

SOAH Docket No. 701-25-10808.IDEA
TEA Docket No. 142-SE-0125

Before the State Office of Administrative Hearings

**Student, by next friends Parent and Parent.,
Petitioner**

v.

**Lamar Consolidated Independent School District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student (Student), by next friends Parent and Parent. (collectively, Petitioner), brings this action against the Lamar Consolidated 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 develop an appropriate educational program for Student and whether Student's proposed educational placement is Student least restrictive environment.

The Administrative Law Judge (Judge) concludes Student's program was appropriate to meet Student unique needs and that Student requires a more restrictive placement to make progress.

II. DUE PROCESS HEARING

The due process hearing was conducted on August^{***}, 2025. A certified court reporter recorded and transcribed the hearing. Petitioner was represented by Mark Whitburn and Sean Pevsner of Whitburn & Pevsner, PLLC. Petitioner's advocate, Karen Mayer Cunningham, Student's Parent, Parent (Parent), and Student's ^{***}(next friends) attended the hearing.

Respondent was represented by Amy Tucker and Sean Hooper of Rogers, Morris & Grover, LLP.^{***}, Executive Director of Special Education, attended the hearing as party representative for Respondent.

Both parties filed written closing briefs in a timely manner. The Decision in this case is due on October ^{***} 2025.

The parties submitted Joint Exhibits 1-27, which were admitted into the record without objection. Petitioner offered 16 separate exhibits. Petitioner's

Exhibits 1-8, 10-12, and 14-16 were admitted. Petitioner withdrew Exhibits 9 and 13. Respondent offered seven separate exhibits, which were admitted into the record without objection.

Petitioner called the following individuals to testify:***, assistant principal; ***Director of Special Education;***, principal; ***dyslexia specialist;***, special education teacher;***, special education teacher;***, general education teacher; and Parent.

Respondent called***, special education teacher, and***, licensed specialist in school psychology.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following issues from the two-year period before the due process hearing request was filed for hearing in this matter:

1. Whether the District denied Student a free appropriate public education (FAPE) by failing to develop and implement an appropriate individualized education program (IEP) that provided academic and non-academic benefits.
2. Whether the District denied Student a FAPE by failing to implement Student IEP.
3. Whether the District denied Student a FAPE by failing to train its personnel appropriately.

4. Whether the District failed to provide Student instruction and services in the least restrictive environment appropriate to Student needs.

B. PETITIONER'S REQUESTED RELIEF

Petitioner seeks the following items of requested relief:

1. An order compelling the District to design and implement an appropriate IEP for Student;
2. An order compelling the District to train its personnel appropriately to implement the IEP referenced in No. 1 above;
3. An order compelling the District to provide compensatory education in an amount and character recommended by Petitioner's experts and private evaluators;
4. An order compelling the District to provide instruction and services in Student's least restrictive environment and specifically not to place Student at ***; and
5. Any and all further relief that the Judge deems appropriate, or which is recommended by Petitioner's experts and private evaluators.

C. RESPONDENT'S LEGAL POSITION

Respondent generally and specifically denies Petitioner's factual allegations and legal claims.

IV. FINDINGS OF FACT

Background Information

1. Student is a ***-old ***grade student in the District. Student lives with Student Parent and***.¹

¹ Joint Exhibit (JE) 1 at 1; JE 9 at 35.

2. Student receives special education and related services as a student with an Emotional Disability, Specific Learning Disability in basic reading skills and reading fluency with the condition of dyslexia^{***}, and an Other Health Impairment (OHI) due to Attention Deficit Hyperactivity Disorder (ADHD) and ^{***2}
3. ^{***}occurs when the section of the ^{*****}As a result, Student experienced headaches and ^{***}issues. Student had ^{***}surgery in March 2022. Parent told the District the surgery was successful.³
4. Student experienced ^{***} by Student biological Parent and has been diagnosed with ^{***}. As a result of Student history of ^{***}, Student has “trust issues” and experiences separation anxiety. Student may “^{***}”
5. In March 2022, Student had a private evaluation by Dr.^{***}, a licensed psychologist, due to exhibiting learning and behavioral challenges, including^{***}. ^{***}May 12, 2022 report yielded diagnoses of dyslexia and ADHD, combined presentation. ^{***}recommended Section 504 services. Recommended accommodations for inattention included preferential seating, chunking of assignments, positive reinforcement/encouragement, re-teaching of difficult concepts, visual representation of assigned work, and frequent breaks.⁵
6. Student began receiving Section 504 services in May 2022 as a student with dyslexia and ADHD. The District offered an admission, review, and dismissal

² JE 1 at 2.

³ JE 9 at 36; JE 13 at 2; Transcript (Tr.) at 202, 385-86.

⁴ JE 9 at 35-36; Tr. at 52, 58-59, 387, 391-92.

⁵ JE 13 at 1, 23-25, 29.

(ARD) committee meeting to review ***evaluation to determine if special education was needed. Parent declined.⁶

7. Student had a private neuropsychological evaluation in September 2022 (TIRR report). Student had behavioral issues across settings, including frequent ***attention and hyperactivity difficulties, ***Student's pattern of behavioral and social interactions occurred within the context of multiple previous exposures to ***. Student had significant difficulty ***consistent with a diagnosis of separation anxiety disorder.⁷
8. The TIRR Report recommended Section 504 services. Strategies to support attention included instruction in a small group setting; instruction in short sessions, punctuated by regular breaks that permit physical activity; presenting unfamiliar information and materials in chunks; use of materials which are stimulating and interesting to Student; and concrete rewards for task completion. Strategies to address fearful and anxious behavior included signaling the class when giving directions and having written directions; using a signal to let Student know Student turn is coming; having Student present to the teacher alone or through a video; extending time on tests to ease pressure; providing one person at school as a point person to check in with briefly (5-10 minutes); and allowing for breaks and use of a colored card to indicate a break is needed.⁸
9. Student's Section 504 committee convened on March***, 2023. Student had demonstrated negative behaviors more frequently over the past couple of months. Behaviors included ***

⁶ Petitioner Exhibit (PE) 1 at 1-4.

⁷ JE 12 at 1, 6.

⁸ JE 12 at 6-8.

***. A behavior intervention plan (BIP) targeting ***and work refusal was developed.⁹

10. Due to continued behavioral issues, Student's Section 504 committee convened again on May *** 2023 and made changes to Student BIP. The District recommended a special education evaluation. Parent did not consent.¹⁰
11. District employees receive training on working with students with a history of *** at the beginning of every school year. The District also provided BIP and IEP implementation training for staff.¹¹

2023-24 School Year – First Grade

12. Student began the 2023-24 school year at Student home campus, ***School.¹²
13. An initial ARD committee meeting convened on September *** 2023. Parent provided the District ***evaluation and the TIRR report. District staff determined no additional assessment was required to determine eligibility. Based on an OHI form completed by Student's pediatrician, Student met eligibility criteria due to ADHD, ***, and ***. Although *** is documented on this form, this condition does not fall under the OHI disability category, and the District considered it as an aspect of Student's later identified Emotional Disability. Student also met eligibility criteria as a student with a Specific Learning Disability in basic reading skills and reading fluency with the condition of dyslexia.¹³
14. The ARD committee requested a functional behavioral assessment (FBA). Parent requested that***, a Board Certified Behavior Analyst

⁹ PE 2 at 1-3; PE 3 at 1.

¹⁰ PE 4 at 2-4; PE 6 at 3; PE 8 at 1; Tr. at 205-06.

¹¹ Tr. at 95, 264.

¹² JE 7 at 10.

¹³ JE 7 at 4, 6, 19; JE 9 at 67; Tr. at 513.

(BCBA), conduct the FBA. A review of existing evaluation data was completed, and Parent provided consent to evaluate on September 7, 2023.¹⁴

15. The ARD committee reviewed Student's present levels of academic achievement and functional performance (present levels). Student displayed challenging behaviors such as impulsivity, inattention, and ***Student responded well to staff and teachers with whom Student felt a connection. When Student engaged in behaviors, Student missed anywhere from 30 minutes to two hours of instruction due to needing to calm down. This impacted Student academically and caused Student to fall behind.¹⁵
 16. The ARD committee reviewed Student academic present levels. Student knew Student letters and sounds and needed to work on blending two phoneme words and then three phoneme words. Student continued to struggle with decoding.¹⁶
 17. The September 2023 IEP included two English goals. A reading goal targeted reading a book on Student independent level and a reading fluency/dyslexia goal targeted using the relationship between letters and sounds to decode accurately when given a list of 10 site words.¹⁷
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18. The IEP included four behavior goals with numerous positive behavioral interventions and supports, including concrete reinforcers, cooling off period, defined physical space, encouragement for classroom participation, frequent reminders of rules, preferential seating/proximity control, and verbal prompts. One goal targeted throwing objects by using communication/visual cards to ask for a break, cool off time, or help in moments when Student felt overwhelmed; a *** goal ***A third goal targeted task refusal by attempting to complete a task using Student "if then board" to work for a preferred task after making an effort to complete or start an assigned task. A fourth goal targeted ***

¹⁴ JE 7 at 19, 21.

¹⁵ JE 7 at 6-7.

¹⁶ JE 7 at 8.

¹⁷ JE 8 at 1-2.

through requesting a preferred spot to sit or using Student cool off/break card to indicate Student needs.¹⁸

19. The District proposed a placement in the ***, a classroom for students experiencing behavioral challenges. Petitioner's advocate stated the family did not agree to an *** placement for the initial provision of services. The ARD committee agreed on a placement in the general education classroom with supports. Student's instructional schedule called for *** minutes per week of direct dyslexia instruction; *** minutes per day of in-class support in English language arts and reading (ELAR); *** minutes per day of in-class support per subject in science and social studies; and *** minutes per day of in-class support in math in the general education classroom.¹⁹
20. Accommodations included access to audiobooks; chunking assignments; cooling off period and a designated cooling off area; daily communication log; extra time; frequent breaks; frontloading transitions or changes; oral administration of tests; other methods of responses; positive reinforcers/encouragement; preferential seating/proximity control; reminders to stay on task; re-teach difficult concepts; spelling assistance; visual representation of assigned work; and a visual schedule.²⁰
21. The ARD committee mutually agreed on Student's services. Parent consented to the initial provision of services on September 7, 2023.²¹
22. In the general education classroom, Student liked to be near Student teacher, ***, and she was a trusted adult. Student spent much of the day by her side. Student had days with more or fewer behaviors, but Student behaviors increased during the time Student was in the general education classroom. ***was initially confined to a part of the classroom, then grew to more of the classroom, and then to the entire classroom. Task refusal became more

¹⁸ JE 8 at 2-3.

¹⁹ JE 7 at 9, 15, 19.

²⁰ JE 7 at 9-10.

²¹ JE 7 at 17, 22.

frequent, and Student began***. Student was frequently absent or pulled out of the classroom due to Student behaviors, making establishing a routine or structure difficult.²²

23. In addition to incentives, breaks, redirection, and intentional ignoring, ***used calming cards with pictures showing replacement behaviors such as taking a breath and counting. Student responded to ***Student on her lap. Student had a calming corner in the room and a special carpet Student could sit on. The teacher used stickers and drawing time as incentives. These interventions sometimes worked and sometimes did not.²³
24. Student's behaviors impacted the learning of other students in the general education classroom. When Student ***, the classroom had to be ***, sometimes more than once a day, from anywhere between a few minutes to more than an hour. Because the students *** to a neighboring classroom, these events impacted those students as well. *** became more frequent and lasted longer further into the semester. Student's behaviors created a safety risk for other students and staff who intervened.²⁴

November 2023 Full and Individual Evaluation

25. Student's full and individual evaluation (FIE) is dated November *** 2023. The multidisciplinary team consisted of a school psychologist/licensed specialist in school psychology, speech language pathologist, diagnostician, music therapist, and occupational therapist.²⁵
26. The speech language pathologist administered several assessments. On the Oral and Written Language Scales-II, Student demonstrated weaknesses in expressive language. Formal testing showed pragmatic language skills in the *** range and a skills inventory completed by Student classroom

²² Tr. at 354-55, 359, 361-62.

²³ JE 5 at 6; Tr. at 357-58.

²⁴ Tr. at 362-65.

²⁵ JE 9 at 1.

teacher showed pragmatic language skills in the *** range. On the Clinical Assessment of Articulation and Phonology, Student obtained a standard score that fell at the first percentile, indicating articulation skills in the *** range. Student had a *** that impacted the correct production of the *** in all contexts. Based on data collected through formal and informal assessments, Student presented with a moderate expressive and pragmatic language impairment and a *** articulation impairment. Speech therapy was recommended.²⁶

27. The FIE assessed Student in the area of emotional/behavioral functioning using informal and formal measures. Parent reported Student got upset easily, and when upset, Student could not regulate Student emotions and the situation could escalate quickly. Student moods could change very quickly. Student had including an ***. Student had difficulty with changes in routine. Student also had difficulty communicating Student thoughts and emotions when upset.²⁷
28. ***reported that Student strengths included being a *** Student was sweet, personable, intelligent, and organized. Behavioral concerns included becoming upset over small things resulting in***, classroom ***, and lost instructional time. The most significant behavioral concerns included***, and work refusal. Student's mood fluctuated throughout the day, going from okay to upset out of nowhere. Sometimes a hug would calm Student down. Other strategies included a visual schedule, break time, drawing, playing with putty, incentives, ignoring, redirecting, cool down areas inside and outside the classroom, and walking breaks.²⁸

²⁶ JE 9 at 23-30, 69, 77.

²⁷ JE 9 at 35-37.

²⁸ JE 9 at 38.

29. Student had *** office referrals so far during the 2023-24 school year—***, *** incidents of non-compliance, ***, and *** incidents of failure to follow the rules. Behaviors were refusing to come into the school, ***²⁹
30. The FIE included assessments and a review of other formal and informal data to evaluate whether Student had autism. Though Student displayed some characteristics of autism, Student did not meet eligibility criteria.³⁰
31. The school psychologist recommended counseling as a related service to address Student's deficits with emotional regulation. Goals should focus on teaching Student to understand, express, and control Student feelings (dealing with stress and frustration) and coping skills.³¹
32. Testing showed that Student had *** emotional/behavioral deficits, including work refusal, hyperactivity, anxiety, ***, ***, and difficulty regulating emotions leading to ***Student met criteria as a student with an Emotional Disability due to an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, a ***, inappropriate feelings under normal circumstances, and a tendency to develop physical symptoms or fears associated with personal or school problems.³²
33. Intellectual functioning was assessed using formal measures with scores falling in the average range in all cognitive areas. On the Woodcock Johnson IV Tests of Achievement, Student demonstrated scores within normal limits in Reading Comprehension, Math Calculation, and Math Problem Solving. Student scores in Basic Reading, Reading Fluency, Written Expression, and Spelling were below normal limits. Student met eligibility criteria as a student

²⁹ JE 9 at 38.

³⁰ JE 9 at 45-49, 66-67; Tr. at 513-14.

³¹ JE 9 at 49.

³² JE 9 at 65-66.

with a Specific Learning Disability in the areas of Basic Reading Skills, Reading Fluency, and dyslexia.³³

34. Recommendations for behavior and learning included a smaller, structured setting that focuses on social skills training, behavior, and social-emotional learning; a structured and predictable environment using schedules, creating a consistent routine with breaks, and clear and consistent expectations to help Student navigate daily tasks; a BIP; counseling as a related service; social skills training to help build positive relationships with peers and adults; regular breaks during tasks that allow Student to get out of Student seat and move around; breaking lessons and assignments into segments; lists and charts that give specific examples for how to accomplish tasks and activities; and warnings before transitions between activities.³⁴
35. Recommendations for academic interventions to improve reading fluency included repeated reading exercises, timed reading practices, modeling fluent reading, and providing feedback and encouragement. Other recommendations included breaking down text into smaller chunks, using visual aids, and practicing with high interest materials. To address Student dyslexia and reading skills, evidence-based interventions, such as multisensory reading programs and explicit instruction in phonics and decoding skills, was recommended.³⁵
36. BCBA *** conducted an FBA. Student identified and defined five problem behaviors, including disruption of activity, ***, task refusal, ***, and***.³⁶
37. ***completed the Functional Assessment Checklist for Teacher and Staff (FACTS Parts A and B). Data was collected on five school days between October 20, 2023 and October 26, 2023. Student had one documented incident each of ***Behaviors were more likely to occur during math, ELAR, and social studies; times in which whole group learning occurs; small group work stations; and when working independently.³⁷
38. Antecedents included removal of a preferred item/activity and when given an instruction/prompt. The hypothesized functions of Student's behaviors were gain (attention, desired item, activity etc.) and avoid/escape (demand, person, setting etc.). Previous effective strategies included proximity, choices, ***, cool down time with preferred people, and talking to Student Parent.

Ineffective strategies were reprimands and being told no.³⁸

39. The BCBA recommended a visual schedule and visual routines to help Student predict Student day; offering choices; not giving ultimatums; giving work in short chunks followed by a break; assigning helper tasks; use of timer and rewarding with a longer break if Student gets the work done; earning time to spend with preferred adults; checks for understanding when given assignments; pre-warn of transitions; and establishing places inside or outside the classroom where Student can go to calm down that are***. When Student became disruptive or***, Student must clean up the mess and do the work Student missed when Student is calm.³⁹
40. Student's ARD committee convened on December***, 2023. The committee reviewed the November 2023 FIE and recommended additional areas of eligibility, including Speech Impairment and Emotional Disability. Parent agreed with all aspects of the FIE, with the exception of the occupational therapy evaluation that did not recommend services.⁴⁰
41. Petitioner's advocate requested that the District provide formal training on***. A training for Student teachers and the campus nurse was conducted on February 28, 2024 by the District's Lead Nurse.⁴¹

³³ JE 5 at 33; JE 11 at 1; Tr. at 351.

³⁴ JE 5 at 34-35.

³⁵ JE 5 at 36.

³⁶ JE 5 at 4, 21-22; Tr. at 415.

³⁷ JE 5 at 22; Respondent Exhibit (RE) 4 at 14-17; Tr. at 478-79.

³⁸ JE 5 at 6; JE 6 at 2.

³⁹ JE 5 at 9.

⁴⁰ JE 5 at 9.

⁴¹ JE 6 at 2-4.

42. The ARD committee reviewed Student's present levels. Behavioral strengths were that Student is inquisitive, organized, sweet, and funny. Behavioral needs included verbal***, hyperactivity, work refusal, and ***/irritability. Teachers reported that Student was a "very smart and capable student." When Student was having a good day other students enjoyed playing with Student. Student could become easily frustrated, and it had been difficult for staff to identify Student triggers. Student had 19 discipline referrals between August 14, 2023 and December 5, 2023. Student classroom had been *** 12 times.⁴²
43. In reading, the dyslexia specialist reported that Student worked when she allowed Student choices, breaks, and incentives like Skittles or putty. Student needed tasks broken into smaller parts and struggled to work independently. Writing was not a preferred activity, and Student became***. Math was a preferred subject and Student math skills appeared to be on grade level, but Student behaviors made it difficult to know where any gaps in learning might be.⁴³
44. The combination of Student's academic challenges in reading, behavioral struggles, and health issues made it difficult for Student to successfully navigate the daily expectations of Student ***classroom. Despite the significant amount of inclusion minutes and behavioral supports in the classroom, Student struggled to regulate Student emotions and use strategies to calm down after becoming escalated. Student required 1:1 support to complete Student classwork.⁴⁴
45. The December 2023 IEP included 15 annual goals. Three English goals targeted decoding unfamiliar words, oral reading fluency, and spelling. A math goal targeted identifying whether a 1-2 step problem was

⁴² JE 6 at 4-5.

⁴³ JE 6 at 5-7.

⁴⁴ JE 5 at 25-26.

*** and showing Student work to solve. A science goal targeted compliance with instructions, doing steps in the right order, and using assigned tools correctly during a science activity. A social studies goal targeted compliance with expectations and turning Student body to engage in conversation or moving to the location Student is assigned to be.⁴⁵

46. The IEP included five behavior goals, including a disruption of activity goal on identifying negative and positive emotional states; an *** goal on asking for a two-minute break; *** goal on expressing Student wants and needs with words/visuals and identifying people who can help Student regain calm; a *** goal on asking for permission to remove Student to another area for calming time; and a task refusal goal on completing work then selecting items from a menu and giving Student two minutes with the item/activity. Each goal included positive behavioral supports, including prompts, visuals, a timer, and rewards. A counseling goal targeted coping skills through identifying and explaining at least two self-regulation/coping strategies (e.g., movement break, deep breathing, self-talk, calming activity).⁴⁶
47. The IEP included three speech goals. One goal targeted acquisition of expressive language skills by retelling a simple story or task using pictures. A second goal targeted acquisition of developmentally appropriate pragmatic skills by identifying the meaning of various types of nonverbal communication behaviors presented through role play, pictures, and/or videos. A third speech goal targeted acquisition of developmentally appropriate articulation by correctly producing the *** in single words.⁴⁷
48. Student's BIP targeted the five behaviors identified in the FBA and specified behavioral interventions and consequences.
 - Disruption of Activity: Present work in chunks, use positive feedback once completed, and give a 2-minute break before presenting the next chunk.

⁴⁵ JE 5 at 11-12, 25-26; JE 12 at 7-8; Tr. at 514-19.

⁴⁶ JE 5 at 23-24; Tr. at 33, 35, 43.

⁴⁷ JE 5 at 11-14, 23.

Before Student starts ***, offer an opportunity to speak with someone who can help Student. Praise appropriate behavior. Consequences: when calm, Student must clean up any messes Student has made. *** because of Student behavior, Student must apologize to Student peers.

- ***: When upset, get Student to identify people who could help Student calm down, including Student Parent or ***. When giving Student choices, make sure all are acceptable choices not ultimatums. Praise appropriate behavior. Consequences: when Student ***or accidentally, Student must apologize when Student is calm.
- Task Refusal: Before transitions, give a warning in minutes and what the next assignment will be and have Student check Student visual schedule. When giving timeframes for completing an assignment, use a timer. Work demands should be clearly stated and kept short, followed by a 2-minute break. Encourage to use words/visuals to ask for what Student wants/needs then help Student get those needs met appropriately. Praise appropriate behavior. Consequences: ***
- ***Remind Student that when Student is upset, Student can always ask for a break. Assign daily tasks in the classroom and deliveries to the front office to give movement time. Remind Student of the safe places Student can remove Student to when upset. Consequences: keep in line of sight. When returning Student to a designated area, do not reprimand and keep talking to a minimum of answering any questions. Once Student has returned to a designated area, prompt Student to spend some time in a safe place provided for Student.
- ***When giving assignments, present with at least three choices of how to complete the required work. Allow processing time when giving instructions along with prompts and encouragement to do Student best. Praise appropriate behavior. Consequences: when calm, complete the

assignment which was delayed because of Student behavior. *** Student should apologize to peers.⁴⁸

49. Student's IEP and BIP incorporated numerous recommendations to support inattention and fearful and anxious behavior from the TIRR report.⁴⁹
50. The ARD committee agreed that Student would move to the *** at *** beginning in January 2024. The *** uses a *** system. Students begin ***. To advance *** a student must obtain a certain percentage on behavioral objectives over a set number of days. Behavioral data is tracked *** where the teacher documents behavioral incidents for behaviors in a student's BIP. *** students remain in the *** self-contained classroom and must maintain a minimum of 52 of 58 points (90%) for each behavioral objective for five cumulative school days before advancing *** where they participate in two general education classes.⁵⁰
51. All academic supports would be provided in the ***, including *** minutes per day of direct instruction in ELAR, 45 minutes per day of in-class support in science, *** minutes per day of direct instruction in social studies, 90 minutes per day of direct instruction in math, and *** minutes per day of direct instruction in physical education/fine arts. Other services included speech therapy for *** minutes eight times per nine weeks, special education counseling for *** minutes five times per nine weeks, and dyslexia instruction for *** minutes four times per week.⁵¹
52. The ARD committee meeting ended in agreement.⁵²

⁴⁸ JE 5 at 19-20.

⁴⁹ JE 4 at 3; Tr. at 434-37, 470-72.

⁵⁰ Tr. at 436, 442.

⁵¹ RE 4 at 18; Tr. at 439, 474.

⁵² Tr. at 443-44, 474-76.

January 2024 – May 2024 (** at**)

53. When Student started in the ** at**, Student did not speak for approximately two weeks. **connected with Student after learning Student ** and she became a trusted adult. Student also developed a good relationship with the principal and regularly had lunch with her. Student did not initially have behavioral concerns apart from work refusal. As of March 6, 2024, Student had no disciplinary referrals since starting in the **. ⁵³
54. **provided Student's academic support one-on-one because Student did not work well with aides and only wanted to work with her. Student exhibited behaviors when she was not present. ⁵⁴
55. On or around February **, 2024, Student reached **, allowing Student to participate in two out classes—** and math. Student, however, went back** after becoming upset because another student looked at Student funny in an out class. Student “**which necessitated **. ⁵⁵
56. After that, Student had significant behaviors on a daily basis for the rest of the semester.**, occurring on a daily basis, was the main behavior seen. For reasons that were often unknown or something minor**, Student would **When Student calmed down, Student wanted **. ⁵⁶
57. Student's behavior, **and **, created a safety risk for others in the classroom and resulted in ** the classroom. ⁵⁷

⁵³ Tr. at 444.

⁵⁴ JE 18 at 1-6.

⁵⁵ JE 22 at 1-8; JE 27 at 1-4; RE 3 at 42.

⁵⁶ RE 4 at 1-2; Tr. at 450-51, 458-59, 495-96.

⁵⁷ RE 1 at 1.

58. For the reporting periods ending on March ***, 2024 and May ***, 2024, Student made progress on each of Student behavioral goals. Student participation in counseling increased in the period ending on May ***, 2024.⁵⁸
59. During the spring semester, Student fully participated in dyslexia lessons for 24 sessions, partially participated in 11 sessions, refused to work during 13 sessions, and was absent 12 days. To encourage participation, the dyslexia specialist ordered a *** coloring book and broke the *** minute sessions into five minute sessions followed by a two minute break to color. This strategy was “somewhat effective.” Reading interventions were provided using the *** Program. The program consists of 25 units, each with five lessons. By the end of the 2023-24 school year, Student had learned the concepts in Units 1-9 and was working in Unit 10.⁵⁹
60. At the end of the 2023-24 school year, the District sought a recommendation from *** for Student’s program for the next year. She recommended the *** Program, a behavioral program operated on a separate campus, because it has additional resources and staff to support students with significant behavioral needs. Student required a level of support Student could not receive in the ***. However, due to parental concerns with this placement, special education leadership determined Student would continue in the *** the next school year and be given an opportunity to advance in the level system during the first grading period.⁶⁰
61. Between January 3, 2024 and May 23, 2024, Student was absent 12 times (***).⁶¹

2024-25 School Year – *The location of the *** changed and Student transferred ***at the beginning of the 2024-25 school**

⁵⁸ Tr. at 33-35.

⁵⁹ RE 3 at 43; Tr. at 46-47, 58.

⁶⁰ PE 16 at 15-16; RE 3 at 74; Tr. at 72-74, 79.

⁶¹ PE 16 at 16; Tr. at 75-76, 106, 124, 169-70, 451.

year. Because Student was on *** at the end of the 2023-24 school year, Student began Student time at *** on ***.⁶²

62. Student had difficulty leaving Student Parent when dropped off at school in the morning. The assistant principal, ***, would greet Student most mornings and bring Student to the classroom. She regularly visited Student classroom and visiting her was a reward for good behavior. However, Student's behavior could escalate when it was time for her to leave.⁶³
63. As of October 4, 2024, of the 22 days Student attended school, data on the five behaviors targeted in Student BIP showed ***Due to continued behaviors as documented in *** and Student's lack of progress on exiting Level 1, on October 2, 2024, the assistant principal sent Student's teacher a packet of information on the *** Program with instructions to begin assembling an admission packet. *** admission behaviors include ***Student met all three criteria for admission to the *** Program.⁶⁴
64. The *** Program is operated on a separate campus and uses a multi- systemic approach to teaching academic and behavioral skills that relies on the applied behavioral analysis and social-emotional learning frameworks. Academic and behavioral interventions are individualized to facilitate the student's success and return to the general education campus. The *** Program has dedicated behavior interventionists on campus, a dedicated special education counselor, smaller class sizes, and a smaller student to staff ratio, with six students with a teacher and a paraprofessional, or a one to three ratio. All staff are trained to work with students with behavioral concerns.⁶⁵

⁶² RE 3 at 50-58.

⁶³ Tr. at 43-44, 138, 306-10, 316-18.

⁶⁴ Tr. at 259, 265-66.

⁶⁵ Tr. at 115-16, 270-71, 288-89.

65. The District attempted to convene an ARD committee meeting to discuss a change in placement in October. Parent and Student advocate refused to convene before Student annual meeting in November.⁶⁶
66. During the 2024-25 school year, Student had three *** teachers. The first teacher, ***, was a trusted adult and Student wanted to be with her all the time. She resigned in October.***, the other *** teacher at***, filled in for approximately two and a half weeks while a new teacher was located. Student made some academic progress while working with***, but Student required one on one attention and instruction to complete work. Student continued to struggle behaviorally.⁶⁷
67. ***was the *** teacher starting in mid-November. When she began working with Student, Student was timid and shy and did not speak but Student opened up after they spent time together and she became a trusted adult.⁶⁸
68. Student's behavior was unpredictable. It was a "guessing game" of when things would escalate. Some days Student would come in and immediately begin having behaviors. Other days Student would come in and sit. Behaviors included***. Student's behaviors resulted in lost instructional time for Student classmates when the classroom was ***. Student's behaviors also resulted in *** getting hurt.⁶⁹
69. Student had Student own area in the *** designated for cooling off. Student was provided a***.

⁶⁶ Tr. at 63-64, 102-03.

⁶⁷ JE 26 at 1-88; Tr. at 96, 194-95, 285, 308, 482-83.

⁶⁸ RE 2; Tr. at 102.

⁶⁹ Tr. at 45, 112, 121, 406.

*** posted a visual schedule and used visual timers so Student could see what was coming up next.⁷⁰

70. Student began engaging in ***, *** during the 2024-25 school year, which increased towards the end of the school year. This led to an increased number of restraints. Student was *** between January 14, 2025 and May 21, 2025 for ***

*** teachers and paraprofessionals captured daily behavioral data in ***. Daily reports were provided to Parent. The data collected documented almost daily behavioral incidents, including ***, and non-compliance.

If Student continued to exhibit behaviors for an extended period of time or exhibited *** behavior and efforts to calm Student down were not successful, the campus would contact Student Parent or *** to help calm Student down. Parent was regularly called to pick up Student ***.⁷³

71. Student's ARD committee convened on November *** 2024 for an annual review. The committee reviewed Student present levels, including behavioral data collected through the ***. Since Student last annual review, the data on each of the behaviors targeted in Student BIP was as follows:

- Disruption of Activity: 148 incidents out of the 101 days scored.
- *** 167 incidents out of 101 days scored.
- ***: 56 incidents out of 101 days scored.
- ***: 122 incidents out of 101 days scored.

⁷⁰ JE 2 at 4, 6.

⁷¹ JE 2 at 6, 19; JE 26 at 90-112.

⁷² JE 2 at 7.

⁷³ JE 2 at 7, 19.

- Task Refusal: 174 incidents out of 101 days scored.⁷⁴
72. Student had been restrained *** times for behaviors ranging from***. Student did not master any of Student behavior goals.⁷⁵
73. Student was refusing to participate in counseling and frequent absences impeded Student progress. Counseling sessions were attempted on three occasions, and Student***. Student was absent four times.⁷⁶
74. Student had made progress in speech. Student mastered two of three speech goals, including Student expressive language and articulation goals. Data was not collected on Student pragmatic language goal due to lack of participation. Since enrolling at***, Student attended all speech sessions for the first nine weeks and only one session the second nine weeks due to absences.⁷⁷
75. The dyslexia specialist had been attempting to work with Student since August ***, 2024. No data had been collected because Student either refused to participate or was absent. When she went to the ***, Student either refused or went *** and refused to come out. The dyslexia specialist tried several things to gain Student interest, including a *** coloring book, reward system with stickers, colored pencils, allowing Student to use the computer, and playing games, all without success.⁷⁸
76. In academics, Student exceled in math and science, with strong skills and interest in these subjects. Student demonstrated weaknesses in certain reading

⁷⁴ JE 2 at 19.

⁷⁵ JE 2 at 7-8.

⁷⁶ JE 2 at 9-10.

⁷⁷ JE 2 at 23-29.

⁷⁸ JE 2 at 15, 17-18, 21.

areas, particularly in basic reading, reading fluency, and written expression. Task refusal further impacted Student progress in these areas.⁷⁹

77. For the remainder of the 2024-25 school year, Student's proposed instructional schedule called for *** minutes four times per week of direct dyslexia instruction; *** minutes per day of direct instruction in ELAR; *** minutes per day of direct instruction per subject in science and social studies; *** minutes per day of direct instruction in math; and *** minutes per day of direct instruction in physical education/fine arts. Other services included speech therapy for *** minutes eight times per nine weeks and special education counseling for *** minutes five times per nine weeks.⁸⁰
78. The ARD committee conducted a functional behavioral review and found that Student's BIP continued to be appropriate, but recommended additional strategies. The BIP was revised to include two new strategies for disruption of activity and task refusal. When the behavior was connected to academic work, Student would be given the option of finishing the assignment on a computer because Student often had trouble completing work with a writing component. In addition, as requested by the family, the BIP now used the terms "regroup" or "restart" after a behavior and offered Student a choice of which assignment or directive to get started on. The "regroup" or "restart" strategy was also added to the physical aggression, elopement, and property destruction elements of the BIP.⁸¹
79. The committee considered Student's educational placement. Student was not progressing in Student current program of instruction, and the District recommended a change in placement to the *** campus to provide a smaller class setting to help support academic and behavioral growth. Parent disagreed with the proposed placement at ***. The meeting ended

⁷⁹ JE 3 at 2-5, 9-10.

⁸⁰ JE 3 at 6-8.

⁸¹ PE 16 at 24-26; Tr. at 160-62, 196-201, 268-74.

in disagreement. Reconvene meetings on December ***, 2024 and January ***, 2025 also ended in disagreement.⁸²

80. Three dyslexia goals were developed, including decoding, spelling, and fluency goals. The IEP also included goals in math, science, and social studies. A physical education goal targeted developing positive self-management and social skills needed to work independently and with others in a physical activity setting by not walking out of the area unattended or getting in a ***with peers or staff. Speech goals focused on producing *** in conversational speech and answering hypothetical questions about everyday situations and social scenarios.⁸³
81. Behavior goals targeted each of the behaviors identified in Student's BIP and remained the same apart from how they would be measured. A counseling goal focused on identifying negative feelings Student was experiencing (i.e., anger, anxiety, stress, frustration, etc.) and practicing expressing negative emotions appropriately by using words to express Student feelings and identifying coping tools to use when frustrated at school.⁸⁴
82. Between approximately mid-January through March, at the campus' request, District administration sent two behavior interventionists to observe and provide suggestions, support the teacher and students in the ***, including at times providing direct support to Student. ***did not see a change in Student's behavior from the behavior interventionists being in the classroom. Student's frequent absences also made it difficult to determine whether the work with the behavior interventionists had a positive effect.⁸⁵
83. Student's ARD committee convened on February***, 2025 for a manifestation determination review. On***, 2025, Student***. Student also ***the

⁸² JE 1 at 2, 7-8.

⁸³ JE 21 at 1-8; RE 5 at 1-15; Tr. at 226-27, 230, 235-37.

⁸⁴ JE 21 at 7; Tr. at 247.

⁸⁵ JE 14 at 1; Tr. at 60-61, 116, 206, 409-10.

student. Student then ***the other student, causing Student***. The ARD committee found the conduct was a manifestation of Student's disability and Student placement did not change.⁸⁶

84. Student continued to refuse direct dyslexia instruction throughout the 2024-25 school year. Student completed only one partial unit of the **** Program due to refusal to participate in the lessons and absences from school. Dyslexia instruction was attempted every day Student was not absent. Even when Student refused to participate, the dyslexia interventionist would remain in the classroom during the allotted instructional time.⁸⁷
85. On the Diagnostic Decoding Survey given in May, Student read *** one syllable short vowel words correctly and *** nonsense words correctly. Student refused to participate in other aspects of the survey. Student read a ***grade end of the year passage at***.⁸⁸
86. Between August ***, 2024 and May ***, 2025, Student was absent *** times (** excused absences, 54 unexcused absences). Absences were often related to medication changes and medical appointments. However, Parent was "petrified" to send Student to school after November 2024 due to fear that Student would be sent to *** with or without Student permission. Student's absences hindered establishing a consistent schedule and routine, consistency in working with Student, and resulted in significant lost instructional time.⁸⁹

⁸⁶ JE 17 at 1-5.

⁸⁷ Tr. at 37-38, 64, 113-14, 155, 457.

⁸⁸ Tr. at 421.

87. Apart from Student math and articulation goals, progress reports for the periods ending on March **, 2025 and May ***, 2025 reflect limited progress primarily due to absences and refusal to participate when present.⁹⁰
88. Student remained on *** for the entire 2024-25 school year. Because Student was on ***, Student received all instruction from the *** teacher, including instruction in art, music, and physical education.⁹¹
89. Student has yet to attend *** due to stay put.⁹²

V. DISCUSSION

A. BURDEN OF PROOF

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). 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). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 62; *Endrew F., ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

B. DUTY TO PROVIDE A FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education 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 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. FAPE

The Four Factors Test

The Fifth Circuit has articulated 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 (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, .320, .323(a). While the IEP need not be the best possible one nor 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 and BIP is to consider Student strengths, Student parent's 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 impedes Student learning and that of others, the District must also 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 evidence showed that the academic and behavioral components of Student's IEPs were individualized on the basis of assessment and performance.

a) Academic Program

Student is eligible for services as a student with a Specific Learning Disability in basic reading skills and reading fluency with the condition of dyslexia. Student's IEPs called for *** minutes per week of direct dyslexia instruction. Present levels from the September 2023 meeting indicated Student continued to struggle with decoding. Student September 2023 IEP included a reading fluency/dyslexia goal targeting using the relationship between letters and sounds to decode accurately

when given a list of 10 site words. The December 2023 IEP included goals targeting decoding unfamiliar words, oral reading fluency, and spelling, Student's deficits identified in the FIE. The November 2024 IEP included three dyslexia goals, including decoding, spelling, and fluency goals. Student's program was individualized in this area.

Student is eligible for services as a student with a Speech Impairment. The FIE found that Student had a moderate expressive and pragmatic language impairment and a severe articulation impairment and recommended speech therapy. The December 2023 and November 2024 IEPs called for speech therapy for *** minutes eight times per nine weeks. The IEPs included goals targeting Student's speech deficits identified in the FIE, including the acquisition of expressive and pragmatic language skills and appropriate articulation through the correct production of the *** phonemes in single words and conversational speech. Student's program was individualized in the area of speech.

Despite achievement testing showing that Student's Math Calculation and Math Problem Solving skills were within normal limits and math being a strength for Student, Student IEPs appropriately included math goals given Student difficulty completing work independently despite Student ability to do grade level work. Student similarly had difficulty completing work independently in science and social studies and Student IEPs included goals in these areas. Importantly, the science and social studies goals in the December 2023 IEP were functional in nature, with a science goal targeting compliance with instructions, doing steps in the right order, and using assigned tools correctly. A social studies goal targeted compliance with

expectations and turning Student body to engage in conversation or moving to the location Student is assigned to be.

These goals were appropriate given Student's need to comply with instructions to access academic work.

b) Behavioral Program

Student has been diagnosed with ADHD and experiences inattention and hyperactivity. Student IEPs included each of the accommodations to address inattention recommended in *** evaluation and recommendations from the TIRR report, including preferential seating, chunking of assignments, positive reinforcement/encouragement, re-teaching of difficult concepts, visual representation of assigned work, and frequent breaks.

The FIE identified emotional regulation as an area of need and recommended counseling as a related service to address this deficit, with goals focusing on teaching Student to understand, express, and control Student feelings and develop coping skills. Student's December 2023 and November 2024 IEPs included counseling for *** minutes five times per nine weeks. The December 2023 IEP included a counseling goal aimed at developing self-regulation and coping skills and Student's November 2024 IEP included a counseling goal focused on identifying negative feelings and practicing expressing negative emotions appropriately by using words to express Student feelings.

Student has a significant history of behaviors at school and these behaviors are consistent with Student Emotional Disability, including ***. Developing a relationship with Student and gaining Student trust are important to making Student feel safe and getting Student to engage in classroom instruction. Student formed trusting relationships with Student teachers, including***. Despite relationships with trusted adults, however, Student's behaviors persisted. In addition, Student connection to a particular adult could result in behaviors if that person was not available or working with another student.

At least with regard to academic instruction, Student responded particularly well to *** during the brief time Student was Student's *** teacher in October and November 2024. However, *** effectively had to delegate responsibility for instructing the other students in the classroom to paraprofessionals so Student could work with Student. Moreover, while the arrangement perhaps yielded some academic gains, it did not result in behavioral progress, with Student continuing to engage in behaviors in the *** classroom, including *** behaviors, during this time.

Student's BIP was based on a comprehensive FBA by a BCBA. The BIP addressed each of the five behaviors identified in the FBA—disruption of activity, ***, ***, ***, and task refusal. Student's IEPs included behavior goals targeting each of these behaviors. Both the BIP and IEP included numerous positive behavioral interventions and supports. In November 2024, the ARD committee updated Student's BIP to include additional strategies to address disruption of activity and task refusal related to academic work, and in

particular written work, by giving Student the option of finishing the assignment on a computer. In addition, as requested by the family, the BIP now used the terms “regroup” or “restart” after a behavior and offered Student a choice of which assignment or directive to get started on.

Student’s unique needs include Student *** history and *** diagnosis. Petitioner alleges the District failed to develop a program for addressing Student’s behavior that appropriately took this history into account. However, many of the recommendations included in the TIRR report related to address fearful and anxious behavior were included in Student’s IEP. For example, the TIRR report recommended having Student present to the teacher alone or have Student video the presentation at home. Student’s IEP allows for other methods of response. The TIRR Report recommended providing extra time and this accommodation was included in Student’s IEPs. The TIRR Report recommended having one person at school who understands Student’s worries and anxieties. Student BIP includes the strategies of offering Student time to speak with someone who can help Student; getting Student to identify people who can help Student calm down, including Student Parent or ***; and reminding Student of the points Student can earn by cooperating and that those points can be exchanged for time spent with a preferred person. The TIRR Report recommended the use of a break card. The IEP includes frequent breaks as an accommodation, and teachers used a break card as a strategy. The BIP also includes as strategies breaks throughout the day and two-minute breaks after a work demand.

While Student’s response to the interventions included in Student IEP and BIP

was mixed, they were nonetheless based on assessment and performance and included

extensive positive behavioral interventions and supports. Petitioner did not present evidence that the interventions were not appropriate or that Student program should have included different interventions but did not.

Even after the District recommended placement at ***, it made efforts to continue to support Student in the **. Between mid-January through March 2025, District administration sent two behavior interventionists to observe and provide suggestions, including at times providing direct support to Student. Student's behavior, however, did not improve even with this additional support in the ** classroom. Student's frequent absences during this time also undercut these efforts.

Overall, the evidence showed the District developed IEPs based on assessment and performance to address Student's behaviors. Petitioner failed to offer sufficient evidence about what was wrong with the goals, BIP, or other interventions and offered no expert or educator testimony about what Student required but was not receiving. Without that information, the Judge is unable to determine that Student's program was not individualized on the basis of assessment and performance in the area of behavior.

As discussed below, the weight of the credible evidence supports the conclusion that it was not Student's program as designed, but rather absences and a prolonged period in an inappropriate placement, that presented the most significant

challenges to Student success.

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. *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.

a) * Placement**

By the time Student began receiving special education services in September 2023, Student already had a significant history of behavioral challenges at school. The District initially proposed an *** placement but granted Parent's request to first attempt placement in the general education classroom with in-class supports, which included *** minutes per day in ELAR; *** minutes per day per subject in science and social studies; and *** minutes per day in math. Even with a significant number of inclusion support minutes, Student struggled behaviorally and academically in the general education classroom.

Student had 19 discipline referrals between August ***, 2023 and December ***, 2023. Student classroom was *** 12 times. According to the classroom data gathered for the FBA, in just one week in October 2023, Student had 29 documented incidents of *** (average daily rate 5.8); 47 documented incidents of task refusal (average daily rate 9.4); and 70 documented incidents of *** (average daily rate 14.0). ***, the general education teacher, implemented a variety of strategies to support Student behavioral

needs, including a visual schedule, break time, drawing, playing with putty, incentives, ignoring and redirecting, establishing a cool down area in the classroom, providing a cool down room outside the classroom, and walking breaks. Despite these strategies, Student's behaviors increased over the fall semester.

Student received limited educational benefit in the general education classroom. Due to Student behaviors, Student missed anywhere from 30 minutes to two hours of instruction due to needing to calm down. Student's behaviors in the general education classroom also resulted in lost instructional time for Student classmates when the classroom was *** and impacted the education of students in neighboring classrooms that received the students during ***.

Student required one on one instruction in the general education classroom to complete academic work and, even with this support, Student engaged in significant task refusal. Finally, the *** placement was consistent with the recommendation in the November 2023 FIE for a smaller, structured setting that focuses on social skills training, behavior, and social-emotional learning.

It is clear from the record that, even with substantial supports and one on one instruction, Student required a higher level of behavioral and academic support than could be provided in the general education classroom. The weight of the credible evidence supports the conclusion that, as of December 2023, the *** was Student least restrictive environment.

b) Proposed * Placement**

After being placed in the *** at ***School in January 2024, Student had a period of time where Student behavior improved to the extent that Student advanced to *** relatively quickly in February 2024. This period was, however, short-lived. After a significant behavioral incident in a general education class, Student went back to *** and remained on *** for the remainder of the 2023-24 school year and for the entire 2024-25 school year. Within the structure of the *** system, this means that Student was unable to maintain behavioral expectations for five cumulative school days in order to reach ***. Student inability to do so reflects the frequency and persistence of Student's behaviors. Student's presence in the classroom created a substantial impact on other students. Student's behaviors in the *** resulted in lost instructional time for Student classmates when the classroom was *** and resulted in *** getting hurt.

The District allowed for sufficient time to see if Student's needs could be met in the *** before recommending ***. The *** classroom teacher from the 2023-24 school year recommended it for Student at the end of that year. However, District administration decided to give Student an opportunity to progress in the *** at ***before recommending a change in placement. When the District began the admission process in October 2024, Student had been in the *** since January 2024. Ten months later, Student continued to struggle behaviorally and was now engaging in *** behavior at school.

Student has complex behavioral issues the District was attempting to address. These efforts were hamstrung at least in part by Student's continued placement in the *** for several months after it was first recommended due to the delay in convening an ARD committee to discuss a change of placement until the end of November 2024 and the stay put provision after Petitioner filed this suit. During that time, Student's behavior did not improve. Student continued to engage in *** and other significant behaviors, with a marked increase in *** utilized during the spring semester of the 2024-25 school year. It was clear from the record that the SESC was not an appropriate placement for Student and that Student needs a higher level of support than even this self-contained setting could provide.

Student's need for one-on-one instruction can be better accommodated at ***, which provides a lower staff to student ratio. Indeed, the *** Program is designed to assist students with significant behavioral issues like Student. Unlike ***, the campus has dedicated behavior interventionists to support the students and teaching staff and assist with de-escalation and a dedicated special education counselor. Paraprofessionals also receive additional training on working with students with behavioral needs.

Though on a separate campus attended only by students with behavioral challenges, the *** Program has certain aspects that are less restrictive than the SESC. Students are not on a *** system and thus all have more access to recess, lunch, and specials outside the classroom, allowing them to practice transitions, an area where Student significantly struggled.

Even with the use of supplemental supports and services, Student was not successful in either the general education classroom or the *** at either campus. The evidence showed that the *** Program is Student's least restrictive environment at this time.

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.*

The record evidenced numerous instances of collaboration between the parties and the District's attempts to accommodate Parent's requests. For example, though it initially proposed an *** placement, the District accommodated Parent's request to first attempt a general education placement with inclusion

supports. The District conducted a training on *** at Parent's request. Student's IEP goals were updated with input from Petitioner's advocate.

ARD committee meeting deliberations, as well as witness testimony, reflect that Petitioner's advocate largely spoke for the family. The assistant principal at ***, described meetings as "very combative," with Petitioner's advocate "pointing the blame" and focusing on what the District was doing wrong in her eyes instead of solutions. This dynamic is reflected in the record from meetings. This was a breakdown in the collaborative process and a missed opportunity to learn from Parent, the person who knows Student best. Another example of the breakdown in the collaborative process occurred when Parent and Student advocate refused to convene for an ARD committee meeting to discuss Student's placement in the fall of 2024. This lack of responsiveness resulted in Student's continued placement in a setting that was not meeting Student needs.

The District's recommendation to send Student to *** is a significant point of contention between the parties. The District convened three ARD committee meetings in an attempt to reach agreement on Student's placement. Parent took issue with what Student perceived as the District "threatening" to send Student there with or without Student permission. This perception resulted in Parent not regularly sending Student to school after November 2024. Not only does this reflect the deteriorated relationship between the parties by that time, it also reflects a misunderstanding of the process, including the District's obligations under stay put, even though Petitioner was represented by an advocate and/or attorney.

In conclusion, this factor favors the District. To the extent there was lack of collaboration, it was attributable to Parent for the reasons discussed. Petitioner failed to establish that the District excluded Parents in bad faith or refused to listen to them.

4. Academic and Non-Academic Benefits

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

Student is intelligent and capable of doing grade level work when Student is present and participates in instruction. Student's absences were a tremendous barrier to both behavioral and academic progress. Student missed a significant amount of instruction during the 2023-24 school year and was absent *** times, or approximately one third of the time, during the 2024-25 school year. Simply put, Student cannot benefit from instruction Student is not at school to receive. In addition, Student's reluctance to engage in instruction when Student attended school not only hindered Student progress but prevented gathering data. As a result, Student true level of progress is difficult to determine.

During the 2023-24 school year, Student made progress in dyslexia instruction. Student began the year working in Lesson 1 of the *** Program and ended the year working in Lesson 9. During the 2024-25 school year, Student made limited progress due to Student refusal to engage in direct dyslexia instruction the entire year. Student completed only one partial lesson. Despite this, on the May 2025 Diagnostic

Decoding Survey, Student read ***accuracy, reading 50 words correct per minute, an improvement since March 2025.

Speech is an area where Student made progress, mastering Student December 2023 IEP expressive language and articulation goals. Student's progress on Student articulation goals is notable, and Student mastered Student December 2023 IEP goal of producing the *** phonemes in single words. As of May ***, 2025, Student was expected to master the November 2024 IEP goal of correctly producing *** in conversational speech by Student next annual review.

For the reporting periods ending on March ***, 2024 and May ***, 2024, Student made some progress on each of Student behavioral goals. During that period, Student attended school more frequently and it is reasonable to infer that Student improved attendance contributed to these gains. Overall, however, Student did not make behavioral progress. Indeed, Student behaviors became more severe and persistent over the relevant time period. As discussed above, the evidence supports the conclusion that Student's behavioral progress was hampered by absences and a prolonged placement in a setting that was not appropriate to meet Student complex and extensive behavioral support needs.

D. IEP IMPLEMENTATION

When determining whether a school district failed to adequately implement a student's IEP, the judge must consider whether there was a significant or substantial failure to implement the IEP and whether there have been demonstrable academic

and non-academic benefits from the IEP. *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1389 (2021). Petitioner must show more than a de minimis failure to implement all elements of Student's IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

Petitioner argues that the District failed to implement the art, music, and physical education components of Student's IEP while in the ***. Student's instructional schedule in the December 2023 and November 2024 IEPs called for *** minutes of direct instruction in physical education and fine arts in the special education setting by the special education teacher. Apart from a brief time in the spring of 2024, Student remained on *** and received all instruction in the ***, including in these subjects. Thus, while Student did not receive instruction in these subjects in the general education setting, the evidence supports that Student did receive it, with each *** teacher testifying that the instruction was provided in the ***.

With regard to dyslexia services, Student was less and less engaged in this instruction over the relevant time period. During the fall of 2023, though Student had difficulty working independently, Student participated in dyslexia instruction. In the spring of 2024, Student participated in 24 sessions, partially participated in 11 sessions, refused to work during 13 sessions, and was absent 12 days but still completed Lessons 1-9 of the *** Program. During the 2024-25 school

year, Student refused to participate or was absent for almost every lesson, completing only one lesson in the Phonics Blast Program. The dyslexia interventionist came to the classroom every time instruction was scheduled and stayed throughout the lesson even if Student would not participate. In addition, she tried numerous strategies to gain Student interest, including a *** coloring book, a reward system, allowing Student to use the computer, and playing games. In this case, the District was ready, willing, and able to provide the instruction set forth in Student's IEP. However, the missed services were attributable to Student's absences and refusal to participate when present.

Finally, though Parent in Student testimony asserted that the District did not implement Student's BIP, Petitioner did not offer sufficient evidence to support this allegation. While, as discussed, Student was not always responsive to the interventions, the evidence does not support the contention that the interventions were not provided or that the District failed to implement substantial or significant provisions of the IEP.

E. STAFF TRAINING

Petitioner alleges the District failed to train its personnel appropriately to meet Student's needs. Special education and related services must be provided by "qualified personnel" who are appropriately and adequately prepared and trained, and who possess the content knowledge and skills to serve children with disabilities. 34 C.F.R. § 300.156(a).

At Petitioner's request, the District trained staff working with Student on ***However, it was not clear from the record to what extent, if any, *** continues to impact Student's learning. The District sought to ensure that personnel were adequately trained. District employees receive training on working with students with a history of *** at the beginning of every school year. The District also provided BIP and IEP implementation training to staff.

Student's history of *** and the *** Student experienced by Student biological Parent continues to impact Student. However, Petitioner failed to offer sufficient evidence of the type of training District personnel needed and did not have or how a lack of training prevented Student from making progress. No evidence was presented as to what training Petitioner believes District personnel should have received and did not. Therefore, Petitioner did not meet Student burden on this claim.

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. The District provided Student a FAPE during the relevant time period, and Student IEPs were reasonably calculated to address Student 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); *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).
3. Petitioner did not meet Student burden of proving that the District failed to implement substantial or significant provisions of Student's IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

4. Petitioner did not meet Student burden of proving that the District failed to train its personnel appropriately. 34 C.F.R. § 300.156(a).
5. Petitioner did not meet Student burden of proving the District failed to provide Student instruction and services in the least restrictive environment appropriate to Student needs. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989).

ORDER

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

Signed October 20, 2025.

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

Kathryn Lewis

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).