing a STAAR or ***exam but the Parents have consistently refused to allow Student to take part in the accelerated instruction program. Student's final grades of ***for the 2023-2024 school year, and ***for the first six weeks of the 2024-2025 school year further confirm the District's determination that Student is not eligible for special education as a Student with a Specific Learning Disability in math.

Based on the evidence, Student's IEP was individualized based on student assessment and performance and individualized to meet Student's unique needs. The evidence in the record proves that the IEP developed by the District satisfied the first *Michael F*. factor. (J-5012; Tr Vol 3 647).

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

At all times, Parents were provided with proper notice of ARD meetings and procedural safeguards. The deliberations of the ARD meetings indicate that the Parents fully participated in the ARD meetings and that the District considered and fully discussed Parental concerns during ARD meetings. The IEP in question in this litigation was developed over a period of five ARD meetings during March, April, and May 2023. Each meeting lasted one hour and 30 minutes. The meetings were contentious, with the Parents demanding, in addition to Student's eligibility as SLD in reading comprehension, that Student be determined eligible as a student with a specific learning disability in math. 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-CV0058, 2017 WL 3017282, at *27 (S.D. Tex. June 15, 2017), *aff'd*, 909 F.3d 754 (5th Cir. 2018). However, the "IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands." *Student v. Collinsville Indep. School Dist.*, 104-SE-1223 (SEA Tex. 2024) (citing *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.*

Claims alleging procedural violations based on parental participation will only rise to the level of FAPE denial if the alleged procedural violation "*significantly impeded* a parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child." 34 C.F.R. 300.513(a)(2)(ii). The IDEA imposes "procedural requirements designed to guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decision they think inappropriate." *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 810 (5th Cir. 2012). This includes the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate education. *Wood v. Katy Indep. Sch. Dist.*, 163 F. Supp. 3d 396, 407 (S.D. Tex. 2015); 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b)(1).

Failure to timely respond to a parent's request will only be deemed to be a denial of a FAPE if Petitioner can establish, by preponderance of the evidence, that such failure "impeded parent's opportunity to participate." *See Student v. San Marcos Consolidated Independent School District*, TEA Dkt. No. 131-SE-0209, *16 (SEA TX 2009). Petitioner did not make that showing in this case.

Petitioner has attended all but one ARD since 2020 (in May 2024), and even that instance was at the behest of Petitioner's own advocate. Throughout the relevant timeline, ARDs have been held at Parent request, with multiple days and extensive time devoted to fully addressing Parental concerns. The record is replete with evidence of collaboration and coordination internally within the District to provide services to Student and provide accurate information to the Parents.

In the 2022-2023 school year, Student's annual ARD Committee convened five times to discuss Parent concerns, and Student's annual ARD took five meetings to complete. (J-6, J-7). The Dean of Instruction testified that the reason the annual took five meetings was because the Committee would not "move on to the next portion" of the IEP "until we got to a point where either there weren't any more questions or the Parents and their advocate were okay to move to the next part." (Tr Vol. 2 590:20-24).

Petitioner claims that the District violated the meaningful participation requirement by taking steps to prevent the Student's Parents from communicating directly with the Student's day-to-day teachers. They claim that this led to delays in communication between the Parents and the Student's

teachers. (Tr Vol 2 513:3-12; 521:14-18; 548:12-549:1, 549:7-12; 556-557; P4(AISD_008426-8429); (P43) (AISD_.004705-4706); P44(AISD_007708); P44(AISD_007760-7762).

In response, the District argues that when it became clear that the Parents were sending high volumes of communication, often redundant, to dozens of staff throughout the District, a communication plan was put in place on October ***, 2022 by the *** principal to ensure that no question fell through the cracks. The communication plan directed the Parents to send all communications concerning special education to the Dean of Instruction and all other communications to the principal who would then see that the appropriate staff would submit a response to either the Dean of Instruction or the principal and the response would be communicated to the Parents. (R-96).

Implementation of communication plans do not, by default, run afoul of the IDEA or hinder a parent's ability to meaningfully participate in a Student's education. *See Collinsville Indep. Sch. Dist.*, 104-SE-1223 at *23. The relevant inquiry is whether a district's implementation of a communication plan "restricted parental participation to such a degree" that the parent's "ability to obtain pertinent information for effective participation in ARD committee meetings was unnecessarily limited." *Student v. Collinsville Indep. Sch. Dist.*, 333-SE-0723, *17 (SEA Tex. 2023). A hearing officer recently found no violation of IDEA where a "communication plan was implemented to consolidate communications, conserve staff resources, and minimize confusion," where parents still received information from the district. *Id.* at *23-24. The District's communication plan met these same criteria and did not prevent the Parents from obtaining pertinent information and effectively participating in ARD meetings.

The Parents have clearly been meaningful participants in Student's education, despite disallowing Student from participating in Student's own ARD meetings. While the Parents have expressed strenuous concerns and disagreement about various aspects of the District's programming, the District has nonetheless listened to the Parent's concerns and worked to accommodate the Parent's wishes insofar as the District believed those wishes aligned with the unique needs of Student.

C. Least Restrictive Environment

Under the IDEA, students with disabilities must be educated with nondisabled peers to the maximum extent appropriate; students are only removed when education in the general setting with supplementary aids and services cannot be satisfactorily achieved. In examining a student's least

restrictive environment, consideration must be given to whether the student can be satisfactorily educated in the general education setting with the use of supplemental aids and services and, 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).

Student's IEP appropriately calls for education in the general education curriculum with accommodations and support from special education staff in the general education classroom. The record reflects that this level of support has enabled Student to make progress in the ELAR general education curriculum, as evidenced by student consistent passing grades. (R-19-23). Student is described as successful, and a joy to have in class by student general education teachers. (Tr Vol 3 640:23-25, 641:1-2; Vol 2 585:21-24). Teachers and ARD Committee members who testified agreed that a more restrictive environment is not appropriate, and that Student has friendships with nondisabled peers. (Tr Vol 2 584:18-22, Vol 3 641:6-25). Grades, recent benchmark testing, work samples, and teacher testimony reflect that Student is meeting general education standards within the general education classroom. The District is educating the Student in the least restrictive environment to meet Student's educational needs. 34 C.F.R. § 300.114(a)(2)(i)(ii), *Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

D. Positive Academic and Non-academic Benefits Demonstrated

A district's obligation is to ensure the student receives *overall* educational benefit from the student's program, and not to remediate the student's disability. The determination of educational benefit is comprehensive and requires review of the "overall academic record." To determine whether the student made academic progress, hearing officers consider the student's class grades, state assessments, grade advancement, and other standardized tests. *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 798 n.12 (5th Cir. 2021).

Moreover, "test scores…are not dispositive" to the inquiry. A hearing officer recently found that academic benefit was demonstrated although a student with an SLD "indeed struggled with STAAR testing" but otherwise "demonstrated progress" appropriate from "one year to the next." *Jennie W.*, 32 F.4th at 469. Indeed, hearing officers have found students to have received a meaningful educational benefit when "making passing grades and advancing from grade to grade" despite reading below grade-level. *Student v. Hutto Indep. Sch. Dist.*, 317-SE-0820, *32 (SEA Tex. 2021). To determine whether the

student made nonacademic progress, hearing officers consider whether the student "made friends and demonstrated other signs of social interactions." *A.A. v. Northside Indep. Sch. Dist*., 951 F.3d 678, 691 (5th Cir. 2020).

Student's academic record reflects that Student is successfully, and consistently, making progress through the general curriculum with the supports outlined in Student's IEPs. Student has passed every course, every year, within the relevant time period. (R-20-R-31). At the time of hearing, Student had attempted and earned ***and was ranked within the top half of student class by GPA. (R-19). Student earned grades in accordance with campus and District policies allowing all students to retake or redo assignments for credit—all student grades, including Student's, reflect mastery of content—whether that be the first or a subsequent attempt. (Tr Vol. 2 394:7-23). While Student's Parent stated, "grades can be manipulated," Petitioner presented no evidence that the District manipulated Student's grades. (Tr Vol 2 571:3-5).

Student's current ELAR Teacher, ***reports that Student "is probably one of the …top in the class as far as getting things done writing," and "does all of the work…with integrity," and reports that Student's work is of "great" quality. (Tr Vol 3 644:1-24). Through the provision of speech therapy services, Student made tremendous progress, and was dismissed from speech services after successfully generalizing articulation skills from structured environments to conversational settings in the areas of distortion for which Student received services. Student consistently made progress toward Student's IEP goals through the relevant time period. Dismissal from speech was agreed upon by the Parents, and the Parent testified that they did not "formally disagree." (Tr Vol 2 526 1-12).

Student does struggle with STAAR, but Student's Parents have consistently refused the District's offers of accelerated instruction pursuant to House Bill 4545. (Tr Vol 2 404:7-25). Principal ***whose background is in reading, explained that it is not unusual for students with reading comprehension issues to struggle with the English***, and would "absolutely" be considered positive for such a student to come within one question of passing. (Tr Vol. 2 389:1-17). Even general education students fail STAAR. (Tr Vol 2 393:4-6). Principal ***explained Student's STAAR scores in light of the raw conversion chart provided by TEA. (R-47) (R-37). Student was one question from passing the Spring 2023 English ***and did not participate in the retake of that ***(Tr Vol. 2 389:18-25). Principal ***testified that in his 29 years of experience, large score drops are more attributable to a "disinterest in taking the test" or "lack of focus and desire" in higher grade levels. (Tr Vol. 2 390-391. 391:6-12).

Student passed the***. (R-37; Tr Vol. 2 392:7-24). All ***assessments are "reading assessments," because each ***requires a student to "read and comprehend just to understand the question and then select an answer." Student was 2 questions from passing the ***in 2023. (R-37; Tr Vol. 2. 392:16-22). Student's current ***teacher, ***, testified that Student "…pays attention, does the things Student is supposed to do, listens… takes assignments seriously… initiates things to work with other kids as well as work independently" and that Student was capable of engaging in abstract concepts.

Nonacademically, Student can be considered successful. Student's principal describes Student as "respectful" and "kind" with no discipline issues. (Tr Vol. 2 375:5-19). Assistant Principal ***observes Student during lunch on a weekly basis, and reported seeing Student sitting with friends, "having a good time" "talking" and "laughing" with peers. (Tr Vol. 2 584-585).***, an expert in special education, has observed Student in social settings such as the cafeteria, where Student can be seen playing games with peers, engaging with others, and seems to have friends. (Tr Vol. 2 451:1-22). Student is "definitely part of a group." (Tr Vol. 2 451:11). Student's current ELAR teacher, ***describes Student as "friendly," "kind," "really wonderful," "does work well," and that Student is "fantastic" and loved by him*** testified that "Student's a big helper… Student works with a group of people, so Student helps not just me but them as well" and has friends. (Tr Vol. 3 825: 9-16).

Under both the Fifth Circuit's standard in *Michael F*. and the Supreme Court's standard in *Endrew F*, the District's IEP for Student was appropriate based on Student's unique needs and reasonably calculated to provide Student a benefit that is more than *de minimis.* The record is clear that Student's educational benefit has been meaningful. Student has been provided with positive academic and nonacademic benefits, provided in a coordinated and collaborative manner by key stakeholders in the least restrictive environment. Petitioner has not met Petitioner's burden to prove that Student's 2023 IEP was inappropriate.

IV. IMPLEMENTATION OF THE IEP

Petitioner claims that the District failed to implement parts of Student's 2023 IEP. When analyzing whether a district failed to implement a student's IEP, hearing officers must consider the third and fourth *Michael F.* factors and determine whether there was a "substantial or significant failure to implement the IEP; and whether there "have been demonstrable academic and non-academic benefits

from the IEP." *Spring Branch Indep. Sch. Dist. v. O.W.*, 961 F.3d 781, 795-96 (5th Cir. 2020) (citing *Bobby R.*, 200 F.3d at 349). The first and second *Michael F.* factors are generally "not at issue" in a claim of failure to implement. *Id.*

To succeed on this claim, Petitioner carries the burden of showing more than a "de minimis" failure to implement all elements of Student's IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000). Rather, Petitioner must demonstrate that the District failed to implement "substantial or significant" provisions of the IEP. *Id.* Such an "approach affords school districts some flexibility in implementing IEPs while also holding them accountable…." *Student v. Comal Indep. Sch. Dist.*, TEA Dkt. No. 051-SE-1022, *28 (SEA Tex. 2023). It is well-recognized that a "failure to execute an IEP perfectly does not amount to denial of FAPE." *Id.* at *28.

In support of the claim that the District failed to implement Student's IEP, Petitioner asserts that the District failed to provide student with qualified special education teachers. The IDEA requires that special education teachers meet certain qualifications to be considered "appropriately and adequately prepared and trained" to serve students with disabilities. 34 CFR § 300.156(a), (c). These qualification requirements apply to "staff who provide special education services." *Student v. Collinsville Indep. Sch. Dist.*, 104-SE-1223, *27 (SEA Tex. 2024); *see also* 34 USC § 300.156(a) (300.156 applies to "personnel necessary to carry out the purposes of this part…").

Teachers who are currently pursuing certification through a state-approved alternative certification program *are* considered "qualified" under the IDEA to teach special education. 34 CFR § 300.156(c)(2)(i)-(ii). These teachers are to receive "high quality professional development; participate in a program with intensive supervision, structured guidance, and ongoing support" and are qualified under that subsection for no longer than three years. *Collinsville Indep. Sch. Dist.*, 104-SE_1223, *27 (summarizing the requirements of § 300.156(c)(i)(ii)).

The IDEA does not create an independent cause of action for due process purposes based on a teacher's qualifications. 34 CFR § 300.156(e). Likewise, "[i]f the only reason a parent believes their child was denied FAPE is that the child did not have a highly qualified teacher, the parent would have no right of action under [IDEA] on that basis." Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 FR 46540-01, 466562. While the qualifications of a teacher cannot be the sole basis for a due process request, special education

instructors' lack of qualifications may be challenged if the proposed deficiency "prevented the child from receiving an appropriate education." *Student v. Texas School for the Deaf*, TEA Dkt. No. 227-SE-0414 at *35 (SEA TX 2015).

Petitioner presented no evidence that Student's instructors were ever unqualified to teach during the relevant time period. The Parent offered only vague contentions that student instructors were "Students" or "interns." Even if true, Petitioner presented no evidence as to how this procedural violation would have resulted in a FAPE violation. Moreover, the District provided ample testimony that its educators are, and were, qualified. Principal *** testified that all of Student's teachers met state criteria and were not interns, but that some were going through an alternative certification program, which is allowed by the state. (R-111; Tr Vol. 2 404:11-14). * * * also testified that Student always had qualified educators per TEA standards, and that parent personally had "multiple conversations both in and out of ARD meetings" regarding the qualifications. (Tr Vol. 2 467:14-24). Student had a co-teacher in the "***" program, which is an AISD program that allows the employment of a special education teacher who is "enrolled in some kind of alternative certification program." (Tr Vol 2 484:1-24). ***had a college degree and was enrolled in an alternative certification program, and was considered qualified to teach special education. *Id.* For *** candidates, "all special education work, including writing IEPs is done in collaboration with a certified special education teacher on campus." (P-58 031596); R-100 001-002). Petitioner failed to meet Petitioner's burden to demonstrate that Student's teachers were not qualified.

In addition, Petitioner offered no other persuasive evidence that Student's IEP was not properly implemented during the relevant time frame. Petitioner complains about Student not being allowed to receive services on campus during the COVID pandemic, but admits that Student did receive services at home and, further, acknowledges that Student could have received services at student school if the Parents had permitted student to wear a mask while on campus, as the District required of other students at that time. Petitioner also complains that Student missed some sessions of student speech articulation services, but there is no evidence such absences materially delayed or impaired student progress. On the contrary, Student was later dismissed from speech eligibility based on the determination that Student met Student's speech goals.

In sum, Petitioner did not meet the burden to prove that there were failures in implementation, or if there were failures, those were somehow material. Petitioner cannot prove that there was any educational harm resulting from these alleged failures because Petitioner is passing the general

education curriculum with accommodations and supports and is on track ***. (Tr Vol. 3 765:8-9). Accordingly, Petitioner has failed to prove Petitioner's claim that Student's IEP was not implemented.

V. Timely Evaluation In All Areas Of Suspected Disability

A. Child Find Claim

As noted above, Petitioner claims that Student should have been identified for special education services earlier than November 2019, when the District first considered student eligibility for such services. As explained above, this "Child Find" claim is time-barred.

Even if the Child Find claim were considered timely filed, however, it would have no merit. The Child Find provision in IDEA states, in relevant part, that "all children with disabilities residing in [a] State…who are *in need of special education and related services*, are [to be] identified, located, and evaluated." This requirement "obligates public school districts to identify, locate, and evaluate students with suspected disabilities 'within a *reasonable* time after the school district is on notice of facts or behavior likely to indicate a disability.'" A district is deemed to have satisfied its Child Find obligation once a district has found a student eligible for special education, even when there is disagreement over the precise eligibility condition.

A district's Child Find obligations are not triggered until the district has "reason to suspect a disability coupled with reason to suspect that special education services may be needed to address [that] suspected disability." Child Find analysis consists of two questions: (1) whether the district had a reason to suspect the student had a disability as well as a reason to suspect special education and related services may be needed as a result of that disability; and (2) whether the district acted within a "reasonable" amount of time after that suspicion arose. *Woody, 865 F.3d at 320; A.L. v. Alamo Heights Indep. Sch. Dist.*, No. SA-16-CV-00307-RCL, 2018 WL 4955220, *6 (W.D. Tex. 2018).

"Suspicion" of disability alone will not trigger Child Find; there must also be a concurrent reason to suspect a need for special education services. *Woody*, 865 F.3d at 320. Therefore, "[a] finding of a child find violation turns on three inquiries: (1) the date the child find requirement triggered due to notice of a likely disability; (2) the date the child find duty was ultimately satisfied; and (3) the reasonableness of the delay between these two dates." *Spring Branch Indep. Sch. Dist. v. O.W. ex rel. Hannah W.*, 961 F.3d 781, 793 (5th Cir. 2020). A "reasonable" time for an evaluation is measured by the

"delay between notice and the school district's referral" of the student for evaluation. *Heather B. v. Houston Indep. Sch. Dist.*, No. 21-20229, 2022 WL 4299727, *4 (5th Cir. 2022); see also O.W., 961 F.3d at 793.

The Hearing Officer in the instant case previously explained that "reasonableness of delay" is measured by "the steps taken by a school district during the relevant period." *See Student v. Pearland Indep. Sch. Dist.*, SOAH Dkt. No. 701-21-1442. IDEA, TEA Dkt. No. 108-SE-0221 at 9-10 (SEA TX 2021) (citing *Krawietz*, 900 F.3d at 676; *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 467 (N.D. Tex. 2016), aff'd in part, rev'd in part, 865 F.3d 303 (5th Cir. 2017); *see also Spring Branch Indep. Sch. Dist.*, SOAH Dkt. No. 701-23- 03509. IDEA at 7. The Hearing Officer found there is no unreasonable delay when districts take "proactive steps to comply with its Child Find duty" throughout the period between "notice and referral." *Id.*

Petitioner provided consent for an FIE on November ***, 2019. AISD completed an evaluation within the statutory timeline, and the initial ARD convened within thirty days, where Student was found eligible for special education and related services as a student with an SLD in reading comprehension, and Speech-articulation. (J-4, J-13 032). Petitioner provided no evidence that this was untimely. Moreover, Petitioner has not indicated in any pleadings what other disabilities, if any, should have been suspected and evaluated before November 2019. Petitioner called no experts to testify as to areas of suspected disability.

Petitioner elicited no testimony from any District witnesses who worked directly with Petitioner at the campus level prior to Fall 2022. Petitioner admitted no exhibits into the record of any educational records of Petitioner during the years prior to student eligibility determination for special education, nor did Petitioner call any witnesses involved in student education prior to student eligibility determination, nor did Petitioner call any witnesses from Petitioner's original FIE evaluation team. Petitioner did not carry Petitioner's burden of proving any Child Find claims and, moreover, such claims are time-barred by the IDEA statute of limitations.

B. ADHD Eligibility

Petitioner also claims that during the limitations period (December 2021 to December 2023), the District failed to timely and properly evaluate Student for other possible eligible disabilities including ADHD. The evidence does not support this claim. For instance, with respect to the claim

that Student suffers from ADHD and other disabilities, the evidence shows that prior to October ***, 2024, Parents had not made known a desire for ADHD testing or OHI eligibility for anxiety. The District had previously evaluated for ED (which included anxiety scales) and ADHD and found that Student was ineligible; Parents agreed to these eligibility determinations. Petitioner has repeatedly denied ADHD, denied anxiety, and specifically said parent did not want a diagnosis of ADHD. Regardless, the District cannot test without consent (especially with no additional suspected disabilities) and is not obligated to override lack of consent.

***testified that the Parents had never stated Student has ADHD and that the Parents had never requested anything regarding the other health impairment category prior to October ***, 2024. (Tr Vol. 3 721:21-24, 722:3-6; Vol. 2 481:14-15—482:1). ***testified that when they requested testing, they specifically stated that they did not want a diagnosis of ADHD for Student, nor did Student need medication. (Tr Vol. 3 721:21-24, 722:3-6; Vol. 2 481:14-15—482:10).

C. Math Eligibility

The evidence also does not support a claim that Student suffers from a specific learning disability in math. As discussed, the Student has been evaluated in all areas of academic performance, including math, since student initial evaluation in February of 2020. Student's evaluations do not support a need for special education in the area of math, and classroom data and teacher input reflect that Student is successful in math. Petitioner's own outside evaluation by ***is riddled with inconsistencies—but does report that math is an area of academic strength for Student.

Student has received passing marks in math for the duration of the relevant limitations period. Student's FIE in 2023 reflects formal math achievement testing scores of *** in math fluency, ***in***, and *** in applied problems for an averaged overall score of *** in the area of math—which is low average, but in the average range and would not indicate an SLD in math coupled with demonstrable in-class success. (J-1 019; Vol. 3 897:17-21, 898:14-20). At the most recent annual ARD, Student's math teacher reported that Student was "one of student top students." (Tr Vol. 3 710:2-3, 710:19-21). Mrs.***, a certified special education and resource math teacher reviewed Student's math work samples, which reflect that Student is able to solve various math equations, demonstrating Student can show work and solve multi-step problems. (R-58 003, 012; R-65; Tr Vol 3 917:24-25, 918:5-10, 919:10-20, 923:4-15; 924:1-20; R-65). ***estified that Student can solve multi step problems and solve

equations that include abstract thinking. (Tr Vol 3 927:1-3; 926; R-66). The evidence therefore does not support a claim that Student has a specific learning disability in math.

D. Expressive Language Eligibility

The District's FIE reported no eligibility of expressive language disorder in 2020. The record reflects that since that time Student has demonstrated no expressive language or pragmatic deficits. ***reported no concerns with Student's abilities to engage in reciprocal social speech. (Tr Vol 3 781:12-23). Student was previously evaluated for language impairment and found within normal limits, indicating there is no impairment. (Tr Vol 3 785:12-20). Students can have impairments and still not qualify for services. (Tr Vol 3 785:12-18). When an individual has normal language skills, an impairment does not develop "absent a traumatic brain injury or some other type of trauma that would cause an impairment in skills" such as a stroke, a head injury, or meningitis. (Tr Vol 3 787:15-25). Having above average social skills does not indicate a social pragmatic language deficit because "having social skills as a strength would be the opposite of having social skills as a weakness." (Tr Vol 3 790:12-22).

The evidence does not support any other special education eligibilities for Student. And no District staff have indicated a suspicion of other potential eligibilities. Petitioner therefore has failed to meet Petitioner's burden to prove that the District did not timely evaluate Student in all suspected areas of disability.

VI. TIMELY RE-EVALUATION

Petitioner claims that the District's 2023 re-evaluation of Student was not timely. Under 34 C.F.R. § 300.303, a district must re-evaluate a student if "the child's parent or teacher requests a re-evaluation" and must nonetheless "occur at least every 3 years, unless the parent and the [district] agree that a re-evaluation is unnecessary." 34 C.F.R. § 300.303(a)(2); *see also* 34 C.F.R. § 300.303(b)(2).

Parental consent is required prior to "conducting any re-evaluation of a child with a disability." 34 C.F.R. § 300.300(c)(1)(i). If consent is not obtained, the district "does not violate its obligation under [34 C.F.R. § 300.111 or 34 C.F.R. § 300.301-311] if [the district] declines to pursue the…reevaluation." 34 C.F.R. § 300.300(c)(1)(iii). A Review of Existing Evaluation Data (REED) can be considered a re-evaluation of a student under the IDEA, even for triennial purposes. *Student v. Cleveland Indep. Sch. Dist.*, 276-SE-0817, *19-20 (SEA Tex. 2018).

Petitioner has not met Petitioner's burden to prove that Student was not timely re-evaluated. Student's initial FIE was conducted on February ***, 2020, making Student's triennial re-evaluation due by February ***, 2023. (J-4) (Initial FIE). A REED was conducted on March ***, 2022, indicating that additional formal or informal evaluation was needed in speech (J-3 002), formal intellectual evaluation (J3-004), and formal achievement testing in the areas of reading, writing, and math. (J3-005). Emotional, behavioral, and adaptive behavior were not areas where additional evaluation was recommended based on available data. (J3-004-005). The REED was discussed in an annual ARD held the same day with Parent in attendance; page 1 of the ARD document, "Review of Additional Evaluation," is marked "yes" to "additional evaluation is needed" with the comment "three year re-evaluation needed" and "New speech, cognitive, and academic evaluations are requested." (J-8 001). The REED was reviewed, and both Parents signed the ARD in agreement and acknowledging receipt of Prior Written Notice indicating the request for re-evaluation due by 2/***/2023 was provided. (J-8 022-025). The Parent testified that parent was contacted by the District for consent for that re-evaluation. (Tr Vol 1 165:1-6). The Parent also testified that parent knew parent had the right to request an evaluation sooner than the three year mark discussed in the 2022 ARD. (Tr Vol 1 173:1-4). The Parent acknowledged that parent agreed to pull forward the REED. (R-89 014).

***testified that parent requested consent to evaluate Student for student triennial when Student "first got to" the campus, but did not receive consent initially. (Tr Vol 3 697:4-9). Parent also testified that the REED was discussed on January ***, 2023, but parent still was unable to get parental consent at that ARD. (Tr Vol 3 699:10-23). ***testified that parent did not forge the ARD signatures of the Parent at that meeting. (Tr Vol 699:24-25). The District began requesting consent and engaging in extended conversations with the Parents regarding consent and due dates in the fall of 2022. Request for consent and a Notice of Proposal to Evaluate was sent on December ***, 2022. (R-14; R-15). Parent agreed to pull the REED forward on January ***, 2023. After additional communication, Parent provided consent on February ***, 2023, which was outside the window for testing due to the lack of prior consent. (R-13). The FIE was subsequently conducted in the areas where consent was provided, and in all areas of suspected disability, and completed on an expedited basis by April 2023. The results of the evaluation were reviewed and discussed in duly constituted ARD meetings with the Parents.

***, speech language pathologist, testified that parent input in the 2023 FIE was that Student no longer presented with a need for speech services and did not meet eligibility as a Student with a speech

impairment. (Tr Vol 3 777:6-12). Parent stated further that Student had only had two areas of articulation concern, which were successfully remediated, and that further services would have been inappropriate because there is "no reason to continue pulling" Student from "academic instruction in order to remediate something that doesn't exist." (Tr Vol 3 820:3-18). ***testified that *** completed *** portion of the FIE in the area of speech and that his evaluation was completed prior to dismissal. Parent testified that an evaluation need not be formal to dismiss a student from speech when they are being treated for articulation or fluency. (Tr Vol 3 777:15-20). Petitioner offered no evidence to dispute this testimony. ***reported that parent communicated parent recommendation for dismissal and Student's mastery of goals prior to the ARD reviewing the FIE. *** said *** left voicemails for both Parents, emailed both Parents, and received no response; however, *** reported that the Parents were present when parent presented the results, and Parents expressed no disagreement. (Tr Vol 3 797:3-25). A district cannot be held responsible for failure to timely re-evaluate a student when the reason for not meeting the IDEA timeline is the unwillingness of a parent to give consent for the district to conduct the re-evaluation. The District conducted the re-evaluation in an expedited manner once parental consent was received. Petitioner has failed to meet Petitioner's burden of proof on this claim.

VII. RESPONDENT'S COUNTERCLAIM TO DEFEND ITS EVALUATION

Respondent filed a counterclaim seeking a ruling that its FIE of Student in 2023 was appropriate. Respondent bears the burden of proof on this claim.

The standards for conducting an appropriate FIE are set forth in IDEA. In making eligibility determinations, a "full and individual evaluation" must be conducted pursuant to the statute. 20 U.S.C. § 1414. The evaluation must assess in all areas of suspected disability and be sufficiently comprehensive to identify all potential special education and related service needs. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4), (6). IDEA evaluations must (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether the child is a "child with a disability" under the IDEA; (2) not rely on any single measure or assessment as the sole criterion for determining a child's eligibility; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34

C.F.R. § 300.304(b). The district should "consider a student's academic, behavioral, and social progress" in making determinations. *D.L. v. Clear Creek Indep. Sch. Dist*., 695 F. App'x 733 (5th Cir. 2017) *see also Alvin*, 503 F.3d at 384.

The evidence shows that the District's 2023 FIE of Student was appropriate. The evaluation used a variety of assessment tools and strategies (Tr Vol. 3 704:19-22); used multiple and sufficient measures and assessments, *Id.* at 22-25; used appropriate, technically sound, and the most recent versions of assessments; were not administered or selected in a racially or culturally discriminatory way; and were administered the instruments consistent with the developer instructions. (Tr Vol. 3 705:1-15). All areas of suspected disability were assessed, and the District did not know of any disability manifestations that were known but ignored or disregarded during the evaluation. (Tr Vol. 3 706:6-11). The evaluation was reviewed with the Parent over the course of two meetings. (J-6 024; *see also* Tr Vol. 3. 706:12-25, 707:1-2).

Petitioner offered no testimony to refute the appropriateness of the District's evaluation. While Petitioner had a private evaluation conducted during the pendency of these proceedings by***, ***did not testify in support of parent evaluation, and in any case, the District pointed to numerous errors in ***evaluation, casting doubt on its reliability, including but not limited to a failure to observe the Student in the classroom setting, (Tr Vol. 3 876:13-20), an excessive amount of assessments in a short time frame, (P-2; Tr Vol. 3 847:14-25; Vol. 3 876:21-12; 877:1-16) (expert in specific learning disabilities testified about the concerning number of evaluations in short time), failure to incorporate multiple measures of data, (Tr Vol. 3 878 11-12) (expert in specific learning disabilities testified about the use of multiple measures of data), the use of assessments outside of the publisher's rules, (Tr Vol. 3 879 4-21) (expert in specific learning disabilities explained the publisher's directions for CTOPP), and a failure to explain the reason for parent September ***, 2024 amendment to parent report, when parent evaluation of Student concluded six months earlier in March 2024. (P-2 002; Vol. 3 861:4-17; *See, e.g.,* Vol. 3 841:1-16) (District's expert in school psychology testified to report issues). Respondent's FIE was appropriate and met the standards of the IDEA.

VIII. Petitioner Did Not Prove The Right To An Independent Educational Evaluation Paid For By The District.

A parent has a right to an Independent Education Evaluation (IEE) at the district's expense if the parent disagrees with the results or recommendations of the district's own evaluation. 34 C.F.R. §300.502(b)(1). In this case, the Parents requested an IEE during the May***, 2023 ARD, and the District granted the request. The District sent the Parent a list of IEE providers and informed the Parent that the IEE appointment could not be made until the provider was identified and had negotiated a contract through the District. On March ***, 2024, ***, PhD., LSSP, BCBA, was identified by the Parent as the IEE provider. However, ***had not gone through the proper steps outlined in the IEE criteria. Instead, the outside evaluation had been conducted on March ***, 2024, before ***was identified and contracted by the District. The District was required to (and did) consider and discuss the IEE in developing the Student's IEP, but the conditions required for the Parent to receive an IEE at District expense were not followed by the Parent. Parent therefore is not entitled to reimbursement for the costs of Dr. ***'s IEE.

CONCLUSION

When looking at the totality of the *Michael F.* factors as applied to the proposed IEP at issue here, the evidence showed that the IEP offered by the District on May ***, 2023 was appropriate based on Student's unique needs and was reasonably calculated to provide Student a benefit that is more than *de minimis*. Student's educational benefit from special education services has been meaningful. Student has been provided with positive academic and nonacademic benefits, provided in a coordinated and collaborative manner by key stakeholders in the least restrictive environment. The Parents participated fully in all of the Student's ARD meetings except one which occurred after this litigation was filed. Their absence from that one meeting was at the direction of the Parent's advocate. The District implemented the Student's IEP and assured that Student's teachers met the certification requirements of TEA. The District evaluated Student in all areas of suspected disability and determined Student's eligibility for special education and related services based on those evaluations and Student's need for such services. Student's evaluations and re-evaluations were usually conducted timely, and when timelines were not met, the delays were due to difficulties in getting parental consent to conduct the re-evaluation or

evaluation. The Parents were not barred from communicating with school staff about Student, but were directed to submit communications to specific staff in order to streamline and manage the Parent's voluminous and frequent communications. For two reasons, the Parents are not entitled to reimbursement of the independent evaluation they obtained. First, the District's evaluation of the Student is appropriate. Second, the Parents failed to follow the District's criteria when the District originally offered to fund the IEE. In summary, Petitioner has failed to meet Petitioner's burden of proof on all claims against the District.

CONCLUSIONS OF LAW

1. Petitioner did not meet Petitioner's burden of proving an exception to the application of IDEA's statute of limitations. As a result, IDEA's two-year limitations period applies. 20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R.§§ 300.503(a)(1)(2); 300.507(a)(1)(2)

2. Petitioner did not meet Petitioner's burden of proving that Student's IEP of May ***, 2023 was not appropriate *34 C.F.R. §300.320*.

3. Petitioner did not meet Petitioner's burden of proving that the District failed to meet Student's unique needs. *Cypress- Fairbanks ISD v. Michael F*., 118 F.3d 245, 251 (5th Cir. 1997).

4. Petitioner did not meet Petitioner's burden of proving that the District failed to establish an appropriate IEP. Petitioner did not prove that the District failed to develop specific and measurable goals to determine and ensure meaningful benefit to the Student. *Cypress- Fairbanks ISD v. Michael F*., 118

F.3d 245, 251 (5th Cir. 1997).

5. Petitioner failed to meet Petitioner's burden of proving that the District failed to collaborate appropriately with Student's Parents. *Cypress- Fairbanks ISD v. Michael F.*, 118 F.3d 245, 251 (5th Cir. 1997).

6. Petitioner failed to meet Petitioner's burden of proving that the District failed to appropriately implement Student's IEP. 34 CFR § 300.156(e).

7. Petitioner failed to meet Petitioner's burden of proving that the District failed to conduct a timely re-evaluation of Student. Petitioner also failed to meet Petitioner's burden of proving that the District failed to conduct evaluations of Student in all areas of suspected need.

8. Petitioner is not entitled to reimbursement for the outside evaluation of Student by Dr. ***.

9. Respondent met its burden of proving that its 2023 FIE of Student was appropriate.

Based on the foregoing Findings of Fact, Conclusions of Law, and Discussion, Petitioner's claims are without merit. Respondent's counterclaim has merit.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Any and all relief requested by Petitioner is

DENIED.

2. Respondent's request that its 2023 FIE of Student be declared appropriate is

GRANTED.

SIGNED on the _____ day of February 2025.

Sandy Lowe
Special Education Hearing Officer
For the State of Texas