

SOAH Docket No. 701-24-24449.IDEA  
TEA Docket No. 391-SE-0824

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

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**STUDENT, by next friends PARENT and PARENT,  
Petitioner**

**v.**

**Hardin-Jefferson Independent School District,  
Respondent**

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## **FINAL DECISION**

\*\*\* (Student), by next friends \*\*\* and \*\*\* (Parents and, collectively, Petitioner), brings this action against the Hardin-Jefferson Independent School District (Respondent or 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 District's proposed individualized education program (IEP) is appropriate. The

Administrative Law Judge (Judge) concludes Petitioner failed to prove that District's proposed IEP is not appropriate.

## **I. DUE PROCESS HEARING**

The due process hearing was conducted via Zoom on March 31 and April 1, 2025. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by attorney Michael O'Dell. Respondent was represented by attorney Geneva Jones with Geneva Jones & Associates. \*\*\*, the Superintendent for District, and \*\*\*, Director of Special Programs for District, attended the hearing as party representatives.

Petitioner offered seven exhibits which were admitted into evidence. Petitioner also offered the testimony of Student's Parent and Parent, as well as Dr. \*\*\*, who performed an independent evaluation of Student. Respondent offered 17 exhibits which were admitted into evidence. District offered the testimony of \*\*\*, a Board Certified Behavior Analyst (BCBA) who worked with Student; \*\*\*, a Licensed Specialist in School Psychology (LSSP) who had previously evaluated Student; \*\*\*, campus principal; \*\*\*, Student's special education teacher; and Ms. \*\*\*.

Both parties filed written closing briefs in a timely manner. The decision in this case is due May 27, 2025.

## **II. ISSUES AND REQUESTED RELIEF**

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

The relevant timeframe in this matter began on August 21, 2022. Petitioner raised the following IDEA issues for decision in this case:

1. Whether District failed to properly maintain Student's stay put placement;
2. Whether District denied Student a free appropriate public education (FAPE) during the relevant time period, including by failing to implement Student's IEP with fidelity, failing to include appropriate and appropriately ambitious goals in Student's IEP, failing to use appropriate assessment tools to monitor Student's progress, and failing to educate Student with \*\*\* after being requested to do so by Parents;
3. Whether District's proposed placement for Student is appropriate and in Student's least restrictive environment;
4. Whether District failed to educate Student in a coordinated and collaborative manner with key stakeholders, including by failing to provide necessary information to Student's parents to allow them to participate in the decision making process;
5. Whether District predetermined aspects of Student's IEP, including placement;
6. Whether District failed to provide Student with appropriate extended school year services.

### **B. PETITIONER'S REQUESTED RELIEF**

Petitioner requested the following items of relief:

1. A finding that District's proposed placement is not in Student's least restrictive environment;
2. An order that Student be placed in \*\*\*;
3. An order that a reintegration plan be developed to assist Student in moving to mainstream classrooms;
4. An order that Student be placed back into \*\*\*class;
5. An order that any IEP goals centered around \*\*\* curriculum be removed and that Student only receive the regular education curriculum;
6. An order that Student not be placed in the \*\*\* classroom for any time of the day;
7. An order that the special education teacher provide push-in resource services for core subjects if pull-out services cannot be properly provided by District;
8. A finding that Student's current IEP was not developed to offer a unique and individualized program that is likely to provide Student with a FAPE;
9. An order that District convene a new Admission, Review and Dismissal Committee (ARDC) meeting and that District provide Parents the ability to meaningfully participate in that ARDC meeting and that:
  - a. District accepts the recommendations from \*\*\*'s IEE and incorporates them into Student's program;
  - b. The ARDC addresses Student's goals and placement issues appropriately and that changes are made to Student's speech goals;
  - c. That all Response to Intervention (RTI) services be undertaken in regular education classes;
  - d. That all HB 1416 services be offered in the appropriate setting at appropriate times;

- e. That Student be awarded compensatory services for District's failure to provide Student with extended school year services;
  - f. That Student be provided a research-based reading program;
  - g. That Student receive appropriate goals in Student's IEP;
  - h. That District provide appropriate assessments to monitor Student's progress in reading;
  - i. That, if District does not have an appropriate curriculum for Student, then District must pay for a private vendor to provide curriculum for Student.
10. An order that Student receive a research based structured reading program in school provided 1:1 with a trained reading specialist;
11. An order that, if District believes that Student requires a more restrictive placement, then they must place Student in a private school at District expense;
12. An order that District follow Student's stay put placement during the pendency of this due process hearing;
13. An order that, if District does not provide appropriate reading services, then Parent may seek private reading and writing intervention services on Student's behalf and seek reimbursement from District;
14. An order that, if District does not appropriately amend and implement Student's speech goals with fidelity, then Parents may seek private speech services and seek reimbursement from District.

### **III. BURDEN OF PROOF AND EVIDENCE**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case is on Petitioner to show that District's proposed placement fails to provide Student with a FAPE or offer a program that is

reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

No IEPs or behavior intervention plans (BIPs) were offered into evidence in this matter. Because the burden of proof rests with Petitioner, to the extent that sufficient evidence was not offered to allow the Judge to determine the proper resolution of Petitioner's issues, the Judge must find against Petitioner on those issues.

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

1. Student is \*\*\* years old and in the \*\*\* grade. Student enrolled in District in the \*\*\* grade.<sup>1</sup>
2. Student is eligible for services under the IDEA as a student with \*\*\* and a \*\*\*. Student also demonstrates \*\*\*, which is the \*\*\*.<sup>2</sup>
3. In spring 2023, \*\*\*, a District LSSP, performed an evaluation of Student regarding Parents' concerns that Student may have dyslexia. Ms. \*\*\* concluded that Student did not have dyslexia and that Student's struggles with reading were due to comprehension issues that may be related to \*\*\*.<sup>3</sup>

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<sup>1</sup> Transcript (Tr.) at 22-23, 26.

<sup>2</sup> Tr. at 23, 75; Petitioner's Exhibit (P. Ex.) 1.

<sup>3</sup> Tr. at 359-360, 403.

4. Student's accommodations include access to \*\*\* (\*\*\*) device and visual aids. Student receives social skills instruction and has a modified curriculum.<sup>4</sup>
5. Student currently has access to Student's \*\*\* device but refuses to use it. The \*\*\* device is not needed because Student can orally express \*\*\*self. District has proposed removing Student's \*\*\* device as an accommodation.<sup>5</sup>
6. Student has \*\*\*. In \*\*\* grade, Student was placed in the same general education core classes \*\*\*, but Student was taken out of the general education classroom to receive special education supports part of the time.<sup>6</sup>
7. Student's Parent requested that Student be placed in all courses \*\*\* in \*\*\* grade. Currently, Student is attending \*\*\*.<sup>7</sup>
8. In \*\*\* grade, \*\*\*.<sup>8</sup>
9. In \*\*\* grade, Student leaves Student's general education classroom during the class period to receive special education services in a special education classroom. It takes Student approximately three minutes to walk from classroom to classroom.<sup>9</sup>
10. Student's special education instruction is provided by Ms. \*\*\*, who is certified to teach K-12 special education.

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<sup>4</sup> Tr. at 43-47, 66, 95, 297, 333, 351, 496, 518, 576, 582, 583-586.

<sup>5</sup> Tr. at 297, 333, 526-527, 549.

<sup>6</sup> Tr. at 26, 40, 47.

<sup>7</sup> Tr. at 48.

<sup>8</sup> Tr. at 49-52, 265-266.

<sup>9</sup> P. Ex. 1; Tr. at 464.

Ms. \*\*\* also serves as the teacher for District's \*\*\* Program.<sup>10</sup>

11. District's \*\*\* Program is a special education setting with modified curriculum designed for students who need additional modifications and services that cannot be delivered in the general education classroom. The \*\*\* Program includes a self-contained classroom for students' core classes and a smaller staff-to-student ratio.<sup>11</sup>
12. District is proposing placing Student in the \*\*\* Program.<sup>12</sup>
13. Student's Stay Put IEP was developed for \*\*\* grade. It includes 17 academic and non-academic goals. The goals are in the areas of reading, language arts, math, science, social studies, \*\*\*, behavior, speech, and \*\*\*.<sup>13</sup>
14. Student has demonstrated some growth in Student's goals in reading, language arts, math, science, speech, and \*\*\*. Student has mastered Student's goals in social studies, \*\*\*, speech, and \*\*\*. Student has not shown growth in Student's behavior goals regarding requesting breaks when frustrated or strategies to avoid \*\*\*.<sup>14</sup>
15. District has proposed continuing Student's goals in reading, math, science, and \*\*\*, revising goals in language arts and behavior, updating goals in speech, and dismissing Student's \*\*\* goal relating to \*\*\*.<sup>15</sup>

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<sup>10</sup> Tr. at 330, 527.

<sup>11</sup> P. Ex. 1; Tr. at 89, 450, 453.

<sup>12</sup> Tr. at 343, 503.

<sup>13</sup> District's Exhibit (D. Ex.) 30.

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

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



16. On March \*\*\*, 2025, Dr. \*\*\* completed an independent psychological evaluation, psychoeducational evaluation, and functional behavior assessment (FBA) of Student. As part of the evaluation, Dr. \*\*\* interviewed Student's parents; performed an in-school observation of Student; reviewed data provided by District; and performed a number of assessments on Student, including the Kaufman Assessment Battery for Children, Second Edition; the Wechsler Intelligence Scale for Children, Fifth Edition; the Kaufman Test of Educational Achievement, Third Edition; the Comprehensive Test of Phonological Processing, Second Edition; the Gray Oral Reading Test, Fifth Edition; and the Feifer Assessment of Writing.<sup>16</sup>
17. While Dr. \*\*\*'s report includes a description of Student's current placement, she had been provided with Student's proposed placement and not Student's current stay put placement. This led Dr. \*\*\* to mistakenly believe Student was currently enrolled in the \*\*\* Program.<sup>17</sup>
18. Dr. \*\*\* observed Student at school for one hour and eight minutes. In the general education classroom, Dr. \*\*\* observed that Student had a paraprofessional seated directly next to Student. Student needed assistance logging onto Student's computer and redirection to watch the classroom video. Student did answer a question after watching the video. Student's attention to the video was inconsistent and the paraprofessional often needed to redirect Student between questions.<sup>18</sup>
19. In the special education classroom, Dr. \*\*\* observed Student take a six-minute break in the sensory break area after entering the classroom. Student then worked on a handout with one-on-one support from a paraprofessional. After completing the assignment, Student took another break for seven minutes. Student then transitioned to \*\*\*.<sup>19</sup>

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<sup>16</sup> P. Ex. 1.

<sup>17</sup> P. Ex. 1; Tr. at 238.

<sup>18</sup> P. Ex. 1.

<sup>19</sup> *Id.*

20. Dr. \*\*\*'s report states that, although Student's accommodations required the use of visual aids, the use of visual aids was not observed in either the general or special education environment. In her testimony, she clarified that the visual aids were present but not utilized. Photographs of the special education classroom show the presence of visual aids. District personnel testified to using visual aids with Student.<sup>20</sup>
21. Dr. \*\*\* found that Student continues to demonstrate characteristics of an \*\*\*, including deficits in initiating and maintaining peer relationships, behavioral rigidity, atypical language, and sensory activities. Dr. \*\*\* found that Student had \*\*\* intelligence and meets Texas Education Agency criteria for dyslexia and a specific learning disability in basic reading.<sup>21</sup>
22. Dr. \*\*\*'s review of Student's behavioral records showed that, in \*\*\* grade, Student needed cues or prompting \*\*\*% of the time. The records for \*\*\* grade show that Student needed prompting \*\*\*% of the time. Dr. \*\*\* found that Student complies with requests \*\*\*% of the time.<sup>22</sup>
23. Dr. \*\*\* found that Student should be educated in "either the general education environment and/or small group, resource classroom (for academic intervention)." Dr. \*\*\* recommended an increase in Student's time in the general education classroom to allow for work completion so Student can receive additional assistance and re-teaching from the general education teacher, as well as providing structured social opportunities.<sup>23</sup>

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<sup>20</sup> P. Exs. 1, 7; D. Ex. 5; Tr. at 68-69, 373, 430, 471-472, 486, 488, 505-508.

<sup>21</sup> P. Ex. 1.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

24. Dr. \*\*\* recommended extended school year services to address reading and social skills.<sup>24</sup>
25. Mr. \*\*\*, a District BCBA, testified as to the problems he observed with Dr. \*\*\*'s report, including that she incorrectly believed that Student was currently enrolled in the \*\*\* Program; that Dr. \*\*\* only observed Student at school for a little more than an hour; and his disagreement with Dr. \*\*\*'s opinion that the best place to work on prompt dependency and social skills was the general education classroom. Mr. \*\*\* concluded that, due to lack of interviews with District staff as well as the limited direct observations, Dr. \*\*\*'s FBA lacked the components necessary to make an honest and professional judgement.<sup>25</sup>
26. Mr. \*\*\* also testified that, based on his review of data related to Student, disruptive behaviors have decreased this year, tolerance of transitions has increased, social skills have improved, inappropriate social interactions have decreased, and some other concerning behaviors have gone away or been minimalized.<sup>26</sup>
27. Mr. \*\*\* testified that Student still has \*\*\* skill deficits across various areas and is in need of more intensive instruction customized to Student's specific needs, including a slower pace of instruction.<sup>27</sup>
28. Ms. \*\*\* accompanied Dr. \*\*\* during her classroom observation. She noted that, in the general education classroom, the paraprofessional redirected Student to Student's computer three times during the 15-minute observation and that Student did not respond when called by name and asked a direct question. Ms. \*\*\* noted the presence of visual aids in the special education classroom. Ms. \*\*\*

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<sup>24</sup> *Id.*

<sup>25</sup> Tr. at 288-289, 292-293, 300, 304, 306, 350.

<sup>26</sup> Tr. at 329.

<sup>27</sup> Tr. at 338.

concluded that Student required frequent prompting, redirection, and support to participate in academic tasks.<sup>28</sup>

29. Ms. \*\*\* testified extensively as to her opinion that Dr. \*\*\* did not properly perform Student's evaluations and "cherry picked" evaluation results to support her conclusions.<sup>29</sup>
30. The work samples submitted by District show that Student's English language arts and reading (ELA/R) work is measured at a \*\*\* grade level and that assignments in ELA/R, social studies, science, and math have substantial modifications including prompting; oral administration; small group instruction; reduced answer choices; reduced assignments; chunking; visual cues; positive behavior supports; \*\*\* supports; word banks; simplified directions; breaks; access to a calculator; set up problems; and/or enlarged font/less problems per page.<sup>30</sup>
31. Student's \*\*\* grade report card reflects that Student is receiving all As and Bs.<sup>31</sup>
32. Regarding the ARDC meeting for the end of the 2023-2024 school year, District provided 16 different proposed dates for the meeting, all of which were rejected by Parents.<sup>32</sup>
33. District convened ARDC meetings with Parents on four occasions in \*\*\* grade to complete Student's IEP, and twice in \*\*\* grade. In the past five years, Parents have never agreed to any IEPs proposed by the school districts Student was attending.<sup>33</sup>

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<sup>28</sup> D. Ex. 3; Tr. at 363-365.

<sup>29</sup> Tr. at 369-408.

<sup>30</sup> D. Exs. 7, 8, 9, 10; Tr. at 499-502, 504-511.

<sup>31</sup> D. Ex. 11.

<sup>32</sup> D. Ex. 29.

<sup>33</sup> D. Ex. 29.

34. During winter 2023, Student's Parent complained that behavior data and \*\*\* data that led to the need to update Student's IEP goals had not been provided. District had provided that data timely as part of Student's 1st \*\*\* weeks IEP progress report.<sup>34</sup>
35. In October 2024, Student's Parent requested information from District regarding Student's behavior data. Student's Parent testified that the data was not provided until February 2025. Ms. \*\*\* testified that the data was provided to Student's Parent in November or December 2024.<sup>35</sup>
36. In \*\*\* grade, Student received scores of \*\*\* on the State of Texas Assessment of Academic Readiness (STAAR) Test in \*\*\*. Student's \*\*\* score shows that Student did better than \*\*\*% of all \*\*\* grade students in Texas, and Student's \*\*\* score shows that Student did better than \*\*\*% of all \*\*\* grade students in Texas.<sup>36</sup>
37. In \*\*\* grade, Student received scores of \*\*\* on the STAAR Test in \*\*\*. Student's \*\*\* score shows that Student did better than \*\*\*% of all \*\*\* grade students in Texas, Student's \*\*\* score shows that Student did better than \*\*\*% of all \*\*\* grade students in Texas, and Student's \*\*\* score shows that Student did better than \*\*\*% of all \*\*\* grade students in Texas.<sup>37</sup>
38. Student received accelerated instruction to address Student's performance on the STAAR tests.<sup>38</sup>

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<sup>34</sup> D. Ex. 28.

<sup>35</sup> Tr. at 36-37, 573-574.

<sup>36</sup> D. Ex. 17.

<sup>37</sup> D. Ex. 16.

<sup>38</sup> Tr. at 581.

## **V. DISCUSSION**

### **A. DUTY TO PROVIDE A FAPE**

The purpose of the IDEA is to ensure that all children with disabilities have available to them a 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). 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 light of the child's circumstances." *Endrew F.*, 580 U.S. at 403.

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

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

*Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997); *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765-66 (5th Cir. 2018).

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

While the IEPs and BIPs in this matter were not offered into evidence, the goal comparison chart shows that the ARDC developed a number of goals to address Student's academic, developmental, and functional needs. District is tracking Student's progress towards these goals and has proposed changes based on Student's performance. Student also receives substantial modifications to Student's assignments as well as accommodations including one-on-one support. While Parents indicated that they did not feel District has been listening to their concerns, the email exchanges between the parties show that District worked with Parents to ensure they had an opportunity to attend ARDC meetings and held multiple ARDC meetings each year. Student's full individual evaluation was not offered into evidence. The only recent evaluation offered into evidence, Dr. \*\*\*'s independent evaluation, was finished shortly before the hearing and had not yet been considered at an ARDC meeting. Petitioner failed to prove, by a preponderance of the evidence, that District's proposed IEP is not individualized to Student on the basis of Student's 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).

To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

1. Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
2. If not, whether the school district mainstreamed the student to the maximum extent appropriate.

*Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student’s disability, the student’s needs and abilities, and the school district’s response to the student’s needs. This determination requires an examination of:

1. a school district’s efforts to provide the student with supplemental aids and services in the general education setting;
2. a school district’s efforts to modify the general education curriculum to meet the student’s individual needs;
3. the educational benefit a student is receiving while placed in the general education setting; and
4. the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

*Id.*

Student currently splits Student's time between the general education and special education setting, with Student leaving Student's general education core classes to receive additional special education services in a special education classroom. In the general education classroom Student has access to a one-on-one aid as well as other accommodations including visual aids. Both parties agreed that Student is "prompt dependent," requiring prompts to perform work \*\*\*% of the time. Student also requires regular sensory breaks. The work samples offered into evidence show significant modifications to Student's assignments. Taken together, District has taken significant efforts to provide Student with supplemental aids and services, as well as to modify the general educational curriculum.

While Student spends time in a general education classroom, it is unclear what educational benefit Student receives while in that setting. The observation notes state that Student requires continuous supports from a one-on-one aid, constant prompting to complete work, and may not answer questions when directly asked. While Student is receiving As and Bs, the only assignments offered into evidence were completed in the special education classroom. The assignments were substantially modified, well below grade level, and required substantial accommodations for Student to complete. No evidence was offered to show what, if any, work is completed in the general education classroom.

Neither party argued that Student's behavior had a significant impact on other students in the general education classroom.

Considering the level of prompting, one-on-one supports, substantial modifications to assignments, and current level of special education services that Student requires to access Student's education, the Judge concludes that Student cannot be appropriately educated exclusively or primarily in the general education environment, even with supplemental aids and services.

While the details of the stay put and proposed IEPs were not offered into evidence, the evidence in the record supports a finding that Student needs more, not less, support. Student performs work below grade level, needs a slower pace of instruction than what is offered in the general education classroom, and needs to work on foundational goals like prompt-independence. The \*\*\* Program would provide Student with a self-contained classroom where Student can work on material at Student's level with one-on-one support and individualized instruction while still attending non-core classes with non-disabled peers. Therefore, the Judge concludes that Petitioner failed to prove, by a preponderance of the evidence, that District's proposed IEP, including placement in the \*\*\* Program, is not 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.*

Both parties agree that their relationship has not been collaborative. Student's Parent does not feel that District is treating Student as an equal partner and believes District is refusing to provide Parent with necessary data. District does not believe that Student's Parent is interested in working cooperatively. The evidence and testimony submitted shows that many ARDC meetings have been held, that they are scheduled for full days and frequently take more than one day to complete, and that it is frequently difficult for District to find a date for the meetings Parents will agree too, with one email indicating that District had offered 16 different dates for Student's Parent to choose from, all of which were rejected.

Student's Parent specifically complains that District failed to provide Parent with requested data, making it impossible for Parent to make informed decisions regarding Student and keeping Parent from being an equal partner in developing Student's IEP. Evidence was submitted regarding two specific instances. First, District offered an email responding to a complaint from Student's Parent regarding a failure to provide behavior and \*\*\* data. In the email, District stated that the data had been provided and Student's Parent had

sent an email commenting that Student had mastered several goals, indicating receipt of the data. The second instance is Petitioner's allegation that District failed to timely provide behavioral data to Dr. \*\*\*, which delayed the completion of her evaluations. Petitioner alleges that it took seven months for District to produce the data. District testified that they timely provided the data one or two months after the request. However, no underlying documentation was submitted to allow the Judge to resolve this dispute. While it is clear that the IEP development process has become non-cooperative, the record does not support a finding that District is excluding Petitioner in bad faith or refusing to listen to Parents. Therefore, the Judge concludes that Petitioner has failed to prove that District has not worked in a cooperative manner with Parents.

Petitioner also alleges that District failed to act in a coordinated and collaborative manner by predetermining aspects of Student's IEP. Predetermination occurs when the district members of the IEP team unilaterally decide a student's educational placement in advance of an IEP team meeting. *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004). Petitioner alleges that District predetermined Student's placement. However, while Petitioner disagrees with Student's proposed placement, no evidence was offered at the hearing to show that District members of the ARDC unilaterally decided any aspects of Student's placement in advance of meetings. Therefore, Petitioner failed to prove that District predetermined any aspect of Student's IEP.

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

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

Currently, Student is passing Student's classes with modified curriculum and assignments, receiving As and Bs. STAAR testing indicates that Student is \*\*\* expectations. District referred to Student's progress on Student's goals as "minimal," which is supported by the IEP Goals Comparison Chart. District is seeking to implement its proposed IEP to address this lack of progress. Student is extremely prompt-dependent, requiring prompting \*\*\*% of the time. Student also needs regular sensory breaks, a slower pace of instruction, and social skills instruction. District's proposed placement will provide Student with a slower pace of instruction, additional one-on-one supports, opportunities for sensory breaks without the need to go to a separate classroom, and increased opportunities to work on social skills and towards prompt-independence. Taken together, Petitioner has failed to prove that District's proposed program would not provide Student with meaningful academic and non-academic benefits.

#### **5. FAPE Conclusion**

Based upon a review of the totality of the factors, Petitioner has failed to prove, by a preponderance of the evidence, that District's proposed IEP was not individualized on the basis of Student's assessment and performance; that the

proposed placement is not Student's least restrictive environment; that District failed to work in a coordinated and collaborative manner with Parents; or that District's proposed placement would not provide Student with meaningful academic and non-academic benefits. Therefore, Petitioner has failed to show that District's proposed placement will not provide Student with a FAPE.

## **B. Current Provision of FAPE**

Petitioner raised the following specific allegations regarding District's provision of a FAPE under the stay put IEP in this matter: 1) District failed to implement Student's stay put IEP with fidelity; 2) District failed to include appropriate and appropriately ambitious goals in Student's IEP; 3) District failed to use appropriate assessment tools to monitor Student's progress; and 4) District failed to educate Student \*\*\* after being requested to do so by Parents.

### **1. Failure to Implement Student's Stay Put IEP with Fidelity**

A student's educational placement while a due process hearing is pending is commonly known as stay put. The stay put provision of the IDEA provides that, during the pendency of an administrative due process hearing under the statute, unless the school district and parents agree otherwise, the child involved in the complaint must remain in Student's current educational placement. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a).

On October 7, 2024, after receiving briefing from the parties, the Judge determined that District was complying with its stay put obligations. At the hearing

in this matter, Petitioner continued to allege that District failed to comply with its stay put obligations. Because the stay put IEP was not offered into evidence at the hearing, the Judge cannot accurately determine the stay put placement. However, three specific concerns were discussed at the hearing. First, Petitioner alleged that the time spent moving Student from Student's general education classroom to Student's special education classroom significantly reduced the amount of time devoted to Student's education. Second, Petitioner alleged that Student's special education classroom was a more restrictive environment than Student's stay put placement. Third, Petitioner alleged that District failed to provide Student with accommodations required in Student's stay put IEP, including Student's \*\*\* device and visual aids.

Regarding the first issue, Student splits Student's time between the general education classroom and the special education classroom. Under the stay put IEP, Student leaves the general education classroom during the class period and finishes the class period in the special education classroom. According to the report from Petitioner's expert, this transition takes three minutes. Outside of Petitioner's preference for a closer classroom and allegations that the transition took an excessive amount of time, Petitioner did not present any evidence to show how this three-minute transition violates Student's stay put placement.

Generally, the assignment of a child to a specific classroom or teacher is an administrative determination at the discretion of school personnel. *See Letter to Wessels*, 16 IDELR 735 (OSEP 1990). A three-minute transition does not, on its face, appear to be a significant departure from the time expected for a student to



move from one classroom to another. Therefore, the Judge concludes that Petitioner has not proven, by a preponderance of the evidence, that District violated its stay put obligations by their choice of location for Student's special education services.

Regarding the second issue, Petitioner argues that the special education classroom where Student is receiving services is, in fact, a more restrictive environment because it is the \*\*\* Program. In support of this, Petitioner argues that the teacher in that classroom serves as the teacher for the \*\*\* Program and that the \*\*\* Program is a self-contained classroom, which is more restrictive. Student does receive special education services in the room that is also used for the \*\*\* Program. However, the evidence and testimony from both sides indicate that Student splits time between the general education and special education classroom for Student's core subjects as required by the stay put IEP. While students in the \*\*\* Program remain in the \*\*\* Program classroom for all of their core classes, Student does not. Therefore, Student is not in the \*\*\* Program. Petitioner has not shown that Student's current placement is more restrictive than the placement in Student's stay-put IEP. Therefore, the Judge concludes that Petitioner has not proven, by a preponderance of the evidence, that District violated its stay put obligations by their choice of classroom or teacher.

Regarding the third issue, Petitioner argues that the stay put IEP required District to allow Student to use an \*\*\* device, which was not observed by Dr. \*\*\* during her observation. \*\*\*, District's Director of Special Programs, testified that Student does have access to the \*\*\* device but does not use it or need to use it due to Student's ability to express \*\*\*self orally.

Ms. \*\*\* testified that Student refuses to use the device, even when prompted. In determining whether a school district failed to adequately implement a student's IEP, thereby denying the student a FAPE, a hearing officer must consider whether there was a significant or substantial failure to implement the IEP under the third *Michael F.* factor and whether there were demonstrable academic and non-academic benefits from the IEP under the fourth factor. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020). That is, 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. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). Because the stay put IEP was not offered into evidence, the Judge cannot determine the exact requirements of the \*\*\* accommodation and so cannot determine what level of access and prompting is required by Student's IEP. Therefore, the Judge concludes that Petitioner has failed to prove, by a preponderance of the evidence, that District is not implementing substantial or significantly provisions of Student's \*\*\* accommodation.

Regarding visual aids, Dr. \*\*\* and Student's Parent stated that they did not see District using visual aids during their observations. District testified that they do use visual aids, offered examples of work completed by Student which show the addition of visual aids, and the photographs of the special education classroom show the presence of visual aids. Therefore, the Judge concludes that Petitioner has failed to prove, by the preponderance of evidence, that District is not complying with the accommodation to provide Student with visual aids.

## **2. Goals and Assessment Tools**

Regarding Petitioner's concerns with Student's goals and the assessment tools use to monitor Student's progress, no evidence was offered regarding how those goals were drafted. Additionally, Petitioner did not offer any evidence of specific disagreements or requested changes to Student's goals. The record does reflect that District is monitoring Student's progress and is able to make recommendations for changes to Student's goals based upon the gathered data. While District is attempting to modify or remove some goals, District has been unable to do so during the pendency of this litigation. The Judge concludes that Petitioner has failed to prove, by a preponderance of the evidence, that Student's current goals were not appropriate or appropriately ambitious when drafted or that district is not using appropriate assessment tools to monitor Student's progress.

## **3. Texas \*\*\* Law**

Petitioner alleges that District denied Student a FAPE by failing to educate Student \*\*\* when requested by Parents, as required by the Texas Education Code section \*\*\*, referred to as the Texas \*\*\* Law. Under the IDEA, a parent or school district may seek a due process hearing on any matters related to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE. 34 C.F.R. §§ 300.503(a)(1)-(2), 300.507(a); 19 Tex. Admin. Code §§ 89.1151(a), 89.1165(c)(5). The Judge has no jurisdiction or authority to make findings of fact, conclusions of law, or issue final orders or decisions related to any claims that arise under laws or statutes other than the IDEA. Because the Texas \*\*\* Law is not part of the IDEA, the Judge lacks

jurisdiction to directly enforce that law. However, the Judge may consider whether the failure to follow that law resulted in a denial of a FAPE.

While Parents have expressed a strong preference for Student to be placed in all classes \*\*\*, Petitioner failed to show why such an accommodation would be appropriate. Student is performing work below grade level and needs additional accommodations and modifications to access Student's education. \*\*\*. It would be inappropriate to place Student in \*\*\*, and it would also be inappropriate to \*\*\* as part of Student's accommodations. Additionally, to the extent that Student needs additional accommodations to access Student's education, it is the responsibility of District, \*\*\*, to provide those accommodations. Therefore, while Petitioner has expressed Petitioner's preference for placement \*\*\* and rights relating to Parental choice of placement \*\*\* may exist outside of the IDEA, they are not directly enforceable under the IDEA and Petitioner has not proven, by a preponderance of the evidence, that District denied Student a FAPE by not placing Student \*\*\* in all of Student's classes.

### **C. EXTENDED SCHOOL YEAR SERVICES**

Petitioner's pleadings state that District failed to provide Student with appropriate extended school year services. No evidence was offered regarding what extended school year services Student has received or how Petitioner believes those services are deficient. Therefore, the Judge concludes that Petitioner has failed to prove, by a preponderance of the evidence, that District failed to provide Student with appropriate extended school year services.

## **D. CONCLUSION**

Based upon the limited record in this case, the Judge concludes that Petitioner has not proven, by a preponderance of the evidence, that District's proposed IEP will not offer Student a FAPE or that District's conduct during the relevant time period has otherwise violated the IDEA.

## **VI. CONCLUSIONS OF LAW**

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner did not meet Petitioner'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); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
3. Petitioner did not meet Petitioner's burden to prove that District denied Student a FAPE during the relevant time period. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
4. Petitioner did not meet Petitioner's burden to prove that District failed to implement Student's stay put placement with fidelity. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5<sup>th</sup> Cir. 2000); *AW v. Fairfax County Sch. Bd.*, 41 IDELR 119 (4th Cir. 2004); *Z.B. v. District of Columbia*, 71 IDELR 164 (D.D.C. 2018).
5. Petitioner did not meet Petitioner's burden to prove that District failed to educate Student in a coordinated and collaborative manner with key stakeholders.

*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); *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003).

6. Petitioner did not meet Petitioner's burden to prove that District predetermined aspects of Student's IEP or placement. *Schaffer*, 546 U.S. at 62.; *E. R. by E. R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 769 (5th Cir. 2018).
7. Petitioner did not meet Petitioner's burden to prove that District denied Student a FAPE by failing to provide appropriate extended school year services. *JH ex rel. JD v. Henrico Cnty. Sch. Bd.*, 395 F.3d 185 (4th Cir. 2005).

### **ORDER**

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

**Signed May 23, 2025**

ALJ Signature:



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Jacob Wallace

Presiding Administrative Law Judge

## **NOTICE TO THE PARTIES**

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