

SOAH Docket No. 701-24-21192.IDEA  
TEA Docket No. 351-SE-0724

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# **Before the State Office of Administrative Hearings**

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

**v.**

**Austin Independent School District,  
Respondent**

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## **FINAL DECISION**

Student (Student), by next friend Parent (collectively, Petitioner), brings this action against the Austin Independent School District (District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issue in this case is whether Student is entitled to recoupment of amounts paid for Student's unilateral private placement after Student was withdrawn from District. The Administrative Law Judge (Judge) concludes that District provided Student with a free appropriate public education (FAPE) and therefore Student is not entitled to reimbursement.

## **I. DUE PROCESS HEARING**

The due process hearing was conducted via Zoom on April 15-17, 2025. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by attorneys Julianna S. Swann and Martin Cirkel of the Cirkel Law Group. Student's parents (Parents) attended the hearing as well as Student's advocate, David Beinke, also of Cirkel Law Group. District was represented by attorneys Andrew Tatgenhorst and Kendra Yoch with Thompson & Horton LLP. Dr. \*\*\*, Executive Director of Special Education Compliance and Operations, attended the hearing as District's party representative.

The parties offered 17 joint exhibits, all of which were admitted into evidence. Thirty-five of Petitioner's exhibits were admitted into evidence. For Petitioner's Exhibit 80, only pages 1, 2, and 3 were admitted. Petitioner offered the testimony of Student's Parents; \*\*\*, Student's vice principal; Dr. \*\*\*, a nationally certified school psychologist and licensed psychological associate who reviewed documents and offered her opinions; \*\*\*, Student's former special education counselor; and \*\*\*, Student's \*\*\* coach. District offered 53 exhibits, all of which were admitted into evidence. District also offered the testimony of Dr. \*\*\*, Student's principal; \*\*\*, Student's special education teacher; and Dr. \*\*\*.

Both parties filed written closing briefs in a timely manner. The decision in this case is due June 6, 2025.

## **II. ISSUES**

### **A. PETITIONER'S ISSUES**

The relevant timeframe in this matter began on July 2, 2022. Petitioner raised the following IDEA issues for decision in this case:

1. Whether District failed to provide Student with a FAPE by not developing an individualized education program (IEP):
  - a. With key stakeholders in a collaborative manner;
  - b. Commensurate with Student's unique and individualized needs;
  - c. Calculated to provide Student educational services in the least restrictive environment; and
  - d. That provided Student with academic and non-academic benefit.
2. Whether District failed to develop or implement an IEP that was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances;
3. Whether District failed to conduct evaluations in all areas of suspected need;
4. Whether District failed to protect Student from bullying and harassment, denying Student a FAPE thereby;
5. Whether District failed to address the impact of bullying and discrimination experienced by Student, denying Student a FAPE thereby;
6. Whether District failed to abide by their own Board policies and procedures, denying Student a FAPE thereby;
7. Whether District failed to consider and/or provide appropriate related services;

8. Whether District failed to ensure that staff serving Student were competent, well-trained, and well-supervised;
9. Whether District failed to provide Student a safe and non-hostile educational environment, denying Student a FAPE thereby; and
10. Whether the failures noted above have, together and separately, contributed to violating Student's rights pursuant to the IDEA and federal rules and regulations promulgated pursuant thereto.

**B. PETITIONER'S REQUESTED RELIEF**

Petitioner requested that the Judge order District to reimburse Student's family for out-of-pocket expenses incurred due to the failures of District, including but not limited to tuition and expenses related to Student's private placement for the past 18 months, as well as all other remedies the Judge deems appropriate.

**C. DISTRICT'S LEGAL POSITION**

In addition to generally and specifically denying Petitioner's allegations and asserting the statute of limitations as an affirmative defense, District argued that Parents and Student moved outside of the boundaries of District on May \*\*\*, 2024, and therefore another school district is responsible for the provision of FAPE to Student as of the date of that move.

### **III. BURDEN OF PROOF, EVIDENCE, STIPULATIONS, AND ADDITIONAL CLAIMS**

The burden of proof in this due process hearing is on Petitioner as the party seeking affirmative relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

Many of the exhibits Petitioner sought to offer in this matter were excluded on hearsay grounds. Petitioner asked to make offers of proof for Petitioner's Exhibits 2-9, 19-22, 24, 26, 30, 36-38, 40, and 42, which was permitted.

Petitioner submitted three additional documents with Student's closing brief and requested that the Judge take judicial notice of the documents as District policies. In IDEA hearings, parties must disclose all evidence that will be introduced at the hearing at least five business days before the hearing. 34 C.F.R. § 300.512(a)(3); 19 Tex. Admin. Code § 89.1180(h). These documents were not included in Petitioner's disclosures. While a judge may take judicial notice of appropriate facts under Texas Rule of Evidence 201 at any stage of the proceeding, the Texas Rules of Evidence only apply in IDEA cases to the extent that they are not modified by the specific rules for IDEA cases. 19 Tex. Admin. Code § 89.1185(d). Allowing Petitioner to introduce additional evidence at this stage of the proceeding, after the record has closed, would deny District its right to object to evidence that was not timely disclosed and deny it any meaningful opportunity to respond to these documents. Therefore, Petitioner's request for the Judge to take judicial notice of the three board policies filed with Student's closing brief is **DENIED**.

At the beginning of the hearing, the parties stipulated that District provided Student with an academic benefit. Additionally, joint stipulations were filed regarding Student's current enrollment; Student's eligibility under the IDEA; the dates of the Admission, Review, and Dismissal Committee (ARDC) meetings; Student's dates of attendance at District; the dates of Student's subsequent enrollments in private placement; the statute of limitations in this matter; and the participation of the parties in two mediations. In Student's closing brief, Petitioner expressly abandoned Student's claim that Student was not educated in the least restrictive environment. The relevant details of these stipulations and waivers are reflected in the findings of fact below.

In Student's closing brief, Petitioner attempts to raise the "derivative claims" of predetermination and failure to provide prior written notice. At the hearing, Petitioner may not raise issues that were not included in its complaint without the agreement of District. 34 C.F.R. § 300.511(d). Under the IDEA, and as plead by Petitioner, failure to work collaboratively with key stakeholders is one of the factors a Judge examines when determining if an IEP is appropriate. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997). While related to failure to work collaboratively, predetermination has unique elements and relies on evidence of activities outside of ARDC meetings. Therefore, pleading a failure to work collaboratively with key stakeholders would not put a district on notice that a petitioner was also alleging predetermination. Similarly, while failure to provide prior written notice may impede a parent's ability to work collaboratively, rebutting this claim requires proof of notices that a school district may not otherwise offer at a hearing.

These “derivative claims” were not expressly plead, nothing in Petitioner’s complaint put District on notice that these derivative claims were being raised, District did not expressly agree to try these claims, and these claims are not addressed in District’s closing brief. Therefore, the Judge will not consider predetermination or prior written notice claims in this decision.

In Student’s closing brief, Petitioner also included an unpled claim that District failed to coordinate with private placement providers. Because this claim was not specifically plead, it will not be addressed by the Judge.

#### **IV. FINDINGS OF FACT**

1. District provided Student with an academic benefit. Student was educated in Student’s least restrictive environment.<sup>1</sup>
2. Student is \*\*\* years old and currently attends the \*\*\* in \*\*\*, a private residential program.<sup>2</sup>
3. A full individual evaluation conducted by District on May \*\*\*, 2022, found that Student continued to be eligible for services under the IDEA as a student with an emotional disturbance and other health impairment. Student has been diagnosed with attention-deficit/hyperactivity disorder (ADHD) and \*\*\*. The evaluation found that Student’s behaviors impeded Student’s academic progress. A functional behavioral assessment (FBA) was completed on May \*\*\*, 2022.<sup>3</sup>

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<sup>1</sup> Transcript (Tr.) at 21; Petitioner’s Post Hearing Brief, footnote 2.

<sup>2</sup> Joint Stipulation of Fact filed on April 10, 2025 (Stipulations).

<sup>3</sup> Joint Exhibit (J. Ex.) 6; Tr. at 30.

4. A revision ARDC meeting was held on May \*\*\*, 2022, while Student was in \*\*\* grade, to discuss Student's evaluations. Student's present levels indicated that Student had difficulties attending to difficult tasks; concentrating on tasks; regulating words and actions; organizing and retaining information; remaining still; and taking turns. Student would become agitated or upset when asked to sustain cognitive effort, resulting in frustration; agitation; refusal; lashing out verbally or physically; and/or elopement from the classroom. Student was able to independently regulate Student's emotions by \*\*\*.<sup>4</sup>
5. A new behavior intervention plan (BIP) was developed and agreed on. Student's behavior goals included communicating Student's thoughts and needs; completing non-preferred tasks; and using positive self-talk and coping strategies to handle stress.<sup>5</sup>
6. Student's accommodations related to behavior management included \*\*\*, frequent check-ins; visual schedule posting; private discussion about behavior; frequent reminders of rules; prompts and redirection; positive reinforcement; rewards for positive behavior; providing visuals and verbal clues; reminders to stay on task; preferential seating; providing choices; clearly defined limits; and frequent breaks.<sup>6</sup>
7. Student's schedule of services included behavioral supports in Student's general education classes; support for co-teaching inclusion for math; pull-out support for math to check on completion and provide breaks; and special education behavior and emotional skills instruction in a special education setting for three \*\*\*-minute sessions weekly. Student also received two \*\*\*- minute special education counseling sessions weekly.<sup>7</sup>
8. Student's BIP identified the function of Student's behaviors as escape and obtaining attention. A plan of positive behavior interventions, strategies,

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<sup>4</sup> J. Ex. 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



and supports was implemented to address Student's identified behaviors, which included aggression; negative self-talk; \*\*\*; refusal; elopement; avoidance of non-preferred tasks; silly physical interactions with peers; and "\*\*\*\*".<sup>8</sup>

## 6<sup>th</sup> Grade

9. Student attended District during the 2022-2023 school year, which was Student's \*\*\* grade year.<sup>9</sup>
10. During Student's \*\*\* grade year, Student's biggest behavioral concern was elopement. Student eloped on average at least \*\*\* per week during the first nine weeks. Student eloped on \*\*\* different days during the second nine weeks. During the third 9 weeks, Student eloped and/or had a disruptive outburst \*\*\* per week in math.<sup>10</sup>
11. An ARDC meeting was held on October \*\*\*, 2022, to revise Student's schedule. Student had asked to be removed from Student's academic intervention class, a special education class, because Student felt it was causing more frustration than assistance. All ARDC members agreed to the schedule change and Student was placed in an \*\*\* instead of the academic intervention class.<sup>11</sup>
12. On November \*\*\*, 2022, Student was restrained by a District staff member for two minutes to keep Student from running down a stairwell and/or out of the building.<sup>12</sup>
13. Student's annual ARDC meeting was held on March \*\*\*, 2023. Student attended the meeting and shared that Student's grades had improved, as well as Student's athletic skills. Student, Parents, and District representatives agreed

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<sup>8</sup> *Id.*

<sup>9</sup> Stipulations.

<sup>10</sup> J. Exs. 16 and 17; Petitioner's Exhibit (P. Ex.) 66 at 13; District's Exhibit (D. Ex.) 12; Tr. at 29, 240.

<sup>11</sup> J. Ex. 4.

<sup>12</sup> P. Ex. 23.

- that Student was improving in Student's emotional regulation and ability to appropriately interact with others.<sup>13</sup>
14. ARDC members discussed additional plans to support Student's emotional and executive functioning progress, including check-ins every two weeks between Student's Parent and case manager to discuss grades and progress. It was agreed that Student would have \*\*\* at school and that, when Student became dysregulated, Student would be allowed to go to predetermined locations to calm down.<sup>14</sup>
  15. Two of Student's behavior goals were updated. A new goal of recognizing the "size of the problem" was added. Accommodations were also reviewed and updated, with the removal of an accommodation related to modifying Student's workload and the addition of accommodations for extra time and oral responses. A new consequence was added to Student's BIP to allow Parents to be called to help with challenging behaviors and to collaborate regarding elopement.<sup>15</sup>
  16. Student's schedule of services for Student's \*\*\* grade year included social behavioral skills instruction in a special education environment; a co-teach math class with special education support; and inclusion support in English language arts, science, and social studies. Student's \*\*\*. Student would also receive three \*\*\*-minute special education counseling sessions per month.<sup>16</sup>
  17. The ARDC meeting ended in agreement.<sup>17</sup>

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<sup>13</sup> J. Ex. 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

18. Student's progress report dated May \*\*\*, 2023, showed Student was making progress towards all of Student's behavioral goals.<sup>18</sup>

19. Student passed all classes in \*\*\*.<sup>19</sup>

**\*\*\* Grade**

20. Student attended District for the first semester of the 2023-2024 school year, which was Student's \*\*\* grade year.<sup>20</sup>

21. During the first nine weeks of Student's \*\*\* grade year, Student eloped \*\*\* times, each time going to a designated location. During the second nine weeks, Student eloped \*\*\* times and both times went to the designated location. \*\*\* Student was able to regroup and continue with Student's regular schedule.<sup>21</sup>

22. During Student's \*\*\* grade year, Student began \*\*\*.<sup>22</sup>

23. On August \*\*\*, 2023, Student \*\*\*. \*\*\*, the vice principal, discussed this matter with Student and asked Student's teachers to pay attention in class and to report anyone repeating a rumor about Student so the rumor could be stopped.<sup>23</sup>

24. On September \*\*\*, 2023, Student \*\*\* during \*\*\*. Student then ran to Student's designated room where staff assisted Student with de-escalating. \*\*\*. Afterwards, Parents met with

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<sup>18</sup> J. Ex. 14.

<sup>19</sup> J. Ex. 8.

<sup>20</sup> Stipulations.

<sup>21</sup> J. Ex. 15; D. Ex. 12.

<sup>22</sup> P. Exs. 66 at 31-32 and 67 at 25; Tr. at 48, 568, 652-653.

<sup>23</sup> J. Ex. 12; Tr. at 34-37.

- District staff and agreed that Student would only attend \*\*\* and an agreed space near the \*\*\* was established for Student to go to when Student needed to self-regulate. Student was allowed to attend the \*\*\* at Parents' request.<sup>24</sup>
25. Also on September \*\*\*, 2023, \*\*\* took one of Student's shoes. Student was not able to immediately identify the \*\*\* but was able to do so on October \*\*\*, 2023. The matter was addressed with the \*\*\*, and Parents were notified.<sup>25</sup>
26. On September \*\*\*, 2023, Student climbed a wall during \*\*\*. Parents were emailed to discuss any ideas regarding additions to the IEP to assist Student in \*\*\*.<sup>26</sup>
27. On September \*\*\*, 2023, Student's Parent sent an email to District regarding Parent's belief that Student was being picked on in \*\*\*. Parent stated that Student did not tell District staff because Student felt Student would suffer consequences. Specifically, Parent referenced incidents where \*\*\* took Student's shoe and backpack, where Student was pushed for no reason, where someone attempted to \*\*\*, and instances where \*\*\* would step on Student's \*\*\*. Parent also stated that \*\*\* would call Student \*\*\*.<sup>27</sup>
28. \*\*\* spoke to Student that same day, and Student stated that Student's backpack was missing because Student had not been using Student's assigned locker. Student could not remember the locker Student had placed Student's backpack in. Student reported that \*\*\*, but no one did. Student could not name anyone who had called Student \*\*\*. \*\*\* asked teachers

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<sup>24</sup> J. Ex. 12; Tr. at 199-201, 484, 550.

<sup>25</sup> D. Ex. 35; Tr. at 35, 179.

<sup>26</sup> J. Ex. 12; D. Ex. 35.

<sup>27</sup> P. Ex. 47; Tr. at 36, 40, 46.

to keep their eyes and ears open and report any harassment of Student by \*\*\*.<sup>28</sup>

29. On September \*\*\*, 2023, \*\*\*. Student's Parent reported that Student was concerned about retaliation in \*\*\*. District informed Parents that the \*\*\* were aware that any retaliation would result in consequences.<sup>29</sup>
30. On October \*\*\*, 2023, Student informed District staff that some items had gone missing from Student's \*\*\*. Student's backpack was later found \*\*\*.<sup>30</sup>
31. Student's October \*\*\*, 2023 progress report shows that Student mastered Student's behavioral goals relating to addressing the root of Student's negative feelings and refraining from rushing through assignments. Student was progressing on Student's final behavioral goal of utilizing positive self-talk to handle stressful situations.<sup>31</sup>
32. On October \*\*\*, 2023, \*\*\* took Student's \*\*\* and \*\*\*. Student stated that this was an accident and Student's parents were informed.<sup>32</sup>
33. On October \*\*\*, 2023, District informed Parents that Student had reported that an \*\*\*. District contacted Parents due to a

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<sup>28</sup> D. Ex. 35; Tr. at 180, 203-204.

<sup>29</sup> D. Ex. 35.

<sup>30</sup> J. Ex. 12; Tr. at 35, 55.

<sup>31</sup> J. Ex. 15.

<sup>32</sup> P. Ex. 48; D. Ex. 35; Tr. at 179, 208-209.

concern about an \*\*\* over social media and Student requesting that Student's parents not be informed.<sup>33</sup>

34. On October \*\*\*, 2023, Student hid in \*\*\*. Student agreed to let \*\*\* for the rest of the day.<sup>34</sup>
35. That same day, Student made a drawing on a desk of a \*\*\* and Student's signature. \*\*\* reported that the words "\*\*\*\*" were also under the image. Student then left the classroom without permission and went to Student's designated cool-down room.<sup>35</sup>
36. On November \*\*\*, 2023, Student \*\*\*. Student felt remorseful and received a one-day suspension, which Student served at home at Parents' request.<sup>36</sup>
37. Despite being required by Student's IEP, Student had not been receiving special education counseling services during Student's \*\*\* grade year. Student's new special education counselor reached out to Parents on November \*\*\*, 2023, notifying them that the first session would take place the following week.<sup>37</sup>
38. Concerns regarding \*\*\* are addressed by the school counselor, not the special education counselor. The special education counselor works on IEP goals.<sup>38</sup>

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<sup>33</sup> P. Ex. 49.

<sup>34</sup> P. Ex. 51; Tr. at 35, 42, 223-224, 636-637.

<sup>35</sup> P. Exs. 50 and 51; Tr. at 638-641.

<sup>36</sup> P. Ex. 61.

<sup>37</sup> P. Ex. 53; J. Ex. 2; Tr. at 59-62, 211-212.

<sup>38</sup> P. Ex. 66 at 37; Tr. at 413, 415, 708, 765-766.

39. On November \*\*\*, 2023, Student was investigated regarding a possible \*\*\*. Student had been making inappropriate comments with \*\*\*while discussing video games and YouTube videos, which had been overheard by a third party and reported. Parents were informed \*\*\*.<sup>39</sup>
40. On November \*\*\*, 2023, a campus counselor discussed her concerns regarding Student's behavior with Student. When asked if Student \*\*\*, Student said it was none of her business. This conversation was reported to Parents that day.<sup>40</sup>
41. On November \*\*\*, 2023, District notified Parents that Student would receive lunch detentions instead of a suspension for Student's comments\*\*\*. District did not want Student to miss instructional time and there was a concern regarding Student \*\*\* with during lunch. Additionally, the Parent's Rights and Bullying Complaint Form was sent to Parents.<sup>41</sup>
42. On November \*\*\*, 2023, Parents sent a 10-day notice of their intent to remove Student from District and seek private placement. In the letter, Parents discussed their concerns with bullying, bullying due to disabilities, theft, social media bullying, and rumors regarding Student. Parents stated that Student \*\*\* at school and that Student's attitude has done a "complete 180" in the last month. Parents expressed concern over mental health damage or \*\*\* Parents informed District that they planned to remove Student from District and that they expected District to reimburse them for the cost of Student's education.<sup>42</sup>
43. On November \*\*\*, 2023, Parents sent a request for additional accommodations for the remainder of the semester, including additional

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<sup>39</sup> J. Ex. 12; P. Ex. 54; Tr. at 55-56.

<sup>40</sup> J. Ex. 12; D. Ex. 35.

<sup>41</sup> D. Ex. 35.

<sup>42</sup> P. Ex. 55.

help outside of the classroom in math, social studies, and lunch; the ability for Student to remove Student to a safe area when Student feels it is necessary; daily updates on Student's performance and frustrations; and emergency compensatory counseling services.<sup>43</sup>

44. On November \*\*\*, 2023, an anonymous report was received by District that Student had been discussing \*\*\*, and bullying. District discussed the issue with Student, who stated that Student did not \*\*\*. Student indicated that Student did feel bullied and mentioned the incident in the l\*\*\*. This information was shared with Parents.<sup>44</sup>
45. An ARDC meeting was held on December \*\*\*, 2023, to discuss Parent's concerns about Student's missed counseling services. Compensatory services were discussed and, because of Student's frustration with being removed from class, it was determined that counseling sessions would last for an additional \*\*\* minutes instead of removing Student from instruction for additional sessions.<sup>45</sup>
46. At the ARDC meeting, Parents' attorney proposed that Student be educated outside of District. Parents expressed that they did not feel Student was making adequate progress. District disagreed, indicating that all available data showed measurable growth academically and behaviorally and that Student continued to progress in Student's IEP goals. Teacher feedback indicated that Student had either mastered or made adequate progress on all goals. Additionally, District had other resources and supports available that had not yet been utilized. It was agreed that this ARDC meeting would end in agreement so District could begin to provide compensatory counseling services, but that the parties would return to discuss Parents' other concerns.<sup>46</sup>

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<sup>43</sup> P. Ex. 56.

<sup>44</sup> P. Ex. 59.

<sup>45</sup> J. Ex. 2.

<sup>46</sup> *Id.*



47. On December \*\*\*, 2023, Principal \*\*\* emailed Parents regarding in-home training as a service to be discussed at the next ARDC meeting.<sup>47</sup>
48. An ARDC meeting was held on December \*\*\*, 2023, to address Parents' plan to remove Student from District as well as Parents' request for additional services. District noted that all data collected supported that Student had mastered all previous goals except one and that Student continued to make progress on that goal. Parents expressed concerns regarding Student's socialization and self-confidence. A self-confidence goal was proposed. District proposed providing in-home supports, but Parents declined.<sup>48</sup>
49. Parents raised concerns regarding negative peer interactions. District responded that Student frequently does not timely raise those concerns with staff and, when raised, Student fails to provide sufficient information for District to investigate. A communication goal was proposed to help Student to timely inform District staff regarding negative peer interactions.<sup>49</sup>
50. The ARDC meeting ended early due to time constraints, but it was agreed that a continuation ARDC meeting would be scheduled. Later, Parents declined the continuation ARDC meeting, stating that they wanted the IEP to be closed in disagreement. Parents also declined a reconvene ARDC meeting.<sup>50</sup>
51. Parents withdrew Student from District on January \*\*\*, 2024.<sup>51</sup>
52. Student was passing all of Student's classes \*\*\*.<sup>52</sup>

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<sup>47</sup> P. Ex. 57.

<sup>48</sup> J Ex. 1.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> D. Ex. 8.

<sup>52</sup> J. Ex. 7.

53. Parents first learned that Student was \*\*\* in January 2024, after student had withdrawn from District.<sup>53</sup>

54. Assistant Principal \*\*\* was one of the staff members responsible for bullying investigations. Parent received training on bullying investigations every summer.<sup>54</sup>

## **V. DISCUSSION**

### **A. FAPE**

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). The school district has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

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

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<sup>53</sup> Tr. at 70.

<sup>54</sup> Tr. at 163-166, 188-189.

light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

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

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

*Michael F.*, 118 F.3d at 253; *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765-66 (5th Cir. 2018).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

## **1. Individualized on the Basis of Assessment and Performance**

In meeting the obligation to provide a FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary

supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, District must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

District's obligation when developing Student's IEP and BIP is to consider Student's strengths, Student's parents' concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34

C.F.R. § 300.324(a)(1). For Student, whose behavior may impede Student's learning and that of others, District must also consider positive behavioral interventions and supports and other behavioral strategies when developing Student's IEP and BIP. 34 C.F.R.

§ 300.324(a)(2)(i); *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir. 2012).

Student's IEP was developed to meet Student's specific needs, as demonstrated by the strategies to address elopement, which balanced Student's need to escape \*\*\* by having Student elope to a designated room. Parents were regularly consulted, both during and outside of ARDC meetings, and asked for their input on how to best serve Student's needs, with their concerns reflected in amended

goals and accommodations. Student also had input into Student's IEP, with the ARDC convening to address Student's request to stop attending one of Student's special education classes and Student attending one of Student's annual ARDC meetings to discuss Student's progress. Student's evaluations were current. Student's performance in class and progress towards Student's goals were monitored and reported to the ARDC, which incorporated that information into Student's IEP.

Student's BIP was based on a current FBA. The BIP identified the functions of Student's behaviors and included individualized behavioral interventions, supports, and other behavioral strategies to address those behaviors. Student's goals and accommodations were drafted by the ARDC considering Student's behavioral needs. Taken together, Petitioner has not proven that Student's IEP was not individualized on the basis of assessment and performance.

## **2. Least Restrictive Environment**

In Student's closing brief, Petitioner expressly abandoned Student's claim that Student was not educated in Student's least restrictive environment. Therefore, the Judge concludes that District was educating Student in Student's least restrictive environment.

## **3. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders**

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, Civil Action No. 4:16-CV-

0058, 2017 WL 3017282, at \*27 (S.D. Tex. June 15, 2017), *aff'd*, 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome, because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

In Student's closing brief, Petitioner raised five instances where Parent alleges District failed to collaborate with Petitioner. First, Petitioner alleges that District failed to tell Parents that Student was not receiving counseling services in the fall of 2023. District does not dispute that it failed to provide Student with the special education counseling services required under Student's IEP during the first part of the fall 2023 school year and did not notify Parents of this failure until a new counselor was hired. This failure continued for more than two months. However, District ultimately informed Parents, discussed the matter at an ARDC meeting, and agreed to compensatory counseling to address the delay. Because Parents reported that Student was frustrated with being removed from class, it was determined that each scheduled session would last for an additional \*\*\* minutes instead of removing Student from instruction for additional sessions. Therefore, while District did initially exclude Parents, District later worked to remedy this failure by discussing this matter with Parents and offering compensatory services.

Second, Petitioner alleges that District failed to provide Parents with notice of their rights under the School Board policies and procedures regarding bullying and harassment. Petitioner has not indicated any time when District was required to provide this information to Parents and failed to do so. District received communication from Parents regarding perceived bullying and investigated the allegations. District also notified Parents of the results of those investigations. Negative \*\*\* were discussed at Student's ARDC meetings, as well as other meetings to discuss specific incidents, and Parents were given an opportunity to express their concerns. Therefore, Petitioner has not proven, by a preponderance of the evidence, that District failed to notify Parents of their rights under school board policy or that any failure to do so resulted in bad faith exclusion of Parents or a refusal to listen to them.

Third, Petitioner alleges that they did not have credible information at the December \*\*\*, 2023 ARDC meeting because the case manager's report did not include discussions of all the alleged bullying and harassment. The referenced report was prepared by Student's case manager to allow for comparison of Student's progress on Student's goals as well as recounting Student's present levels of performance. It does include references to Student's behavioral incidents, including \*\*. Nothing in the report was inaccurate or misleading. Petitioner did not explain how providing this document, which was a summary of other information available to Parents, resulted in District excluding Parents or showed that District refused to listen to them. Therefore, the Judge finds that Petitioner has not proven, by the preponderance of the evidence, that District excluded Parents in bad faith or refused to listen to them by providing them with the

case manager's report at the December \*\*\*, 2023 ARDC meeting.

Fourth, Petitioner alleges that, while the December \*\*\*, 2023 IEP indicates consideration of alternative services for Student under Tiers II and III, there is no evidence in the deliberations that the ARDC considered those services. While it is true that the deliberation notes do not reflect specific discussions of services under Tiers II and III, Petitioner did not present any evidence or argument regarding how this discrepancy would have excluded Parents in bad faith, demonstrated a refusal to listen to them, or otherwise evidence a failure to work in a collaborative manner.

Petitioner also alleges that Dr. \*\*\*, District's special education director, testified that District staff needed to consider several factors before ruling out an out-of-district placement, but the deliberations in the ARDC meeting notes do not evidence a discussion of those factors. While Dr. \*\*\* testified regarding what the Texas Education Agency requires before they will approve a residential placement, she emphasized the ARDC's role in making the determination that out-of-district placement was appropriate, which was informed by discussion of Student's least restrictive environment and District's ability to meet Student's needs. The additional factors listed by Dr. \*\*\* dealt with approval of the private placement after it was determined that Student's needs could not be met by District. At the ARDC meeting, District maintained that Student could be appropriately served by District. Therefore, a consideration of these additional factors would not be appropriate. Additionally, the final ARDC meeting ended early due to time constraints. The discussion of additional services was going to continue at a subsequent ARDC meeting, which was cancelled by Parents. Petitioner has not



indicated any factors regarding out-of-district placement that should have been discussed but were not discussed, has not shown that District would not have discussed those factors at the subsequent ARDC meeting that Parents cancelled, or that District excluded Parents or refused to listen to Parents' concerns regarding private placement.

Although District failed to initially notify Parents of the lack of special education counseling, they acted to cure that failure through communication and compensatory services. In general, District regularly communicated with Parents about Student both in and out of the ARDC meetings, listened to Parents' feedback, and incorporated Parents' concerns into Student's educational services. Therefore, Petitioner has failed to prove, by a preponderance of the evidence, that District failed to act in a coordinated in collaborative manner with Parents.

#### **4. Academic and Non-Academic Benefit**

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).

The parties stipulated that Student received academic benefits from District.

In Student's closing brief, Petitioner only addressed the alleged lack of non-academic benefits Student received in \*\*\*. Petitioner argued that District failed to assure that Student's IEP, BIP, and accommodations were fully implemented in

\*\*\*, but does not indicate how they were not implemented outside of Student not being allowed to attend \*\*\* after Student \*\*\*. Petitioner concludes that the failure to provide Student a non-academic benefit in \*\*\* violated Student's right to a FAPE. However, the question before the Judge is not if Student received non-academic benefit from \*\*\*, but rather if Student received a non-academic benefit from District's program overall.

Regarding the non-academic benefits Student was receiving from District's program, Student went from eloping \*\*\* a week in the first nine weeks of \*\*\* grade to only a handful of times in \*\*\* grade. Additionally, when Student eloped, Student was now going to a safe, predesignated location. In \*\*\* Student would \*\*\* when Student became dysregulated. In \*\*\* grade Student was learning to self-regulate. Student had mastered or was making progress on all of Student's behavioral goals. Therefore, Petitioner has not proven that Student was not receiving non-academic benefit from District's program.

## **5. FAPE Conclusion**

Student's IEP was individualized on the basis of Student's assessment and performance; Petitioner waived Student's claim that Student was not being educated in Student's least restrictive environment; services were provided in a coordinated and collaborative manner with key stakeholders - outside of District's failure to inform Parents of the lack of special education counseling, which District later remedied; and Student received positive, non-trivial, academic and non-academic benefits from District's program. In consideration of all of the factors, the Judge concludes that Petitioner has not shown, by a preponderance

of the evidence, that District's program failed to offer Student a FAPE.

**B. Bullying and a Non-Hostile Educational Environment**

Petitioner contends that District denied Student a FAPE because they failed to protect Student from bullying and failed to provide Student with a safe and non-hostile educational environment. Bullying of a student with a disability may constitute a denial of FAPE if it results in the student not receiving a meaningful educational benefit or effectively prevents a student receiving special education services from learning. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013); *El Paso County Sch. Dist. 3*, 60 IDELR 117 (SEA CO 2012); *Harrisburg City Sch. Dist.*, 55 IDELR 149 (SEA PA 2010). Petitioner stipulated that Student received academic benefit from Student's educational program. Additionally, as discussed above, Student continued to receive non-academic benefits despite the alleged bullying. Petitioner has not proven by a preponderance of the evidence that the alleged bullying denied Student a meaningful educational benefit or prevented Student from learning and, therefore, the Judge concludes that Petitioner has not proven that Student was denied a FAPE due to bullying.

Petitioner alleges that District failed to appropriately investigate allegations of bullying. A district may be liable for a denial of a FAPE if it is deliberately indifferent to allegations of bullying where the abuse is so severe that the child can derive no benefit from the services that they are offered by the school district. However, parents must give the school district a reasonable opportunity to respond to the allegations and offer solutions. *M.L. v. Federal Way School District*, 394 F.3d 634, 651 (9th Cir. 2005); *Fort Bend Indep. Sch. Dist.*, 125 LRP 11645 (SEA TX 2025). All allegations of bullying that were reported to District were timely investigated. In

some instances, like the report that Student was\*\*\*, or had items \*\*\* or that \*\*\*, Student admitted that the allegation was not true. In others, such as a student spreading a rumor about Student or \*\*\* making insulting comments about Student, Student was unable to give enough information for District to investigate these claims. Despite the inability to investigate these allegations, District appropriately responded by asking staff to keep an eye out and address such behavior. Additionally, a goal was added to Student's IEP to work on having Student timely report these incidents so they could be investigated. In other incidents, such as the theft of Student's shoe, when Student was able to identify \*\*\*, the incident was investigated and found to not be bullying. However, the matter was addressed with the other student and Parents were informed. Because District investigated and addressed the alleged instances of bullying, the Judge concludes that District was not deliberately indifferent to allegations of bullying against Student and did not deny Student a FAPE by failing to address bullying.

In order to prevail on a claim for a hostile educational environment under the IDEA, Petitioner must show that District engaged in harassing conduct that was so severe, persistent, and/or pervasive it created a hostile environment and interfered with Student's ability to receive a FAPE or that District knew of such conduct and failed to act. *T.K. and S.K. ex rel. K.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 289, 317 (S.D.N.Y. 2011); *Fort Bend Indep. Sch. Dist.*, 125 LRP 11645 (SEA TX 2025). No evidence was offered that showed that District staff engaged in any harassing conduct against Student. As discussed above, District investigated and addressed all reports of bullying or harassment against Student. Therefore, Petitioner has failed to prove that District denied Student a FAPE by failing to

provide a non-hostile learning environment.

**C. Failure to Implement Student's IEP**

District admits that, during the fall of 2023, it did not provide the special education counseling services that were required by Student's IEP. Under Student's IEP, Student was entitled to three \*\*\*-minute counseling sessions per month. Student did not receive those services for two and a half months. This issue was raised and addressed at an ARDC meeting, and the parties agreed that District would provide compensatory counseling services to make up for the missed time.

In determining whether a school district failed to adequately implement a student's IEP, thereby denying the student a FAPE, Petitioner must show more than a *de minimis* failure to implement all elements of an IEP. Petitioner must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. Districts retain some flexibility in scheduling services and, when necessary, providing compensatory services. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). District did fail to provide Student's special education counseling services as required by Student's IEP. However, District offered compensatory services to make up for missing time. Ultimately, at the request of Parents and in light of their concerns for removing Student from class, it was agreed to extend each session rather than offer additional sessions.

The purpose of these counseling sessions was to work on Student's IEP goals, which Student also worked on with Student's special education teacher. Despite

not receiving Student's special education counseling, Student was demonstrating progress towards Student's IEP goals. Therefore, given Student's continued progress towards Student's goals and District's offer of compensatory services to make up for lost counseling time, the Judge finds that the delay in beginning counseling services in the fall of 2023 was not a substantial or significant departure from Student's IEP and did not deny Student a FAPE.

**D. Failure to Conduct Evaluations and/or Convene a New ARDC Meeting**

Petitioner alleges that, due to Student's declining emotional and behavioral state, District should have convened an ARDC meeting in fall 2023 and performed additional evaluations. A district must ensure that a re-evaluation of a child with a disability is conducted if: 1) the district determines that the educational or related service needs of the child warrant a reevaluation; or 2) if the child's parent or teacher requests a reevaluation. 34 C.F.R. § 300.303(a).

In the fall of 2023, Student's FBA was current. Parents did not request a reevaluation. No District witnesses recommended reevaluations. Dr. \*\*\*, Petitioner's expert, indicated that a new evaluation was needed if the ARDC did not know the functions of Student's behaviors. Student's BIP identified the functions of Student's behaviors as escape and obtaining attention and identified specific behaviors of concern, including aggression; \*\*\*, refusal; elopement; silly physical interactions with peers; and \*\*\*. Student's concerning behaviors in the fall of 2023 all fell within the behaviors identified in Student's BIP and Petitioner did not show that the function of those behaviors had changed.

Additionally, Petitioner alleges that District should have performed additional evaluations regarding Student's \*\*\*. While Student's Parent testified that Parent reported concerns for \*\*\* to District, District denies ever being informed of Student's \*\*\* before Parents made the decision to remove Student from the District. While Parents point to Student \*\*\*, \*\*\*Student's special education teacher, credibly testified that the changes to Student's clothing were not concerning and were normal for a middle school aged student. Student's Parent also testified that Parent learned that Student began \*\*\*after Student left District, but no evidence was offered to show that Student was \*\*\* while enrolled in District in the fall of 2023.

Student's evaluations were current, no one requested additional evaluations, and Student's BIP identified the functions of Student's behaviors of concern. While Parents' concerns regarding Student's \*\*\* cannot be discounted, Petitioner has not proven, by a preponderance of the evidence, that District was, or should have been, aware of Student's alleged \*\*\* before Parents notified District they were withdrawing Student. Therefore, the Judge concludes that Petitioner has not proven that District should have called additional ARDC meetings or conducted additional evaluations in the fall of 2023 or that District denied Student a FAPE by failing to reevaluate Student in the fall of 2023.

**E. Failure to Follow Board Policies and Failure to Train Staff Regarding Bullying Investigations**

Petitioner alleges that District failed to comply with District board policies and procedures addressing investigations into bullying and harassment and failed to train staff on those policies. Petitioner argues that board policy required the investigation to be completed by District's Section 504 Coordinator. No evidence was admitted that supports this assertion but, even if true, Petitioner has not shown how District assigning investigations to a trained vice principal instead of to the Section 504 Coordinator resulted in a denial of FAPE, significantly impeded Parents' opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Assistant Principal \*\*\* testified that she was one of the staff members responsible for conducting bullying investigations and discussed how those investigations are conducted. She stated that she received training on these procedures every summer and that she followed District policy. Petitioner has not shown how the investigation procedures \*\*\* testified to varied from board policy or how any variations resulted in a denial of FAPE, significantly impeded Parents' opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. *Id.* Therefore, the Judge concludes that Petitioner has not proven, by a preponderance of the evidence, that District failed to follow board policy regarding bullying investigations or denied Student a FAPE by failing to train staff or failing to follow board policies regarding bullying.



**F. Failure to Consider and/or Provide Appropriate Related Services**

Petitioner alleged that District should have provided Student with additional services including psychological services, mental health services, and wrap around services. An IEP need not be the best possible one, nor must it be designed to maximize Student's potential, as long as District is providing Student with a meaningful educational benefit. *Juan P.*, 582 F.3d at 583. As discussed above, District provided Student with meaningful academic and non-academic benefit. Therefore, while Petitioner may have desired additional services, such services were not necessary to provide Student with a FAPE.

Petitioner alleges that this failure was also a procedural violation. The December \*\*\*, 2023 ARDC meeting was convened to address Parents' concerns regarding Student's behaviors and additional needs. It ended early due to time constraints, but it was agreed that the ARDC would reconvene. Parents subsequently withdrew their consent to reconvene. Parents, not District, ended the consideration of additional services for Student. Therefore, the Judge concludes that Petitioner has not proven that District committed a procedural violation by failing to consider or provide additional services.

**G. Cumulative Violations**

Petitioner alleges that the numerous procedural violations in this matter constitute a substantive violation that deprived Student of a FAPE. *S.Y. and R.Y v. New York City Department of Education*, 68 IDELR 230 (S.D. N.Y, 2016). However,

the only violation the Judge has found in this matter was District's failure to timely provide the counseling services required by Student's IEP. Therefore, the Judge concludes that Petitioner has not shown, by a preponderance of the evidence, that District's alleged procedural violations amounted to a denial of a FAPE.

## **H. Private Placement**

The primary remedy sought by Petitioner is reimbursement of private school tuition and other out-of-pocket expenses. If a student is unilaterally placed in a private school, private school tuition reimbursement is available as a remedy under the IDEA if: 1) the school district did not make a FAPE available to the student in a timely manner prior to the private enrollment; and 2) the private placement is appropriate. 34 C.F.R. § 300.148(c). Because Petitioner has not proven by the preponderance of the evidence that District failed to provide Student a FAPE, Petitioner is not entitled to reimbursement of private school tuition.

## **VI. CONCLUSIONS OF LAW**

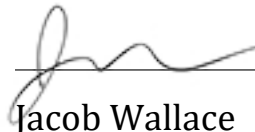
1. The burden of proof in this due process hearing is on Petitioner. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner did not meet Student's burden to prove that District's proposed IEP would not provide Student a FAPE or that the proposed IEP is not reasonably calculated to address Student's needs in light of Student's unique circumstances. *Cypress- Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
3. Although District failed to implement the counseling services required by Student's IEP, Petitioner did not meet Student's burden to prove that the District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

4. Petitioner did not meet Student's burden to prove that Student was denied FAPE due to bullying or a hostile educational environment. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013); *El Paso County Sch. Dist.* 3, 60 IDELR 117 (SEA CO 2012); *Harrisburg City Sch. Dist.*, 55 IDELR 149 (SEA PA 2010); *M.L. v. Federal Way School District*, 394 F.3d 634, 651 (9th Cir. 2005); *T.K. and S.K. ex rel. K.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 289, 317 (S.D.N.Y. 2011); *Fort Bend Indep. Sch. Dist.*, 125 LRP 11645 (SEA TX 2025).
5. Petitioner did not meet Student's burden to prove that District failed to follow Board policies or denied Student FAPE, significantly impeded the parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefit by failing to follow Board policies. 34 C.F.R. § 300.513(a)(2).
6. Petitioner did not meet Student's burden to prove that District failed to train staff who work with Student appropriately. *Schaffer*, 546 U.S. at 62.; 34 C.F.R. § 300.156(a).
7. Petitioner did not meet Student's burden to prove that the procedural violations, taken together, substantively violated Student's rights to a FAPE. *S.Y. and R.Y v. New York City Department of Education*, 68 IDELR 230 (S.D. N.Y, 2016).

**ORDER**

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

**Signed June 6, 2025**

A handwritten signature in black ink, appearing to read "Jacob Wallace", is written over a horizontal line.

Jacob Wallace  
Presiding Judge

**NOTICE TO THE PARTIES**

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