

SOAH Docket No. 701-24-16337.IDEA
TEA Docket No. 268-SE-0424

Before the State Office of Administrative Hearings

**Student. and Parent.,
Petitioner**

v.

**Schertz-Cibolo-Universal City Independent School
District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student. (Student or Petitioner), supported by Parent. (Parent) in accordance with a supported decision-making agreement (SDMA), brought this action against Schertz-Cibolo-Universal City Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issues in this case are whether the District denied Student a free appropriate public education (FAPE) by failing to hold an admission, review, and dismissal (ARD) committee meeting upon request between January *** and June ***,

2024, and by failing to consider an independent evaluation obtained by Parent when it developed an IEP for Student in June 2024.

The Administrative Law Judge (Judge) concludes that the District denied Student a FAPE from March *** to April ***, 2024, when it failed to timely convene an ARD committee meeting after Parent requested one on Student's behalf pursuant to an SDMA. The Judge further concludes Petitioner failed to show that the District violated the IDEA by not considering a parent-initiated evaluation during an ARD committee meeting held in June 2024.

II. DUE PROCESS HEARING

The due process hearing in this case was conducted on January 22, 2025, through the Zoom videoconferencing platform. Additional testimony was taken on February 14, 2025, regarding Petitioner's standing to bring and pursue the claim alleged in this action. The hearing was closed to the public, and the proceedings were recorded and transcribed by a certified court reporter. Petitioner was represented by attorney Jordan McKnight, and Parent was present on January 22 and February 14, 2025. Student was present on February 14, 2025. Debra Liva also attended the hearing on January 22, 2025, as Mr. McKnight's legal assistant.

Respondent was represented by attorney Cynthia Buechler with Buechler & Associates.***, Director of Special Education, and***, Assistant Director of Special Education, attended the hearing as party representatives for the District. The Decision in this case is due March 10, 2025.

The parties submitted one joint exhibit which was admitted without objection. Petitioner submitted seven separate exhibits. Petitioner's exhibits 1

through 4 and 6 were admitted without objection. Petitioner's remaining exhibits were admitted over Respondent's objections. Respondent withdrew one exhibit and offered 14 others. Respondent's exhibits 1 through 4, 6 (pages 1-41 and 44-47), and 8 through 10 and 15 were admitted without objection. Respondent's exhibits 11 through 13 were admitted over Petitioner's objections.

Petitioner called Parent, Student, and the District's director of special education to testify. Respondent called a former administrator at the *** Student attended and the District's special education coordinator as witnesses.

III. PETITIONER'S ISSUE AND REQUESTED RELIEF

A. Issue

The relevant timeframe in this case begins on January 12, 2024. Petitioner raised the following issue for decision:

- Whether the District failed to provide Student with a FAPE during the relevant timeframe.

B. Requested Relief

Petitioner requested the following items of relief:

1. Order the District to hold an ARD committee meeting and place Student in an *** program;

2. Order the District to provide compensatory education and related services; and
3. Any and all other remedies Petitioner may be entitled to under the law.

IV. FINDINGS OF FACT

1. Student turned *** years old on***. Student is now *** and lives with Parent within the jurisdictional boundaries of the District.¹
2. Student entered into an SDMA with Parent on October ***, 2022. The SDMA identifies Parent as Student’s “supporter” and states that Parent may help Student with life decisions related to obtaining food, clothing, and a place to live; Student physical health; Student mental health; managing Student ***or ***getting an education or other training; choosing and maintaining services and supports; and***.²
3. The SDMA also states that Student’s “[s]upporter does not make decisions for [Student].” Instead, the SDMA allows Student’s supporter to help Student get the information Student needs to make medical, psychological, ***, or educational decisions; help Student understand Student choices; or communicate Student decisions to the right people.³
4. While attending school, Student received special education and related services as a student with other health impairment (OHI) due to attention deficit hyperactivity disorder (ADHD), a specific learning disability (SLD) in the areas of basic reading skill and reading comprehension, and speech impairment.⁴
5. A *** ARD committee meeting was held on January***, 2023. The IEP developed during that meeting indicated that Student was on the ***and that Student would ***in May 2023 by meeting the

¹ Transcript (Tr.) (vol. 2) at 351, 360.

² Respondent’s Exhibit (RE) 15 at 1; Tr. (vol. 2) at 352.

³ RE 15 at 1.

⁴ Petitioner’s Exhibit (PE) 6 at 1-2.

requirements set forth in ***⁵ Consistent with the requirements set forth in that provision, Student worked on a modified curriculum and was required to master Student IEP goals, specific self-help skills, and***. However, Student was not required to pass ***.⁶

6. Student ***as anticipated, and Petitioner filed a due process hearing request that same month. Parent did not believe Student was ready to ***.⁷
7. Petitioner obtained an independent evaluation in neuropsychology from ***in August 2023. Petitioner disclosed the evaluation to the District in connection with the previous case, but neither Student nor Parent provided the evaluation to Student's ARD committee for consideration at an ARD committee meeting.⁸
8. The parties settled the previous case on or about January ***, 2024, and entered into a settlement agreement. Pursuant to that agreement, Petitioner released all claims against the District that were, or could have been, raised related to Student's***.⁹
9. Parent contacted the District on January *** 2024, and requested an ARD committee meeting to discuss additional services for Student. The District denied Parent's request.¹⁰
10. Parent requested an ARD committee meeting again on March***, 2024, and this time informed the District that parentwas making the request pursuant to an SDMA. The District's director of special education responded on March ***,

⁵ Although Student's IEP refers to a ***. See 74 Tex. Admin. Code § 74.12; Tr. (vol. 1) at 281.

⁶ PE 2 at 3; PE 6 at 2, 8, 11-12, 18; Tr.(vol. 1) at 161-63, 190-91, 292-96.

⁷ PE 2 at 3; RE 1 at 2-4; Tr. (vol. 1) at 43.

⁸ PE 5; Tr. (vol. 1) at 12-13, 200-03, 206, 213, 215, 236-39, 249, 253, 292-96.

⁹ JE 1; Tr. (vol. 1) at 13, 206, 250.

¹⁰ PE 1; Tr. (vol. 1) at 37-38, 163-64.

2024, and denied Parent's request, stating that Student had ***and was no longer eligible for special education services and that all claims related to Student ***had been released under the parties' settlement agreement. The special education director believed at the time that the January 2024 settlement agreement included language severing any future ties between the parties.¹¹

11. Petitioner initiated this action on April 17, 2024. Student made the decision to file the current due process hearing request with Parent's support and provided input related to Petitioner's pleadings.¹²
12. The District emailed Parent on April ***, 2024, requesting a current email address for Student and a copy of the SDMA because the District did not have one in Student's file. The District's email also included an invitation to an ARD committee meeting scheduled for May ***2024. The invitation was sent to both Parent and Student.¹³
13. Parent provided the District with a copy of the SDMA after the resolution session was held on May ***2024. Parent and Student attended the resolution session along with an advocate. Consistent with the relief requested in the Complaint, the advocate asked the District to place Student in an *** program. The District responded that the ARD committee would consider the request at the meeting scheduled for the next day. Student and Parent did not show up for the May *** 2024 ARD committee meeting.¹⁴
14. On May ***, 2024, the District contacted Parent and Student in writing to reschedule the ARD committee meeting for May***, 2024. The District included copies of the ARD notice and procedural safeguards when it did so. The District also offered to reschedule the meeting for another day if May *** did not work for Parent and Student.¹⁵

¹¹ PE 2; PE 3; Tr. (vol. 1) at 41-43, 205, 210.

¹² Tr. (vol. 2) at 355-56.

¹³ RE 2; RE 6 at 41; Tr. (vol. 1) at 110-13, 204-05, 211-12.

¹⁴ RE 15 at 1; Tr. (vol. 1) at 113-15, 14, 212, 214, 235-36; Tr. (vol. 2) at 370.

¹⁵ RE 3; RE 6 at 34; Tr. (vol. 1) at 115.

15. On May *** 2024, the District called Parent to confirm Petitioner's attendance at the ARD committee meeting and to reschedule it if necessary. The District also sent a transition survey for Parent and Student to complete for the ARD committee's consideration. When Parent and Student did not show up for the ARD committee meeting, it was rescheduled for June *** 2024. A new ARD meeting invitation was sent to them along with another copy of the transition survey.¹⁶
16. Parent emailed the District on May ***, 2024, and asked the District to stop scheduling ARD committee meetings and requested contact information for the District's representative for Texas Rehabilitation Services. Parent renewed Parentrequest for this information on June ***, 2024, and the District responded on June ***, 2024, with the name and contact information for a Transition Vocational Rehabilitation Counselor and a Rehabilitation Assistant with the Texas Workforce Commission.¹⁷
17. Student and Parent did not attend the June***, 2024 ARD committee meeting, and the District held it without them.¹⁸
18. The June 2024 IEP developed by the District members of the ARD committee does not mention the *** evaluation but refers instead to a full and individual evaluation (FIE) of Student completed on February ***2022. Because Student had not attended school since Student ***in May 2023, the committee reviewed Student present levels of academic achievement and functional performance ("present levels") in reading, speech, written expression, math, and behavior from the 2022-23 school year. In addition, the committee reviewed previous transition assessments, information from school staff, Student's communication needs, and a concern referenced by Parent in one of Parent June 2024 emails to the director of special education regarding Student's inability to write an *** or compose a meaningful paragraph.¹⁹

¹⁶ RE 4; RE 6 at 20, 22-23; Tr. (vol. 1) at 117.

¹⁷ RE 6 at 17-20; Tr. (vol. 1) at 116, 118.

¹⁸ Tr. (vol. 1) at 213, 215; Tr. (vol. 2) at 133-34, 373.

¹⁹ RE 1 at 1.

19. The committee revisited Student's transition services and noted that the District sent Student and Parent transition surveys twice prior to the meeting to gather updated information, but the surveys were not returned. The District indicated, however, that it would request additional transition information upon Student's re-enrollment, and another ARD committee meeting would be held to take into account any updated information provided.²⁰
20. Student's transition plan identified Student interests and provided that, upon re-enrollment, Student would receive assistance with Student ***skills, completing***, and connecting to***. It also included the information the District previously provided to Parent regarding the Transition Vocation Rehabilitation Counselor and Rehabilitation Assistant with the Texas Workforce Commission.²¹
21. The plan incorporated the following annual IEP goals: independently updating a personal planner with weekly schedule information; independently self-advocating (asking for help, stating when Student has completed a task, etc.) in the classroom or at a community worksite; and producing written documents appropriate for employment (such as professional emails, a résumé, and job applications).²²
22. The District proposed transition services through its ***program for *** minutes a day *** days per week. The District also offered transportation services to enable Student to access the ***program because the program is not available on Student home campus.²³
23. An ***program is a special education program that provides specialized educational services for students with disabilities who accessed modified curriculum in *** and need additional support transitioning from ***to ***. These programs focus on, among other things,

²⁰ RE 1 at 5, 8; Tr. at 120, 228.

²¹ RE 1 at 6, 8-9; RE 6 at 17.

²² RE 1 at 8, 14-15.

²³ RE 1 at 20-22, 24, 29-30; RE 6 at 4, 12; Tr. (vol. 1) at 134-35, 141-42.

independent *** skills and *** readiness. There is no general education counterpart to the *** program.²⁴

24. The District sent a copy of the IEP and procedural safeguards to Student and Parent after the June *** meeting and again at the beginning of the 2024-25 school year. Student has not accessed any of the services set forth in the June 2024 IEP.²⁵
25. On December ***, 2024, the District offered Student tutoring services for *** hours a day for *** school days during the summer as compensatory services. The District offered Student additional tutoring services in January 2025.²⁶

V. DISCUSSION

A. Petitioner's Standing

Standing is a component of subject-matter jurisdiction and must exist at the time a petitioner files suit and throughout the pendency of the action. *Douglas v. Delp*, 987 S.W.2d 879, 882 (Tex. 1999). Under the IDEA, a parent has standing to bring an action against a school district on behalf of a minor child. 34 C.F.R. §300.507(a). Once a student reaches the age of majority, however, the IDEA establishes that a state may provide for the transfer of parental rights to the student. 34 C.F.R. § 300.520(a). Texas law explicitly provides for the transfer of these rights.²⁷ Tex. Educ. Code § 29.017; 19 Tex. Admin. Code § 89.1049(a).

²⁴ RE 1 at 18-22; Tr. (vol. 1) at 281, 321-22.

²⁵ RE 6 at 11-12, 15; Tr. (vol. 1) at 134-35, 142-44, 232-33; Tr. (vol. 2) at 373.

²⁶ RE 6 at 2, 4, 6.

²⁷ The transfer of parental rights under the IDEA is central to the threshold inquiry in this case as to whether the Judge has subject matter jurisdiction. It is also relevant to the merits of Petitioner's claim that the District violated the IDEA by failing to hold an ARD committee meeting when Parent requested one. The transfer of parental rights and its effect on Petitioner's claim against the District is addressed below in Section V(D)(1) and (2).

Student in this case was *** years old when the Complaint was filed. Parent does not have *** of Student, and Student has not executed a power of attorney delegating Student legal or educational decision-making rights to Parent. Instead, Student executed an SDMA in October 2022.²⁸ The SDMA identifies Parent as Student’s “supporter” and permits parent to help Student with *** decisions, including getting an education or other training and choosing and maintaining services and supports. It also allows parent to help Student “obtain the information Student needs to make decisions, understand Student options, and communicate Student decisions to others.” Student’s failure to appear at the due process hearing on January *** raised questions for the Judge as to Parent’s and Student’s respective roles in this proceeding and whether those roles were consistent with the SDMA. Additional testimony on this narrow issue was elicited on February 14, 2025.

Student testified that Student made the decision, with Parent’s support, to bring this action and that Student provided input and was involved in the process. This testimony supports the conclusion that Petitioner has standing in this case and that Parent was acting in a supportive role for purposes of litigating Petitioner’s claim in accordance with the SDMA.

B. Burden of Proof

The burden of proof in a due process hearing is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding.

²⁸ While state law dictates that parental rights transfer at age 18, the administrative rules provide that the transfer of those rights does not prohibit a student from executing an SDMA or a power of attorney. 19 Tex. Admin. Code § 89.1049(e).

Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden in this case is therefore on Petitioner to establish that the District denied Student a FAPE during the relevant timeframe.

C. FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). School districts must provide a FAPE to all children with disabilities ages 3 through 21 in their jurisdiction and are responsible for providing specially-designed, personalized instruction with sufficient support services to enable those children to receive an educational benefit. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001. The instruction and services provided must be at public expense and comport with the students' IEPs. 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).

Determining compliance with the IDEA requires a two-part inquiry: first, whether the school district has complied with the procedural requirements of the law; and second, whether the student's program is "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

D. Procedural Requirements

Petitioner in this case pled procedural violations of the IDEA related to Parent's requests for an ARD committee meeting and the District's failure to consider a parent-

initiated evaluation during a June 2024 ARD committee meeting. Liability for a procedural violation arises only if the procedural deficiency impeded the student's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

1. January *, 2024 Request for an ARD Committee Meeting**

When a written request is made for an ARD committee meeting by an individual with the right to do so under the IDEA, the school district must either (1) schedule a meeting, or (2) provide prior written notice within five school days explaining why a meeting will not be held. 19 Tex. Admin. Code §89.1050(e).

According to Parent's testimony, Student continues to struggle with Student writing, ***, and *** skills. In light of these struggles, Parent emailed the District on January ***, 2024, and requested an ARD committee meeting. Student, however, was *** and Parent failed to mention the SDMA. Nor did Student contact the District on Student own to make such a request. Because *** and Petitioner did not put the District on notice that Parent was making the request pursuant to a legal instrument that gave Parent the authority to do so, the District did not violate the IDEA by failing to schedule the ARD committee meeting or providing prior written notice at that time.

Petitioner's argument that the SDMA has been in effect since October 2022 is immaterial.²⁹ Regardless of when the SDMA was executed, the District was not required to respond to Parent's request until Parent put the District on notice that she was acting pursuant to the SDMA.

2. March *, 2024 Request for an ARD Committee Meeting**

Parent made another request for an ARD committee meeting by email on March ***, 2024. This time, Parent indicated Parent was making the request in accordance with the SDMA. The District responded on March ***, 2024, stating that Student had ***and was no longer eligible for special education and that any claims related to *** had been released under the parties' settlement agreement. The District's response was inaccurate and misguided.

Under the IDEA, students are eligible for special education and related services from the age of 3 through 21 or when they *** with a regular ***. 34 C.F.R. § 300.102; 19 Tex. Admin. Code § 89.1035. A regular *** is one that is identical to those *** students without disabilities receive when they meet state and local*** requirements. 34 C.F.R. § 300.102(a)(3)(i). It must be fully aligned with state standards.

Consistent with federal regulations, students in this state who receive special education may ***and be awarded a regular ***if they have demonstrated mastery of required state standards, completed general education credit requirements, and demonstrated satisfactory performance on ***

²⁹ Pet. Closing Brief at 3, ¶8.

. 19 Tex. Admin. Code § 89.1070(b)(1). ***under subsection (b)(1) terminates eligibility for special education services. 19 Tex. Admin. Code § 89.1070(a).

Meanwhile, students who have completed credit requirements for ***through a modified curriculum, mastered state standards in accordance with the modified content set forth in their IEPs, and obtained ***along with sufficient self-help skills to maintain that ***may also***. These students are not required to pass ***if their ARD committee waives the requirement. 19 Tex. Admin. Code § 89.1070(b)(3)(A). ***under subsection (b)(3)(A) is commonly referred to as “an IEP***,” and it does not automatically terminate a student’s eligibility for special education services. Instead, a parent or student may request further services, and the student’s ARD committee must then meet to determine whether the student needs additional support transitioning to ***. *See* 19 Tex. Admin. Code § 89.1070(j).

Here, Student continues to meet the *** requirements for eligibility, and Student ***pursuant to § 89.1070(b)(3)(A).³⁰ Consistent with the requirements of this code provision, Student completed Student *** through a modified curriculum, demonstrated mastery of state standards in accordance with the modified content identified in Student IEP, and was not required to pass ***. Student’s ***therefore did not terminate Student eligibility

³⁰Student turned***. Because Student ***after September 1 of the 2024-25 school year, Student will continue to be eligible for special education services through the end of the 2025-26 school year. 19 Tex. ***

to seek additional services from the District. Upon receiving Parent's request pursuant to the SDMA for an ARD committee meeting, the District was required to convene one or provide prior written notice of its refusal to do so. Moreover, while the settlement agreement may have released claims related to Student's ***it did not—as the District mistakenly believed—prospectively release the District from its obligation to hold an ARD committee meeting at Petitioner's request.

In sum, the evidence shows that Parent made a written request on Student's behalf for an ARD committee meeting on March *** pursuant to an SDMA and that the District failed to respond as required under the IDEA until April ***, 2024, when it contacted Parent and Student to schedule the meeting. The District's failure to timely respond to Parent's request impeded Student's right to a FAPE from March *** to April ***, 2024.

3. Student's Parent-Initiated Evaluation by Dr. ***

Finally, Petitioner argues that the ***evaluation is the most recent evaluation data available and that the District violated the IDEA by failing to consider it when Student's IEP was developed at the June 2024 ARD committee meeting.³¹ As a threshold matter, Petitioner's argument conflates two regulations which place different obligations on a school district. In developing an IEP, school

³¹The *** evaluation was admitted as an exhibit over Respondent's objection at the hearing. PE 5. After the exhibit was admitted, counsel for Respondent asked the Judge to take judicial notice of the "previous due process hearing" between the parties and argued that the release in "the settlement agreement specifically precluded any issues regarding [the *** evaluation] from being brought forward." Tr. at 245-46. Judicial notice of an adjudicative fact, however, must be readily verifiable, and documents filed in the previous action do not meet this criteria. Tex. R. Evid. 201(b). Due process hearings are confidential, and this Judge did not preside over the prior action or otherwise have access to the records that were the subject of counsel's request. 34 C.F.R. § 300.610. Nor did counsel offer the records as an exhibit during disclosures or provide them to the Judge in connection with her request. *See* Tex. R. Evid. 201(d). Counsel's request was denied. Tr. at 246.

districts must consider the results of the initial or most recent evaluation of a student. 34 C.F.R. § 300.324(a)(1)(iii). For purposes of this provision, the evaluation referred to is one that has been conducted or adopted by the district. Conversely, a district's obligation to consider a parent-initiated evaluation requires the parent to share the evaluation with the district and is conditioned on whether the evaluation meets district criteria. 34 C.F.R. § 300.502(c)(1). While school districts must consider these evaluations in making decisions regarding FAPE, they are not required to accept the findings or adopt the recommendations included in them.

Any obligation the District may have had in this case to consider the ***evaluation at the June 2024 ARD committee meeting falls under § 300.502(c)(1), and Petitioner failed to show that the District was required to consider the evaluation under this provision. First, no evidence was presented to show that the evaluation meets the District's criteria. Second, although Petitioner produced a copy of the evaluation during disclosures in a previous case, neither Parent nor Student shared a copy of the evaluation with the ARD committee. The Judge is unwilling to conclude under the circumstances presented here that obtaining a copy of the parent-initiated evaluation through litigation achieves the same collaborative purpose contemplated by the regulations. And third, the special education director testified during the hearing that any issues related to the ***evaluation were released under the parties' January 2024 settlement agreement. Petitioner did not rebut this testimony during the hearing or in Student closing brief.

Nonetheless, even if Petitioner had been able to establish that the District was required to consider the ***evaluation, Petitioner's refusal to participate in the IEP development process renders this type of a procedural error harmless. Several circuit courts of appeal—including the Fifth Circuit—have held that a procedural

violation of the IDEA does not result in a denial of FAPE when the petitioner fails to make an effort to meaningfully participate in the IEP process. *See, e.g., Rockwall Indep. Sch. Dist. v. M.C.*, 816 F.3d 329, 340 (5th Cir. 2016) (denying parents' requested relief for an IEP that was incomplete due to their unwillingness to attend an IEP meeting); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306, 1314 (10th Cir. 2008) (holding that the parents' withdrawal from the IEP process made the district's failure to have an IEP in place harmless); *Hjortness ex rel. Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 1065-66 (7th Cir. 2007) (determining that "the parents' intransigence" to block an IEP they did not agree with does not amount to a procedural violation by the district). These cases support the conclusion that Petitioner cannot attempt to thwart the IEP development process by refusing to attend an ARD committee meeting and then claim the District committed a procedural violation when it failed to consider a parent-initiated evaluation that neither Parent nor Student shared with it or showed up at the meeting to discuss.

In an effort to justify Parent's refusal to attend the ARD committee meeting, Petitioner argues that Parent did not trust the District to hold one in good faith while litigation was pending.³² Admittedly, the District's initial response to Parent's March *** request did little to repair what the record reflects to be a strained relationship between the District and Parent. Nonetheless, the District's efforts as of April ***, 2024, were legally sufficient and complied with the IDEA. Moreover, with the exception of cases involving "stay put" issues, the Judge is unaware of any authority (and Petitioner offers none) indicating that the filing of a due process hearing request abates the IEP development process. Indeed, it is reasonable to

³² Pet. Closing Brief at 8, ¶24.

conclude that such a practice would often work to the detriment of the student involved and unduly delay the delivery of needed services.

In short, Petitioner failed to show that the District violated the IDEA by not considering the ***evaluation at the June 2024 ARD committee meeting. But even if Petitioner had met Student burden on this threshold issue, Petitioner's failure to participate in the IEP development process renders such a procedural violation harmless.

E. Appropriate Program

Having found that the District committed a procedural violation when it failed to respond to Parent's March ***request for an ARD committee meeting, the Judge must next consider whether the June 2024 IEP is reasonably calculated to enable Student to make appropriate progress. The Fifth Circuit has articulated the following four-factor test to determine whether a student's program meets this standard:

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. Dis. V. Michael F. by Barry F., 118 F.3d 245, 253 (5th Cir. 1997).³³

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. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

An IEP is the vehicle by which a school district ensures the provision of a FAPE to students with disabilities under the IDEA. A student's IEP must include a written statement of annual goals and objectives and how they will be measured as well as a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, 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). In developing the IEP, the school district must consider the student's strengths, the parent's concerns for enhancing Student education, the initial or most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). While the IEP need not be the best possible one or designed to maximize a student's potential, it must

³³ The Fifth Circuit has determined that this four-factor test is consistent with the standard laid out by the Supreme Court in *Endrew F. See E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018)(citing *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 401-04 (2017)).

nevertheless provide the student with a meaningful educational benefit. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The June 2024 IEP satisfies these requirements. In developing the IEP, the evidence shows that the District reviewed Student's present levels from Student last year of ***along with the results of an FIE from February 2022. The District also considered previous transition assessments and planned to revise the IEP if necessary when Student enrolled in the program and provided updated information. The District considered Student's communication needs as well as information from Parent regarding Parent concerns for Student's education and provided contact information and a referral to individuals at the Texas Workforce Commission. The IEP includes three *** goals, a statement of how they will be measured, and accommodations. The IEP also indicates that Student will receive instruction and services through the District's *** program for *** hours a day *** days a week, and it includes transportation as a related service to enable Student to access the services offered.

Based on the evidence presented, the Judge concludes that the June 2024 IEP is adequately individualized on the basis of assessment and performance.

2. Least Restrictive Environment

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

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

The June 2024 IEP places Student in an *** program to address Parent’s concerns related to Student’s transition to ***. This is a special education setting, and there is no general education counterpart to it. Accordingly, the *** program placement is the least restrictive environment for purposes of providing Student with the services Petitioner has requested from the District.

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 parents, to accede to their 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 parents have the right to dictate an outcome. Nor do they 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).

Here—after initially providing a procedurally flawed response to Petitioner’s March ***request—the District took steps to work with Petitioner in a coordinated, collaborative manner. It attempted to rectify its March *** response by reaching out to Petitioner, requesting a copy of the SDMA, scheduling and rescheduling the ARD committee meeting, providing information requested by Parent, and offering Student

tutoring services and placement in an *** program.³⁴ Unfortunately, Parent rejected the District's efforts. Parent rejection of these efforts and refusal to participate in the ARD committee process or encourage Student to take advantage of the services offered by the District was not collaborative.

Overall, the evidence shows that the parties have struggled to work together collaboratively. Nonetheless, the District has attempted to do so since April ***, 2024.

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). Once a student ***from***, however, the focus of special education services is no longer on satisfying state curriculum requirements but shifts to supporting student's transition to ***. These transition services typically address a student's needs as they relate to ***education, ***, and***. The evidence in this case shows that Student *** in May 2023 and remained eligible for special education transition services. Parent reported concerns with Student reading, writing, ***, and*** skills. In response to Parent's concerns, the June 2024 IEP placed Student in the District's *** program Petitioner had requested and included goals and accommodations to address Student's needs in these areas.

³⁴ Petitioner argues, based on a request made in the Complaint, that the District was required to contact Student attorney rather than Parent to schedule any ARD committee meetings. Pet. Closing Brief at 8, ¶ 5. It is unclear why the District chose to contact Parent and Student directly, but the Judge is unaware of any law, regulation, or order entered in this case that prevented the District from doing so.

Based on the evidence presented, the June 2024 IEP is reasonably calculated to provide Student with academic and non-academic benefits that support Student ***.

5. FAPE Conclusion

Overall, the evidence shows that the June 2024 IEP offered by the District is individualized on the basis of assessment and performance and places Student in the least restrictive environment. Although the District's initial response to Petitioner's March ***request failed to reflect the type of collaboration contemplated by the IDEA, the District made repeated efforts to remedy the situation and engage Petitioner in the educational decision-making process. Finally, the June 2024 is reasonably calculated to provide Student with benefits that support Student ***.

F. Remedy

The District procedurally violated the IDEA, leading to a denial of a FAPE for Student. The District did not respond as required to Petitioner's March***, 2024 request for an ARD committee meeting until April ***, 2024. This delayed a determination as to whether and what services Student needed to develop Student ***'s skills. As such, the District must compensate Student for this failure.

An administrative law judge in a due process hearing has the authority to grant all relief deemed necessary, including compensatory education, to ensure the student receives the requisite benefit denied by the school district's failure to comply with

the IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991). Compensatory education imposes liability on the school district to pay for or provide services it was required to pay or provide all along and failed to do so. *See Meiner v. Missouri*, 800 F.2d 749, 753 (8th Cir. 1986); *D.A. v. Houston Indep. Sch. Dist.*, 716 F.Supp.2d 603, 612 (S.D. Tex. 2009), *aff'd*, 629 F.3d 450 (5th Cir. 2010) (upholding decision that student failed to prove amount of compensatory reimbursement Student was entitled to for school district's failure to timely evaluate).

Compensatory education may be awarded after finding a violation of the IDEA. It constitutes an award of services to be provided prospectively in order to compensate the student for a deficient educational program provided in the past. *G. ex. rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295 (4th Cir. 2003). The judge has broad equitable powers to fashion appropriate relief where there has been a violation of the IDEA. *Sch. Comm. of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359, 374 (1996); *Harris v. Dist. of Columbia*, 19 IDELR 105 (D.D.C. 1992). A qualitative, rather than quantitative, standard is appropriate in fashioning compensatory and equitable relief. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 800 (5th Cir. 2020); *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).

Petitioner requested compensatory services but yet failed to offer any expert testimony or evidence explaining the nature and scope of the compensatory services Student needs to remedy the denial of FAPE in this case. Nonetheless, in light of the Judge's broad discretion to fashion appropriate relief and the six-week period in which Student was denied a FAPE, the Judge grants compensatory education in the amount of 12 three-hour days in the District's *** program along with the

transportation services necessary to ensure Student's access to the services provided. The 12 three-hour days are derived from the number of days per week of attendance in the program identified in the June 2024 IEP multiplied by the six week delay resulting from the District's failure to properly respond to Petitioner's March *** request for an ARD committee meeting. These services are to be allocated at the discretion of the District and are to be provided during the 2024-25 and/or 2025-26 school years. They must be provided in addition to any like services included in Student's IEP. To the extent Student does not re-enroll in the District during the timeframe stated herein, the District's obligation to provide these compensatory services is extinguished.

II. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party seeking relief. *Schaffer*, 546 U.S. at 62.
2. Parent's rights under the IDEA ***when Student***. 34 U.S.C. § 300.520(a); Tex. Educ. Code § 29.017; 19 Tex. Admin. Code § 89.1049.
3. Petitioner had standing to bring and pursue Student claims in this action. *Douglas v. Delp*, 987 S.W.2d at 882; 34 C.F.R. § 300.520(a); Tex. Educ. Code § 29.017; 19 Tex. Admin. Code § 89.1049(a).
4. Petitioner did not meet Student burden of proving that Respondent denied Student a FAPE by failing to convene an ARD committee meeting in response to Parent's request on January***, 2024. *Schaffer*, 546 U.S. at 62; 34 U.S.C. § 300.520(a); Tex. Educ. Code § 29.017; 19 Tex. Admin. Code § 89.1049.
5. Petitioner did not meet Student burden of proving that Respondent denied Student a FAPE by failing to consider the ***evaluation at the June***, 2024 ARD committee meeting. *Schaffer*, 546 U.S. at 62; 34 C.F.R. §§ 300.324(a)(1)(iii); 300.502(c)(1).

6. Respondent denied Student a FAPE between March *** and April ***, 2024, by failing to appropriately respond to Petitioner's request for an ARD committee meeting made pursuant to Student's SDMA with Parent. *Schaffer*, 546 U.S. at 62; *Rowley*, 458 U.S. at 176; *Endrew F.*, 580 U.S. at 399, 403; *Michael F.*, 118 F.3d at 253; 34 C.F.R. §§ 300.503(a), 300.513(a)(2); 19 Tex. Admin. Code § 89.1050(e).
7. The IEP developed by the District members of the ARD committee on June***, 2024, is reasonably calculated to enable Student to make appropriate progress in light of Student unique circumstances. *Rowley*, 458 U.S. at 176; *Endrew F.*, 580 U.S. at 399, 403; *Michael F.*, 118 F.3d at 253.

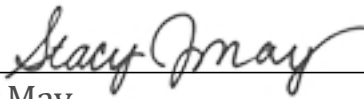
III. ORDERS

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

The District shall offer Student 12 *** days in the District's *** program along with the transportation services necessary to ensure Student's access to the services provided. These services are to be allocated at the discretion of the District and are to be provided during the 2024-25 and/or 2025-26 school years. They must be provided in addition to any like services included in Student's IEP. To the extent Student does not re-enroll in the District during the timeframe stated herein, the District's obligation to provide these compensatory services is extinguished.

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

Signed March 10, 2025.



Stacy May
Presiding Administrative Law Judge

IV. NOTICE TO THE PARTIES

The Final Decision of the Administrative Law 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).