

SOAH Docket No. 701-23-24984.IDEA
TEA Docket No. 347-SE-0823

**Before the
State Office of Administrative Hearings**

—
**STUDENT. BY NEXT FRIENDS PARENT.,
Petitioner**

v.

**ROUND ROCK INDEPENDENT SCHOOL DISTRICT,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student. (Student), by next friends Parent. (Parents and, collectively, Petitioner), bring this action against the Round Rock Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The main issues in this case are whether the District failed to timely and appropriately identify Student for special education and related services, whether the District failed to evaluate student in all areas of suspected need, and

whether the District denied Student a free appropriate public education (FAPE) during the relevant time period.

The Administrative Law Judge (Judge) concludes the District's evaluation and eligibility determinations were appropriate, and the District provided Student with a FAPE and a program reasonably calculated to enable Student to make appropriate progress in light of student unique circumstances.

II. DUE PROCESS HEARING

The due process hearing was conducted over four days on July *** – August***, 2025, August***, 2025, and August***, 2025, via the Zoom videoconferencing platform. Attorney Mark Whitburn with Whitburn & Pevsner, PLLC, represented Student. Attorneys Heather Rutland and Emma Lynch with Eichelbaum Wardell Hansen Powell & Muñoz, PC, represented the District.***, Area Director of Special Education, attended the hearing as the party representative for the District. A certified court reporter recorded and transcribed the hearing. Both parties timely filed written closing briefs. The Decision in this case is due October 15, 2025.

The parties offered joint and separately disclosed exhibits. The parties jointly offered 34 exhibits, and all were admitted. Petitioner offered 29 exhibits, and all were admitted. Eight of Petitioner's exhibits were admitted over Respondent's objections. Respondent offered 10 exhibits, all of which were admitted.

The following fact witnesses testified during the hearing:

1. ***, a Teacher of the Visually Impaired (TVI) with the District.

2. ***, Director of Outreach at the ****
3. ***, a *****special education teacher who became Student's case manager in the 2022-23 school year.
4. ***, the Director of the****. Student received private educational services here after leaving the District.
5. ***principal of***.
6. ***, a board-certified behavior analyst (BCBA) at the ***. CARD was Student's private applied behavioral analysis therapy (ABA) provider.
7. **Student's Parent** (Parent) provided sworn testimony.

The following expert witnesses testified during the hearing:

1. ***Area Director of Special Education and 504 for the District. ***testified as Respondent's expert in the IDEA and the District's special education program.
2. ***, Clinical Psychologist and owner of the***. ***testified as Petitioner's expert in psychology, specifically regarding neuropsychological assessment of children with complex conditions, including gifted children, children with autism, and children who fall into both categories.
3. ***, the District co-lead speech language pathologist. ***testified as Respondent's expert in speech and language pathology, the District's speech services and assessment, and related service delivery.
4. ***, Assistant Director of Behavioral Services in the District. Ms. *** was a District-level behavior specialist in 2022- 23, when ***first became involved in Student's case. ***testified as Respondent's expert in special education, behavioral supports,

interventions and analysis, and the District's protocols and procedures for functional behavioral analysis.

5. ***, owner of ***. ***testified as Petitioner's expert in the use of clinical therapies within a Montessori framework to educate neurodivergent children, including children with autism.
6. ***, Educational Diagnostician and assessment lead in the District's***. ***testified as Respondent's expert in special education procedures, the District's special education procedures and assessment.
7. ***Director of the Pediatric View program at ***testified as Petitioner's expert in *** and in the development of educational programs for students with ***.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following issues under the IDEA for the 2022-23 and 2023-24 school years for decision in this case:

1. **Identification.** Whether the District failed to timely and appropriately identify Student for special education and related services.
2. **Evaluation.** Whether the District failed to timely and appropriately evaluate Student in all areas of suspected need.
3. **FAPE.** Whether the District failed to provide Student with a FAPE for the relevant time period.
4. **IEP Development.** Whether the District failed to develop an appropriate Individualized Education Program (IEP) for Student.
5. **IEP Implementation.** Whether the District failed to properly implement Student's IEP.

Petitioner did not address IEP implementation at hearing, nor in student closing

argument, so this issue is waived and not addressed in this decision.

IV. RESPONDENT'S LEGAL POSITION AND ADDITIONAL ISSUES

Respondent generally and specifically denies Petitioner's factual allegations and legal claims. The District contends it appropriately considered and identified Student's disability and that it provided Student with a FAPE during the relevant time period, that it can continue to do so, and that Petitioner is not entitled to any of the requested relief. The District also asserted the statute of limitations as an affirmative defense.

V. REQUESTED RELIEF

A. PETITIONER'S REQUESTED RELIEF

This case was filed on August *** 2023, with Notice from the Texas Education Agency (TEA) issued on August***, 2023. Petitioner's original requests for relief, as filed in 2023, included the following:

1. An order to compel the District to provide suitable private placement for Student, as recommended by private experts and evaluators;
2. An order to compel the District to provide such private services for Student as may be necessary to supplement the private placement referenced in number 1 above and as may be recommended by private experts and evaluators in light of Student's complex needs, characteristics, and circumstances; and
3. Any and all further relief that the Judge deems appropriate, or which is recommended by the Student's experts and private evaluators.

Petitioner identified Respondent's alleged failures as occurring during the 2022-23 school year and the spring-summer planning period that preceded it, and

Student studentrequest for an award of private placement and supplemental services at District expense contemplated such placement and services for the 2023-24 school year, which was just about to begin when Petitioner filed studentcomplaint. However, as the case's procedural history lengthened by continuances, so has Student's ongoing private placement. Petitioner now recasts studentrequests for private placement as continuing through the 2024-25 school year and as ongoing in the current 2025-26 school year.

As such, Petitioner's original request for private placement and supplemental services for the school year that followed the alleged failures by the District have expanded to now include reimbursement for Student's educational and therapeutic services provided by Parents during the 2022-23, 2023-24, and 2024-25 school years, and a corresponding prospective placement for the current 2025-26 school year. Petitioner now frames studentrequests for relief as for:

1. An order to compel the District to reimburse Parents for specific educational and therapeutic expenses from the 2022-23 school year;
2. An order to compel the District to reimburse Parents for specific educational and therapeutic expenses from the 2023-24 school year;
3. An order to compel the District to reimburse Parents for specific educational and therapeutic expenses from the 2025-26 school year;
4. An order to compel the District to reimburse Parents for specific expenses incurred across time periods; and
5. An order to compel the District to prospectively place Student in the programming proposed by Parents, including a ***intervener, for the rest of the 2025-26 school year.

B. RESPONDENT'S REQUESTED RELIEF

Respondent requested an order finding for the District on all claims and awarding the District such other findings and relief as it may show itself justly entitled.

VI. FINDINGS OF FACT

1. Student is an active, intellectually gifted, curious ***grade student with a passion for airplanes. Student is eager to connect with peers and adults, and Student has exceedingly high standards for student. Student has been diagnosed with attention deficit hyperactivity disorder (ADHD), Autism Spectrum Disorder, ***, ***, ***and ***. Studenthomeschool program has recently included participation in homeschool coop activities including running and hiking groups. Student has also received academic tutoring, speech therapy, occupational therapy, ABA therapy, psychotherapy/play therapy and equine therapy, and studenthas participated in social skills groups. The family resides in the Round Rock Independent School District.¹

Educational History

2. In 2018, Parents initiated an evaluation for the District's Preschool ***, but they revoked consent before the evaluation was completed, stating they were pursuing other options. Student was homeschooled in ***and attended ***a private school for ***, for part of ***grade in the 2021-22 school year.²

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3. At***, Student had difficulty regulating studentemotions and behavior, interacting with studentpeers, and engaging in instruction and learning activities. Student presented with ***

¹ Joint Exhibit (J)4; Transcript (Tr.) Volume (Vol.) 2 at 471-480, 512; Tr. Vol. 3 at 750-835.

² J1 at 6; Petitioner's Exhibit (P)4 at 2; P10 at 1; Respondent's Exhibit (R)12 at 1, 10.

***deficits. ***staffed all of its small classes with a teacher and a paraprofessional, but the school could not meet Student's needs with their existing structure and resources. Student was then receiving private ABA therapy, and ***allowed studentprivate therapists into the school to provide one-to-one support throughout the day—until the family's insurance carrier stopped covering ABA services in that setting. Student withdrew from ***in February, 2022. At the time, Student had been diagnosed with ASD, ADHD, and a ***disorder.³

Spring 2022 enrollment in RRISD and preparations for 2022-23 school year

4. That spring, Parents contacted the District to enroll Student for second grade in the upcoming 2022-23 school year. The family's zoned home school was ***School, but they sought and were granted an interdistrict transfer to have Student attend***. Parents began a dialogue with ***about Student's giftedness and disability-based needs, with the goal of creating a ***-grade plan similar to student's ***experience. In particular, Parents wanted to ensure Student had one-to-one support throughout the school day for student behavior and that this support would be provided beginning the first day of school.⁴
5. On May***, 2022, the ***Admission, Review and Dismissal (ARD) facilitator contacted Parents to inquire about the 2018 evaluation and whether Student might already be eligible for special education. ***explained that if a public school had already found student eligible, Student could potentially start school with an IEP in place. In the alternative, if Student was not currently eligible, the school could still create a support plan using tiered interventions available to all students and 504 accommodations. If Parents were interested in pursuing an IEP for Student, the District would evaluate student to determine if student was eligible for specially designed instruction, before they could design an IEP. The following week, on May *** 2022, Parents confirmed that the discontinued 2018 evaluation was their only

³ J4; P4 at 2; P10 at 1; R12 at 1, 10; Tr. Vol. 3 at 795.

⁴ P10 at 1, 11; R12 at 8, 265; Tr. Vol. 1 at 30-128. The transfer was granted for one school year and subject to revocation for excessive absences, among other things.

previous foray into possible special education eligibility. They instead requested a temporary IEP providing all day one-to-one support based on ***information that they provided with their response.⁵

6. Parents provided an evaluation dated August***, 2021, that was conducted by a licensed School Psychologist on staff at***. The evaluator relied on the Wechsler Intelligence Scale***, 5th Edition (WISC-V), the parent ratings on the Behavior Assessment Scale for***, 3rd Edition (BASC-3), a parent questionnaire and interview, and the evaluator's observations of Student during assessment activities. The evaluation's purpose was not to assess Student comprehensively; rather, it was to confirm Student's ***- level IQ as an ***admission requirement. The evaluation did not include teacher or provider ratings on the BASC-3, nor any separate speech and language, executive functioning, social skills, adaptive behavior, emotional-behavioral, sensory, or academic achievement testing. No observations of Student in a school, clinic, other natural environment, or interacting with other children were included. The evaluation did not include a functional behavior assessment (FBA).⁶
7. Student's WISC-V results identified student Full Scale IQ as in the ***range, ranking student in the *** percentile, with *** lower working memory and processing speed scores. The evaluation recounted Parent's BASC-3 ratings which identified Student's problem areas as anxiety, fearing making mistakes, frequent stress and nervousness, inability to maintain attention and concentration, withdrawal, functional communication and social skills. The evaluation recommended multi-sensory instruction, frequent social opportunities with***, social skills development, extra processing time, and warnings about upcoming change.⁷
8. Parents also provided ***with an undated letter from the ***school counselor, whose credentials appear on the letter as LCSW, RPT. The letter described Student's behavioral difficulties in ***grade and recommended full-day, one-on-one ABA therapy as

⁵ P10 at 1; R12 at 8.

⁶ P4.

⁷ P4; R9 at 14; R10; R12 at 3, 11.

necessary for student success in school. The counselor was not identified as a Board Certified Behavior Analyst.⁸

9. ***cognitive testing to establish Student's eligibility for the *** program right away. The ARD facilitator organized a meeting for Parents with campus administration for the week of May***, 2022, to discuss available disability supports. ***added Student to its end-of-year class placement projections for 2022-23 and assigned student to a ***grade class that would accommodate student ***services and potential eligibility for special education. The last day of the 2021-22 school year was May***, 2022.⁹
10. Over the summer, the ***principal, counselor, and *** teacher worked with Parents to set up pre-start-of-school times for Student to meet student teacher and other key adults, for an upcoming teacher home visit, and to orient Parents to the *** program. Parents were encouraged to join the parent teacher association (PTA) as a way to make connections in the school community.¹⁰
11. Before instructional staff returned to work in August 2022, Parents emailed the original ARD facilitator to inquire about the timetable for setting up a temporary IEP and evaluation. The ARD facilitator, who had moved to a different position in the District, connected Parents to the new campus ARD facilitator at***, the school psychologist (LSP-intern) and the speech-language pathologist (SLP) as their new points of contact. The former ARD facilitator told Parents when school staff were returning for the new school year and to expect them to reach out soon about consent for the evaluation. ***reminded Parents that the District could not provide an IEP without first evaluating Student and introduced them to * * *

⁸ J4. Presumably, LCSW stands for Licensed Clinical Social Worker and RPT stands for Registered Play Therapist, but these licenses are not defined in the record.

⁹ J29; P4; P10 at 5, 10; R9 at 14; R10; R12 at 3, 10-11; Tr. Vol. 1 at 253-280. The Judge takes judicial notice of the District's 2021-22 and 2022-23 calendars. Link to "previous calendars" at <https://www.roundrockisd.org/o/rrisd/page/calendars>.

¹⁰ R12 at 3.

Assistant Principal (who also served as the campus 504 Coordinator) to plan for non-IDEA support for the beginning of the year.¹¹

12. The next day, on August ***2022, a ***504 team met with Parents, found Student eligible under Section 504 as a student with ADHD, autism spectrum disorder, and ***, and they created student initial accommodations plan. The plan required teachers to provide preferential seating, minimize distractions, ignore minor infractions, and discuss Student's behavior privately. Throughout student day, Student was to have the option to use a ***and to have access to snacks, water, and scheduled and prompted breaks to the school library. Student was to receive positive reinforcement, and gentle shoulder taps to remind student to stay on task. Instructional accommodations were provided to support Student's working memory and processing speed. The plan also noted that Student was new to public school, had had one-to-one support in private school, and was being referred for a special education evaluation.¹²
13. Between August *** 2022, Parents contacted District special education administration and ***several different times and with increasing urgency. They reiterated their concern that Student would not be successful without one-on-one ABA support throughout the school day. They repeated their request to establish Student's special education eligibility using ***information so a temporary IEP could be developed right away. Parents asked that Student's private ABA providers be allowed to work with student in the public school setting as they had at ***and offered to assist the District in contracting with their *** clinic until the District could staff the position itself. Parents requested an emergency ARD committee meeting and expressed confusion as to why an IEP could not be created.¹³
- 14.

¹¹ P10 at 5-6; R12 at 10.

¹² J26; J27; J28; R12 at 61.

¹³ P10 at 7; R12 at 16, 61; Tr. Vol. 1 at 30-128; Tr. Vol. 4 at 953-983.

(FIE) and provide them with a Notice and Consent form. The evaluators planned to adopt the cognitive testing from the ***evaluation, and they proposed evaluating Student's speech, language, and phonological processing, student fine and gross motor skills, visual- motor integration, emotional/behavioral status, adaptive behavior, reading skills, academic achievement skills and student potential needs for assistive technology. The Notice identified formal and informal measures, parent and teacher input, and previous evaluation as sources of information. Parents were told the evaluation could be completed as soon as October 21, 2022, if they were able to return the signed consent form the same day. On the same day, the family toured the campus along with other new families as a part of ***new student activity program.¹⁴

Fall semester, 2022

15. Student started ***grade in the District on August***, 2022, the first day of the 2022-23 school year. A total of nine school days had elapsed since the ***ARD facilitator originally reached out to Parents to inquire about Student's history and explain the evaluation process for special education eligibility.¹⁵
16. In the first week of school, the District began collecting baseline information for the evaluation. This included parent and teacher input forms, vision and hearing screening, and a brief classroom observation by a special education teacher who would later become Student's case manager. Parents identified aspects of Student's autism and ADHD diagnoses as areas of difficulty for Student. Parents stated Student was receiving private ABA, Occupational (OT) and speech therapies, though they did not share evaluation reports from these providers with the District during the 2022-23 school year.¹⁶
17. On September***, 2025, the Executive Director of Special Education, the Area Director of Special Education, and the ***Assistant Principal met with Parents to address their hesitation to

¹⁴ J1 at 9; P10 at 11; R12 at 16, 18, 22-23; Tr. Vol. 1 at 253-280.

¹⁵ J1 at 2, 7-8, 16; P6; P10 at 4; R4; R12 at 36. See the District's 2022-23 calendar.

¹⁶ J1 at 2, 7-10, 15-16; R4; Tr. Vol. 1 at 193-252.

consent to the planned Full and Individual Initial Evaluation (FIIE). Parent testified that Parent felt reassured and went on to sign the form on September ***. At the meeting, Parents again asked to send their private *** provider to school with Student, but they were told that this was not possible under the District's Board Policy.¹⁷

18. The District received Parents' signed consent for the evaluation on September***, 2022, and set the evaluation due date for November***, 2022, 45 school days later. Parents added a note requesting to add ***as suspected areas of disability, and that the evaluation be expedited. On the same day, the campus LSSP contacted Parents about the evaluation due date and the schedule for beginning the assessments. Parents emailed the Area Director with a renewed request to expedite the evaluation.¹⁸
19. That fall, Student could become dysregulated when ***. Student had perfectionist tendencies, especially in math and***. Student exhibited behaviors such as***.¹⁹
20. The ***team developed a daily behavior rating system to assess the frequency and degree to which identified, specific, behavioral concerns disrupted Student's or other students' learning or required increased staff attention and support. The team implemented the system for the first time on September***, 2022, and on most school days that Student was present thereafter. Information from the behavior rating system was also provided to Parents as part of a communication plan.²⁰

¹⁷ In addition to meeting with Parents in person to discuss the FIIE, the Area Director of Special Education directly provided Parents with the actual Board Policy that prohibits *** providers from delivering services in school. R12 at 31.

¹⁸ J1 at 2; J2; J20; P10 at 11; R12 at 32-35, 48.

¹⁹ R7 at 12-14; Tr. Vol. 1 at 193-252.

²⁰ J32 (audio recording) at 1:24:00; R6; R7 at 1; Tr. Vol. 1 at 30-128; Tr. Vol. 3 at 665-729; Tr. Vol. 4 at 953-983.

21. Student also received general education behavior supports, such as *** and small group social skills instruction using the ***.²¹
22. In October and November, 2022, ***school psychologist and general education school counselor engaged in ongoing communication with Parents to discuss aspects of the evaluation underway and Student's anxiety. At Parents' request, the counselor provided a list of outside counseling programs for ***and ***, and for *** therapy.²²
23. Student's FIIE was completed on November *** 2022. The evaluation formally assessed Student's functional, academic, cognitive, and behavioral skills using the Comprehensive Assessment of Spoken Language - 2nd Edition (CASL-2), the Autism Spectrum Rating Scale (ASRS), the Kaufman Test of Educational Achievement, 3rd Edition (KTEA-3), and the Vineland Adaptive Behavior Scales, 3rd Edition (VINELAND-3). The evaluators adopted and incorporated ACE's cognitive findings on the WISC-V but started over with a fresh BASC-3 so they could capture both parent and teacher ratings. The FIIE included the hearing and vision screening, parent and teacher input, and physician's form that had been gathered in August 2022. The evaluation team observed Student across school environments and conducted a play-based assessment.²³
24. Student's ARD committee met for the first time on December***, 2022. Based on the FIIE, the committee found Student eligible for special education and identified student as a student with autism, a speech impairment ***, and Other Health Impairment for ADHD. The FIIE and teacher and parent input pointed to student need for specially designed instruction to strengthen student social, behavioral, and adaptive skills. Parents articulated their most important goal as increased, positive, ***. The proposed IEP included 1) a social skills goal

²¹ J11 at 3; Tr. Vol. 1 at 30-128; Tr. Vol. 3 at 665-729; Tr. Vol. 4 at 953-983.

²² R12 at 37-38, 41-42, 47-48.

²³ J1; J22 at 2; R12 at 46; Tr. Vol. 1 at 193-252; Tr. Vol. 2 at 349-545. Tr. Vol. 3 at 611-664. *See also* 2022-23 RRISD calendar.

combining using Student's words and developing sensory, body-oriented skills to increase positive peer interactions; and 2) a self-regulation goal designed to develop Student's awareness of student state of regulation and associated behaviors, to advocate for, or accept a break as a strategy to re-regulate and to return to class or task ready to learn or try again. The IEP proposed *** of direct instruction on strategies for regulation and *** interaction, sensory breaks, and speech therapy in the special education setting. It also proposed *** minutes a week of in-class social skills and socialization support in the general education setting. All of Student's 504 accommodations but one were rolled into the IEP, and the team added a positive reward system, frequent and immediate feedback, frequent reminders of the rules, use of a personal timer, unlimited calm down space in the classroom, and the option to leave class to a cool down space. The school team identified no academic needs for specially designed instruction at the time.²⁴

25. During the meeting, Parents questioned the present levels as painting too rosy a picture and the goals as overbroad. They were concerned that the functions of Student's behavior were being glossed over, leaving the team susceptible to employing the wrong intervention in the absence of more precise functional behavior data. They requested a Functional Behavior Assessment (FBA) and the school members of the ARD committee agreed that this was a necessary next step to refine intervention to respond to the fall behavior data in a more individualized way than could be addressed by the general education behavior supports already in place. Parents struggled with the ARD agenda, wanting to discuss how to increase staffing so Student could receive more in-class support before completing a full discussion of present levels, goals, accommodations, and how services would be delivered. Team members provided detailed explanations in response, and they did not rush the agenda, despite running out of allocated meeting time. The team agreed to recess until January.²⁵

²⁴ J11 at 3; J13 at 1-3, 5-6, 8-9, 14; J22; J26, J27, J28; Tr. Vol. 1 at 30-128; Tr. Vol. 4 at 953-983.

²⁵ J13 at 2-3; J33; J34.

26. In the first semester, Student missed 17 full days of school and arrived late or was picked up early on at least an additional eight days.²⁶
27. The ARD committee continued the initial IEP meeting on January *** 2023. Staff provided Parents with the Notice and Consent forms they would need to begin the FBA as well as an OT evaluation Parents had requested. Parents signed the IEP in agreement to allow aspects of Student's IEP to begin, but they did not sign the consent forms for the evaluations. Parents noted that their agreement was not to be construed as agreement that the plan was adequate. Parents limited their consent to implementation only to those provisions in the IEP that could be provided in the general education setting. They expressly withheld consent to implementation of Student's special education minutes for sensory breaks and direct social skills instruction.²⁷

Spring semester, 2022

28. Soon after the ARD committee meeting, Parents requested a Behavior Intervention Plan (BIP) to align with Student's private ABA services and to expand the behavior tracking/communication system to include Antecedent, Behavior, Consequence (ABC) data, but they would not consent to the FBA that would generate them. They wanted to discuss the ***Supplement and Student's struggle to complete writing tasks. They asked for more categories of information to be reported in the daily communication system. When the speech therapist was ready to begin providing services in mid-January, Parents asked to change the SLP's proposed schedule and expressly withheld consent for ***to begin individual sessions. The Assistant Principal incorporated parent suggestions and redeveloped the communication form. By the end of January, 2023, the District had set up a series of meetings for Parents and various staff members to continue working on each topic.²⁸
29. Student frequently engaged in attention- or connection-seeking behavior, to which classmates

²⁶ J29 at 1-2; R12 at 39, 58-60, 229-40, 242-45, 260, 263.

²⁷ J18; J21; J33; J34; Tr. Vol. 1 at 30-128; Tr. Vol. 2 at 471-480, 512; Tr. Vol. 3 at 750-835; Tr. Vol. 4 at 953-983.

²⁸ J11 at 4; P10 at 13-14; R12 at 70-75; Tr. Vol. 1 at 193-252.

Sometimes, children simply would not engage with Student. Student had ***turn, made ***attention. As student social and self-regulation deficits blurred together, Student frequently***, *****²⁹

30. In February, 2023, Parents reported that Student was beginning to resist going to school due to anxiety about student peer interactions and requested more support for Student's social integration, more positive interventions, and for the school to coordinate with the private ***providers. The school counselor increased Student's *** participation and sent a list of outside social skills and psychotherapy providers at Parents' request. The ***teacher made sure Student had access to all accommodations for which student was eligible on testing that was occurring that month.³⁰
31. In March, 2023, Parents reported increasing difficulty convincing Student to come to school. They asserted that the remedy was for Student to receive full-day, one-on-one support so student could receive direct social, behavioral, and communication-oriented instruction in the Parentent, across student day, in the general education environment. Without such support, Parents said, Student could not overcome student social/behavioral skill deficits, and student social and performance anxiety would continue to mount, fueling student disruptive behaviors. At the same time, Student's case manager advocated for Parents to allow *** to implement the direct social and behavior skills instruction that was in student current IEP but as yet unimplemented due to their nonconsent.³¹
32. Neither had the District received consent for the FBA or OT evaluations. Parent testified that Parentwas upset about how long the FIIE had taken, and because it had not included an FBA in the first

²⁹ J11 at 3; P10 at 23; R7 at 15-21; Tr. Vol. 1 at 193-252; Tr. Vol. 2 at 471-480, 512; Tr. Vol. 3 at 750-835.

³⁰ J29 at 3; P10 at 15-19; R12 at 205, 207-208, 228, 247-50, 261.

³¹ P10 at 22-26, 34; R12 at 96, 102.

place. Parents instead asked the District to fund independent educational evaluations (IEEs) in both areas, with their private ***provider to conduct the school FBA. After the January and February 2023 dialogue with Student's classroom teacher about student difficulties completing writing assignments, Parents requested a new evaluation for dysgraphia. At the end of March 2023, the District approved the outside FBA/IEE. District administrators testified that they believed Parents would never consent to a school-conducted FBA, they felt hamstrung by Parents' nonconsent to necessary services for Student, and the team also wanted the additional evaluation data to inform continued build-out of Student's IEP.³²

33. Student expressed student own distress to student Parent about student difficulties with peers and how student found ***to be chaotic and confusing. The general education counselor reported that Student was referring to Student as***" and engaging in other negative self- talk. That spring, Student made ***. Once, student created the name "****" for Studentin a classroom online learning game. On another occasion, Student ***in class and stated student***. Student's absences, late arrivals, and early departures continued, and Parents relayed to the school their worries that Student's self-esteem and mental health were deteriorating.³³
34. Teachers saw Student's externalized behaviors at school, but they also perceived student as eager to engage in conversation with adults and peers, and experiencing "joyful Parentents" with classmates. Student's case manager testified that ***recognized Student's perfectionistic tendencies and quick path to dysregulation when things were not going student way, but ***did not perceive Student as generally anxious about school when student was there.³⁴
35. Parents had Student evaluated by a private audiologist on March***, 2023. In a report dated April ***2023, the audiologist

³² Tr. Vol. 1 at 30-128; Tr. Vol. 2 at 471-480, 512; Tr. Vol. 3 at 665-729, 750-835; Tr. Vol. 4 at 953-983.

³³ J11 at 3; P10 at 23; Tr. Vol. 1 at 253-280; Tr. Vol. 2 at 471-480, 512; Tr. Vol. 3 at 814.

³⁴ J11; Tr. Vol. 1 at 193-252.

diagnosed *** and made a number of recommendations for accommodations at school.³⁵

36. The ARD committee met to revise Student's IEP on April***, 2023, and Parents shared the audiology report. The team discussed Student's anxiety, confidence, sense of belonging, the timing of student behaviors and episodes of dysregulation, and how to enhance the current communication system to provide more detailed information to Parents. They agreed that Student's behaviors could stem from multiple sources, including bids for attention or connection with peers, student low frustration tolerance, and student newly identified *** activity and to develop additional individualized opportunities for student to connect with peers. The campus offered a special education counseling evaluation to explore Student's anxiety more deeply and to see if additional special education supports might be helpful. Parents' advocate inquired about an FM system and the team offered to set up a trial. Parents requested a *** meeting to review daily behavior tracking data. The committee ran out of time and agreed to reconvene in May to continue working on IEP revisions. Parents declined the offers of a counseling evaluation and a trial FM system in the classroom. *** began the FBA-IEE on May *** 2023.³⁶
37. The ARD committee met again on May *** and May***, 2023, to continue to address proposed revisions to the IEP. They updated Student's behavior and social skills goals to emphasize positive peer interactions and body-based regulation strategies. The committee added a new goal for completion of writing activities and new accommodations taking into account the *** report. Student was given a new accommodation to request a walk with a preferred adult when needing therapeutic processing. The accommodations were modified to reflect a greater emphasis on positive reinforcement and confidence-building. The revised IEP provided increased special education time for social skills, sensory breaks and speech therapy, and added time in the special education

³⁵ J5.

setting to work on writing skills. The revised schedule of services now included Parents' requested *** of direct consultation time with the teachers.³⁷

38. Just before the May***, 2023 meeting, Parents emailed the committee a State Eye Report that they obtained the day before (dated May *** 2023), diagnosing Student with another new medical condition:***. While the report confirmed a new area of suspected disability for Student, it did not evaluate how the condition manifested for Student's functional vision in school or what learning media would be most effective for student, nor make any specific programming recommendations. The committee registered this new information but did not yet have enough information to be able to work ***related changes into the May IEP revisions.³⁸
39. Before the May***, 2023, meeting, Parents were informed that Student had missed *** days of school and student transfer to ***would be revoked. Teachers and administrators from***, Student's home school, were invited to join in the May *** meeting, and District administration attended, as well, to ensure as seamless a transfer of information as possible to the ARD committee that would take over Student's program at***. Parent testified that Parents perceived the transfer back to ***washing their hands of Student and student program.³⁹
40. Student was marked absent one additional day before the end of school. Shortly thereafter, Parents withdrew Student from the District. *** completed the FBA-IEE on June***, 2023, too late to have an impact on the 2022-23 school year, but in time for the District to begin working its conclusions into Student's ***grade plan early in the new school year. Student had not returned to the District since.⁴⁰
41. Over the 2022-23 school year, Student's general education report card showed that student made grade-level progress in almost all of student second

³⁷ J11 at 4, 7-9, 15.

³⁸ J6.

³⁹ Tr. Vol. 1 at 30-128; Tr. Vol. 2 at 471-480, 512; Tr. Vol. 3 at 750-835; Tr. Vol. 4 at 953-983.

⁴⁰ J3; Tr. Vol. 2 at 471-480, 512; Tr. Vol. 3 at 750-835.

grade subjects. Student went from needing direct guidance on almost all skills and concepts in the first reporting period to either exhibiting mastery or needing minimal guidance to meet grade level expectations in spelling;***; five out of seven areas of science; six out of seven areas of reading; and 10 out of 10 areas of math. Overall, Student was rated as performing at or above grade level in both reading and math throughout the school year. Student exhibited less progress in student writing skills, only mastering one out of five areas of writing and remaining at the “limited progress” level in two of five for all four reporting periods.⁴¹

42. The report card reflected progress without mastery or delayed progress in Student’s technology, risk-taking and information-sharing skills, and student did not meet second grade expectations for growth in almost all remaining oral language, executive functioning, and behavioral competencies. Student remained at the*** level all school year for listening actively and attentively without interrupting, following and appropriately restating oral directions, working collaboratively with others and appropriately in groups, developing social communication, showing respect for others and school property, transitioning appropriately, thinking critically to organize information, following directions, working independently, and organization. Most of these areas were directly addressed by Student’s IEP, despite its limited implementation. The report card did show small gains in some of these areas during the spring semester, 2023.⁴²
43. During the 2022-23 school year, the District offered 170 instructional days to its students. Student was marked absent ***. Of the *** days Student attended school that year, student either arrived late or was picked up early at least *** times. Student thus missed *** of student school year due to absences, and partial days made up roughly *** of the days Student did attend.⁴³

⁴¹ J30; R5 at 1-2; Tr. Vol. 3 at 754.

⁴² J30.

⁴³ J29; J30 at 2; P13; R5 at 1; R12 at 39, 58-60, 222-40, 242-63. See the District’s 2022-23 calendar.

VII. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁴⁴ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case is therefore on Petitioner to show that the District failed to provide Student with a FAPE during the 2022-23 school year and failed to offer Student a FAPE for the 2023-24 school year. *Id.*; *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403. To recover student requested remedies, Petitioner must not only prove a denial of FAPE but also that Parents' private placement is appropriate under the IDEA. 34 C.F.R. § 300.148.

B. 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). The 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), 201; Tex. Educ. Code § 29.001.

The District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must

⁴⁴ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009).

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 implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 580 U.S. at 403.

C. INITIAL EVALUATION AND IDENTIFICATION

The IDEA's child find provisions guarantee access to special education for students with disabilities. 20 U.S.C. § 1400(d)(1)(A). A school district, like Respondent, must have policies and procedures in place to locate and timely evaluate children with suspected disabilities in its jurisdiction, including children who are suspected of being a child with a disability and in need of special education, even if they are advancing from grade to grade or not enrolled in public education. *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 949 (W.D. Tex. 2008).

A school district's obligation to evaluate a student for potential eligibility for special education is triggered when the district has reason to suspect the student has a disability, coupled with reason to suspect special education services may be needed to address it. *Richard R.*, 567 F. Supp. 2d at 950. Here, the parties do not dispute the District's duty to evaluate (*see* further discussion in section 3 below). However, Petitioner has consistently raised questions about the extent to which eligibility may have been found or whether an IEP could have been developed without a public-school evaluation, and whether in this case, the District failed to evaluate Student within a reasonable time.

1. Full and individual initial evaluation (FIIE)

Under the IDEA, public schools **must** conduct a full and individual evaluation before **initially** providing special education and related services to a child with a disability. 34 CFR § 300.301(a) (emphasis added). While the mandatory language in this provision—must—is clear, the second operative concept is that a school may not provide a student’s initial IDEA services without first conducting an FIIE. When the former ARD facilitator at ***first reached out to Parents on May *** 2022, to ask what had happened with the 2018 evaluation for ***, this was the threshold question ***was asking. If Student had completed the 2018 evaluation and received even minimal initial services, special education support in 2022 would not have been Student’s initial. However, Parents confirmed Student had neither completed the 2018 FIIE nor received public special education services anywhere else, thereby triggering the requirement of a full evaluation before an IEP could be developed or any specially designed instruction provided.

2. Purposes and contents of an appropriate FIIE

Petitioner next asserts that the District did not approach the FIIE with the appropriate urgency or attention to the known complexity of Student’s needs. A parent has the right to initiate a request for an initial evaluation, and that evaluation serves dual purposes: to determine if a child meets the eligibility requirements to receive special education services, *and* to create a research-based, data-driven picture of student functional, developmental and academic educational needs. 34 C.F.R.

§§ 300.301(b), .304(c)(6). The IDEA requires trained and knowledgeable evaluators to use a variety of assessment tools, strategies, and technically sound instruments.

34 C.F.R. § 300.304(b)(1)-(3). This becomes the foundation from which initial special education services can be designed.

To ensure the initial evaluation can comprehensively address both eligibility and provide a springboard for IEP design, the IDEA requires schools to assess in all areas of suspected disability, including in areas not commonly linked to the disability category that led to the referral. 34 C.F.R. § 300.304(c)(6). Moreover, developing an IEP that is well-calibrated to the student's needs is more important than the eligibility category. *Klein v. Hovem*, 745 F.Supp. 2d 700 (S.D. Tex. 2010) (revd. on other grounds, 690 F.3d 390 (5th Cir. 2012) (while the school district, experts, and parents may disagree over the diagnosis of a student's disability, "the IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe the child's multiple disabilities."))

Student's initial evaluation team were licensed, knowledgeable professionals who used multiple formal and informal assessments, sought substantial input from teachers and parents, and included classroom observations and a play-based assessment. The 42-page, November 2022 FIIE concluded that Student met eligibility in three different categories, confirmed that student was achieving academically at average to superior levels, made educational recommendations and contained rich jumping-off places for IEP development across a number of different skills and competencies where Student showed disability-related deficits.

Student's FIIE was both appropriately designed and executed, and sufficiently comprehensive under the IDEA.

3. Reasonable time to evaluate

The IDEA allows districts 60 school days from when they receive signed, written parental consent to complete a comprehensive initial evaluation, but Texas shortens this period to 45 school days. 34 C.F.R. § 300.301 (c); Tex. Educ. Code § 29.004(a)(1); 19 Tex. Admin. Code § 89.1011. The District’s Area Special Education

Director and lead assessment professional for the ***both testified that the District’s practice is to allow evaluation teams to rely on this amount of time when assessment planning to accommodate classroom observations, formal testing (sometimes by multidisciplinary evaluators) and time for teachers and parents to provide written input, interviews, and ratings for specific formal assessments. Student and evaluator absences and other scheduling needs also impact the speed of the evaluation. Respondent acknowledges the urgency for many children to evaluate quickly, but the District is generally reluctant to shorten the 45-day schedule because they do not want to compromise the quality of the evaluation.⁴⁵

While the IDEA’s implementing regulations address how quickly a school district must act after parental consent to evaluate is obtained, neither the statute nor the regulations set a specific number of days in which a school district must evaluate a student between when the school first becomes aware that a qualifying disability may be present and when they refer the student for an evaluation. Courts have inferred a “reasonable time” standard into the analysis of whether a school district maintains an appropriate pace to evaluation once it is on notice that a student might be eligible for and need special education services. *Dallas Indep. Sch. Dist. v.*

⁴⁵ Tr. at Tr. Vol. 1 at 30-128; Tr. Vol. 2 at 349-545; Tr. Vol. 4 at 953-983.

Woody, 865 F.3d 303, 319 (5th Cir. 2017); *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018).

The extent to which a school district takes proactive steps to comply with its duty to identify and evaluate a student with a disability is the measure of reasonableness in this situation. *Spring Branch Indep. Sch. Dist. v. O.W.*, 961 F.3d 781, 793 (5th Cir. 2020). The reasonableness of a delay is not, then, defined by its length in weeks or months. *Id.* Under *Krawietz*, whether a district violates or upholds its duty to timely identify and evaluate turns on three inquiries: (1) the date the district had notice of a likely disability; (2) the date the duty was ultimately satisfied; and (3) the reasonableness of the gap between these two dates. *Krawietz*, 900 F.3d at 676.

Here, the District clearly understood by May *** 2022, that Student likely had a qualifying disability that created the need for an IEP, as demonstrated when the campus ARD facilitator initiated an explicit email conversation with Parents about the unfinished 2018 FIIE. Parents replied back on May***, 2022, requesting an IEP even while acknowledging that Student did not yet have established eligibility. The last day of school in 2021-22 was May *** 2022. On August *** 2022 (before school started in 2022-23), the District convened a 504 meeting in which the referral for a special education evaluation was made. Parents were invited to an assessment planning meeting a few days later on August***, where the special education evaluators gave them the printed Notice and Consent forms to sign when they were ready. The evaluators explicitly told Parents that the FIIE could be completed as soon as October *** if they signed consent and triggered the 45-day deadline that day.

By August *** 2022, the District referred Student for an evaluation, planned it in collaboration with Parents, provided Parents with the consent form and informed them that the District would rely on the 45-day timeframe per its standard

evaluation practice. At that time, a total of nine school days had elapsed since May***, 2022, when the District first had reason to know they likely had a duty to evaluate Student.

August***, 2022, was the first day of the 2022-23 school year. The following week, the District began collecting preliminary data for the evaluation that did not require parental consent (e.g., vision and hearing screening, distributing informal parent and teacher questionnaires, sending a special education teacher for a brief classroom observation). The District proactively took the steps they could without parental consent so they would be ready to start the more formal steps as soon as Parents returned the signed consent form.

Petitioner argues Student's pathway to eligibility should have been shorter than it was, or in the alternative, the FIIE should have uncovered information that would allow for IEP development that somehow would respond to the presence of *** and *** before these conditions were even diagnosed. This is not persuasive. Parents' revocation of consent before the 2018 evaluation was completed contributed directly to the District's 2022 decisions about what needed to happen to get to an eligibility determination. Moreover, the District evaluated comprehensively in all areas relating to ADHD and autism, including specific inquiry into ***

Because Student was new to the District, the evaluation team relied heavily on parent input to frame the suspected areas of disability. In this case, the District responded thoroughly to Parents' requests and satisfied its obligations to evaluate Student in all areas of *then-suspected* disability, determine student eligibility and design student initial IEP—not only within a reasonable time, but expeditiously.

D. APPROPRIATE PROGRAM

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 positive academic and non-academic benefits are demonstrated;
3. Whether the program is administered in the least restrictive environment (LRE); and,
4. Whether the services are provided in a coordinated, collaborative manner among the key stakeholders.

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) (citing *Endrew F.*, 580 U.S. 386).⁴⁶

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 are intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Michael Z.*, 580 F.3d at 294. It is important to note that because the District did not rush, but timely and appropriately met its child find duty, the District's responsibility for providing Student a FAPE only began in January 2023, even though Student was in school for the entire 2022-23 school year.

⁴⁶ Even after the Supreme Court's 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765-66 (5th Cir. 2018) (citing *Endrew F.*, 580 U.S. 386).

1. Individualized on the basis of assessment and performance.

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,.320,.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the District must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

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

C.F.R. § 300.324(a)(1). For Student, whose behavior impeded student learning and that of others, the District was also obligated to consider positive behavioral interventions and supports, and other behavioral strategies, when developing student 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).

The FIIE and parent input focused Student's initial IEP development on the areas in which student exhibited deficits resulting from student disability:***. At the same time, Student's placement and schedule of services reflected student intellectual and academic needs to fully access the general education curriculum with ***services supplementing. In the spring

semester, the school team engaged in ongoing communication and meetings with Parents, and by the end of the first reporting period, they were already planning revisions to the IEP, albeit without as much performance and assessment data as the ARD committee had requested. The May, 2023, changes further individualized the IEP on the basis of performance and parent input, arguably bringing it into even closer alignment with Student's needs.

Both the initial IEP that went into effect in January 2023, and the IEP revisions the ARD committee made in April and May 2023, were appropriately individualized based on Student's FIIE and performance, and reasonably calculated to address Student's needs in light of student unique circumstances and complex profile. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Endrew F.*, 580 U.S. at 403.

2. Academic and non-academic benefits, demonstrated in part by successful transition to a less restrictive placement and more inclusive service delivery.

Student's report card shows overall academic growth that met or exceeded grade-level expectations, but Petitioner points to Student's in- and after-school behaviors, ***, and school refusal to demonstrate that student did not benefit sufficiently from student program.

a. Social, emotional, and behavioral difficulties across both semesters.

Despite Student's ongoing social, emotional, and behavioral difficulties and student apparent *** in the spring semester, the spring did not mark a point of obvious regression in these areas. While the record does not reflect concrete progress on Student's IEP goals, student relationships with peers, or in student confidence about

school, it does demonstrate that the most distressing emotional/behavioral areas of concern were present and similar *before* the spring of 2023. Parents' input in August, 2021, for the ***evaluation identified ***areas for Student, and student behaviors there were beyond that school's ability to accommodate after the private ***therapy was discontinued midyear. In August 2022, in the beginning-of-year questionnaire the District used to request preliminary information for the FIIE, Parents again listed ***as active concerns. They noted then that Student worried about student own imperfect future performance in specific situations and how that served to fuel student anxiety about those situations. Parents flagged behaviors such as***, ***that student was experiencing anxiety. Later that fall, Parents expressed through their BASC-3 ratings that Student sometimes had****" or "I****." In October and November 2022, Parents and the school counselor were already conversing—at Parents' request—about private therapists who could work with Student's anxiety.

Petitioner relies on allegedly increasing absences in the spring as the foundation for student school refusal argument. Yet the record shows that Student had the same number of absences in the spring semester as in the fall (17 absences each semester). While Parents reported Student's anxiety about being different and not knowing how to function with peers at school as the reason for student spring absences, the record is silent as to why Student missed 17 days of school in the fall. If Student's actual anxiety and resistance about school is to be measured in missed school days and parent reports of anxiety, as Petitioner maintains, the weight of the evidence suggests these difficulties remained consistent from fall to spring.

b. 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 LRE 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 LRE, 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. *Id.* 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.

Credible evidence shows that Student's placement in the general education setting with special education support struck an appropriate balance between student academic and intellectual needs for general education and *** content and student need to develop social and self-regulation skills, and to practice them in a natural environment with nondisabled peers. When the ARD committee developed the initial IEP to allow for direct instruction in social skills and speech therapy in a special education setting, it was with the benefit of the fall semester data which demonstrated that Student would have a better chance at learning these critical skills in a quieter, more specialized environment, and with support to practice and generalize them into the rest of student day. However, Parents' limited consent to the pullout services in the first nine weeks of the spring semester prevented the school team from trying the initial plan out and gathering data in the first reporting period for potential IEP revision in April and May 2023. The weight of the evidence demonstrates that Student's program was reasonably calculated to reflect Student's LRE, but the combination of Student's late start to participate in pullout services and student withdrawal midway through the IEP year resulted in little information militating in one direction or another.

However, from an LRE perspective, *** grade at ***and ***grade at ***differed significantly from each other. At***, student received specialized *** programming in addition to grade level academic content. In both environments, Student's attentional, social, and self-regulatory deficits presented significant barriers to student ability to engage without

support. However, at ***, Student was in larger classes with more nondisabled peers. There, student robust accommodations and behavioral supports— under student 504 plan and student IEP—were designed to ensure close adult attention without installing a permanent, one-to-one adult across Student’s day who risked serving as a barrier between Student and student classmates. Student’s supports at *** and the way they were delivered gave student a much less restrictive, more inclusive experience than student received at ***.

Student thus made significant progress in student ability to move through student school experience alongside student nondisabled peers, with much less restrictive support in place. Further, Student made it through student entire *** grade school year—several months longer than student lasted in *** grade at***.

c. IEP progress.

Student’s progress on IEP goals is not apparent from the evidence. The IEP went into effect in January, 2023, and when the first reporting period ended in mid-March 2023, Parents had not yet consented to allow Student to participate in the pull-out speech therapy and social skills services in the IEP. Additionally, the ARD committee was already beginning to plan the April revision ARD. Unfortunately, the record does not contain an IEP progress report from that period. When the next IEP progress report was issued at the end of the second reporting period on May *** 2023, Student’s social skills and self-regulation goals had just been updated and student writing goal just added. The progress report shows only some minimal baseline data for the new goals.

d. Academic progress.

Student's IEP (put into place in January 2023) was only half-way through the 36-week IEP year for which it was designed when Student withdrew from the District. Yet, Student's report cards demonstrate that—despite emotional and behavioral struggles throughout the school year, Parents' nonconsent to implement IEP services or to conduct new evaluation, new ***diagnoses, and Student's frequent absences—Student made consistent, appropriate progress through the ***-grade curriculum and school experience over the 2022-23 school year.

The Judge concludes that Student received meaningful, though in some ways, unsatisfying, academic and non-academic benefits from the program provided by the District.

3. Services provided in a coordinated, collaborative manner by key stakeholders.

Credible evidence showed that when Petitioner first approached Respondent in May 2022, the District moved quickly to both listen to Parents' experience, goals, and concerns while also making significant efforts to orient the family to public school systems, processes, and opportunities. Before Student started ***grade in the 2022-23 school year, the District had already qualified student for ***, 504 accommodations, and general education behavioral supports. ***intentionally placed student in a ***-grade class that was anticipated to work well with both *** and, eventually, special education. The family toured the campus and Parents met with campus and District-level staff, and Student's FIIE was underway before the first day of the 2022-23 school year. While these activities all

occurred before the relevant time frame for the evaluation of FAPE, they set the tone not for the District's efforts to work collaboratively and responsively with Parents.

The IDEA contemplates a collaborative process between the school district and the parents, but it does not require a school district to accede to a parent's demands in the name of collaboration. *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). The right to meaningful input does not mean a student's parents have "veto power" over a school district's decisions or the right to dictate an outcome. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). School districts are presumed to have met the IDEA's requirements for collaborating with a student's parents unless they exclude them in bad faith or refuse to listen to them. *Id.* This was hardly the case here.

Here, the original and new ARD facilitators, the LSSP, SLP, campus and District administrators, and special education teacher accurately explained required processes and timelines for evaluation, eligibility, IEP development, progress monitoring and service delivery to Parents in writing and in meetings or calls. District staff presented clear and consistent information and listened to Parents' suggestions and concerns. They introduced Parents to different District or campus professionals as needed, and team members both initiated and agreed to set up meetings at Parents' request. The evaluators involved parents in assessment planning and adopted the ***evaluation's principal findings (about Student's intellectual abilities). The ARD committee repeatedly extended meeting time in favor of helping Parents receive answers to their questions. The District adopted accommodations from the APD report in the May, 2022, IEP revisions.

On the other hand, Parents held back the full implementation of the initial IEP. They refused to consent to a District FBA, OT evaluation, and counseling evaluation, all of which were projected to yield information that would allow the ARD committee to fine-tune the IEP in direct response to Parents' articulated concerns. When the ARD committee made meaningful revisions to the IEP in the spring of 2023, even without the additional evaluation data the District requested, Parents withdrew Student from the District. During the single spring semester of 2023, Parents precluded the District from fully trying out the original proposed program and never gave the proposed supports from May 2023 a chance.

"The IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations." *Rockwall Indep. Sch. Dist. v. M.C.*, 816 F.3d 329, 339–40 (5th Cir. 2016) (quoting *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 72 (3d Cir.2010); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 995 (1st Cir.1990) (the IDEA "ought not to abet parties who block [a school's attempts to develop an IEP using IDEA-directed procedures] and then, dissatisfied with the ensuing IEP, attempt to jettison it because of problems created by their own obstructionism.")). See also *White*, 343 F.3d at 380.

The District more than met the requirement of working with Parents in a coordinated, collaborative way in the single year from Student's enrollment to student withdrawal.

4. FAPE conclusion.

Student's IEP was appropriately individualized on the basis of the FIIE and student performance and placed student, successfully, in a less restrictive environment than the one student came from in ***grade. Student made sufficient academic and non-

academic progress to satisfy the meaningful benefit standard, and the campus and District team worked closely together and made significant, consistent efforts to collaborate with Parents throughout the year. As such, for the period beginning when Student's initial IEP was approved through student withdrawal from the District, the District provided Student with a FAPE.

E. REIMBURSEMENT FOR PRIVATE PLACEMENT

If the parents of a child with a disability, who previously received special education and related services in a public school, unilaterally enroll the child in a private school, a judge may require the school district to reimburse the parents for the cost of that enrollment **if** the judge finds that the district had not timely made a FAPE available to the child before parents enrolled student in a private school. 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148; *see also Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 at 369–71, 105 S.Ct. 1996; *Michael F.*, 118 F.3d at 248. To receive reimbursement, a disabled child's parents must prove both that (1) the IEP calling for public school placement was inappropriate under IDEA, and (2) the private placement was proper under the Act. *M.C.*, 816 F.3d at 339 (quoting *Michael Z.*, 580 F.3d at 293).

Petitioner did not prove by a preponderance of the evidence that the District failed to make a FAPE available to Student before student withdrew from the District. The evidence showed unequivocally that Parents worked hard and creatively to pursue additional evaluation and a rich combination of educational and therapeutic activities and services to continue advancing Student's social, emotional and academic development during and after the relevant time period. Parents are the ultimate educational decision-makers for their children, and they have every right to

opt out of what is offered by a public school in favor of something else. However, the IDEA does not extend a school district's responsibility to fund the private educational choices of unhappy parents when the school properly executes its duties to deliver on a child's educational rights and entitlements. *M.C.*, 816 F.3d at 339–40. Thus, despite credible evidence demonstrating the quality of Parents' post-withdrawal research, evaluation and programming choices, opting to withdraw Student from public education to pursue them remains a private choice on Parents' part without creating corresponding liability for the District.

In the absence of a deprivation of FAPE, this decision need not reach the appropriateness under the IDEA of the opportunities Parents have made available to Student since student left the District. *M.C.*, 816 F.3d at 339, n. 5 (quoting *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir.1993) (if parents fail to satisfy their initial burden of showing that an IEP was inappropriate under the IDEA, "then there is no need to inquire further as to the appropriateness of [the private school placement]."))

VIII. CONCLUSIONS OF LAW

1. As the party challenging the IEP, the burden of proof in this case is on Petitioner. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner did not meet student burden of showing that the District failed to timely and appropriately evaluate student for special education eligibility. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.304(b), (c); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 949 (W.D. Tex. 2008).
3. Petitioner did not meet student burden of showing that the District improperly declined to find Student eligible for special education and related services or provide student with a temporary IEP without having first completed a full initial individual evaluation. 34 C.F.R. § 300.301(a).

4. Respondent provided Student a FAPE during the relevant time period, and both the initial, December 2022, IEP, and the IEP revisions the ARD committee made in April and May 2023, were reasonably calculated to address Student's needs in light of student unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

IX. ORDER

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

Signed October 15, 2025.

ALJ Signature:



Caroline Nelson
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), 516; 19 Tex. Admin. Code § 89.1185(n).