

SOAH Docket No. 701-24-22075.IDEA  
TEA Docket No. 360-SE-0724

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

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

**v.**

**Klein Independent School District,  
Respondent**

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## **FINAL DECISION**

### **I. STATEMENT OF THE CASE**

Student. (Student), by next friend Parent. (Parent and, collectively, Petitioner), brings this action against the Klein 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 issue in this case is whether the District offered Student a free appropriate public education (FAPE) during the 2023-2024 and 2024-2025 school years. The

Administrative Law Judge (Judge) concludes that Petitioner has not proven by a preponderance of the evidence that the District failed to offer Student a FAPE during the 2023-2024 and 2024-2025 school years.

## **II. DUE PROCESS HEARING**

Petitioner was represented in this litigation by attorneys Cynammon Burns Allen and Keith Lamar Pryor Howard. The District was represented by attorneys Matthew Acosta and J. Erik Nichols with Spalding Nichols Lamp Langlois. The due process hearing was conducted on September \*\*\*2025. The hearing was recorded and transcribed by a certified court reporter. Both parties timely filed written closing briefs. The decision in this case is due by November 6, 2025.

One hundred and thirty-three joint exhibits were admitted without objection. Thirty-one of Petitioner's exhibits were admitted.<sup>1</sup> The District offered 21 exhibits into evidence, all of which were admitted without objection. The parties also filed 56 joint stipulations of fact, which are reflected in the findings of fact below. Petitioner called, Student's \*\*\* grade general education teacher;\*\*\*, a licensed specialist in school psychology (LSSP) retained by Petitioner;\*\*\*, the principal of Student's former \*\*\* school;\*\*\*, a behavior analyst retained by Petitioner;\*\*\*, Student's non-attorney advocate; and Student's Parent. The District called\*\*\*, the District's Special Education Compliance Coordinator;

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<sup>1</sup> Petitioner's Exhibits (P. Exs.) 1-6, 8-10, 12-21, 23-30, 32, 35, 40, and 45 were admitted. Pages 1-3 of Petitioner's Exhibit 39 were admitted as well.

\*\*\*, a campus coordinator for the District;\*\*\*, a special education teacher at the District;\*\*\*, a special education teacher at the District;\*\*\*, a school psychologist with the District;\*\*\*, the principal of the District's Therapeutic Readiness Center; and\*\*\*, a school psychologist at the District.

### **III. ISSUES**

Petitioner identified the following IDEA issues for decision in this case:

1. Whether the District denied Student a FAPE during the 2023-2024 and 2024-2025 school years;
2. Whether the District denied Student a FAPE through the use of inappropriate restraints, exclusions, and isolation during the 2023-24 and 2024-2025 school years; and
3. Whether tuition reimbursement for Student's private placement is appropriate.

Petitioner requested the following items of relief:

1. An order requiring the District to place Student in an appropriate private school with tuition, tuition reimbursement, transportation, food allowance, and related services;
2. Compensatory services from a private provider of Petitioner's choice; and
3. Any further relief the judge deems just and proper.

The District generally and specifically denied Petitioner's allegations, asserted the statute of limitations as an affirmative defense, and alleged that Petitioner failed to provide proper notice of unilateral placement.

#### IV. CLAIMS CONSIDERED

On March 19, 2025, the previous judge granted Petitioner's request to amend the complaint. After a prehearing conference on April<sup>\*\*\*</sup>, 2025, the previous judge adopted 10 issues for hearing based on Petitioner's amended complaint. On May <sup>\*\*\*</sup> 2025, Petitioner requested that the issues for hearing be revised. The motion was granted and, on June<sup>\*\*\*</sup>, 2025, the previous judge adopted the three issues for hearing stated above. At the hearing, Petitioner attempted to introduce evidence related to an alleged child find violation, but the District objected because child find was not an identified issue for the hearing.

One of the purposes of the pre-hearing conference is to specify the issues for hearing. 34 Tex. Admin. Code § 89.1180(d)(1). After the pre-hearing conference, the judge is required to issue a written order including the issues to be adjudicated at the hearing. 34 Tex. Admin. Code § 89.1180(e)(2). An amended pleading takes the place of a prior pleading. Causes of action not contained in amended pleadings are effectively dismissed at the time the amended pleading is filed. *See*, Tex. R. Civ. Pro. 65; *FKM Prtshp. v. Board of Regents*, 255 S.W.3d 619, 633 (Tex. 2008). When Petitioner asked the previous judge to revise the issues in its order, they were asking that the previous judge amend the order establishing what issues were to be considered at the hearing. When the previous judge granted Petitioner's request, Petitioner effectively dismissed any issues not included in the amended order. Issuing a decision on those issues would deny the District its due process rights to be informed of the claims against it. Therefore, the Judge will not consider Petitioner's

claims relating to child find, challenges to the evaluations, timeliness of the FBA, and IEE criteria.

## **V. FINDINGS OF FACT**

### **A. GENERAL EDUCATION**

1. Student enrolled at \*\*\* School in the District as a \*\*\* grade student for the 2023-2024 school year.<sup>2</sup>
2. Prior to enrolling in the District, Student exhibited severe behaviors at Student\*\*\*, including\*\*\*, and being unable to regulate Student emotions. With the use of a behavior intervention plan (BIP) developed by \*\*\*, the principal of Student's school in\*\*\*, they were able to reduce Student's behaviors from daily to once a week.<sup>3</sup>
3. Prior to the beginning of the 2023-2024 school year, Parent requested a Full and Individual Evaluation (FIE) from the District to determine whether Student was eligible for special education and related services under the IDEA.<sup>4</sup>
4. On August 9, 2023, Parent signed a referral for special education, which was received by the District on August 11, 2023. In the Parent Information Form, Parent indicated that Student had occasional meltdowns and could be argumentative, but was generally happy. Meltdowns took place during transitions, when things weren't perfect, or \*\*\*. Student was described as friendly, and Parent stated that Student played well until triggered. Parent noted that Student had difficulty paying attention, \*\*\*Student was in therapy working through

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<sup>2</sup> Joint Stipulations of Fact (J. Stip.).

<sup>3</sup> Transcript (Tr.) at 302-306; P. Ex. 18.

<sup>4</sup> J. Stip.

\*\*\*. Student had been diagnosed with ADHD and an \*\*\*.<sup>5</sup>

5. On August \*\*\*, 2023, Parent signed a Request for Special Education Evaluation, which was received by the District on August \*\*\*, 2023.<sup>6</sup>
6. On August \*\*\*, 2023, the District sent Parent a Consent for FIE form. The consent was returned on August \*\*\*, 2023.<sup>7</sup>
7. On October \*\*\*, 2023, the District contacted Parent regarding scheduling an initial meeting of Student's Admission, Review, and Dismissal (ARD) Committee to review the results of the FIE. The parties agreed to hold the meeting on November\*\*\*, 2023.<sup>8</sup>
8. On November \*\*\*, 2023, Student began Student first day in the \*\*\* Program located at the \*\*\* Alternative Education Center.<sup>9</sup>
9. \*\*\* is a \*\*\*-day general education program designed to allow students to receive targeted behavioral and character interventions based on individualized goals in a smaller group setting. The program incorporates behavior skill training and character development lessons. While at the \*\*\*, a student receives support developing goal directed behavior interventions to allow them to participate in the school environment. Student had a behavior plan to address \*\*\*, \*\*\*, non-compliance, and work refusal.<sup>10</sup>
10. On November \*\*\*, 2023, the District completed the Full and Individual Initial Evaluation (FIIE) for Student. The sources for evaluation for the FIIE

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<sup>5</sup> Joint Exhibit (J. Exs.) 1, 2.

<sup>6</sup> J. Ex. 3.

<sup>7</sup> J. Exs. 5, 6.

<sup>8</sup> J. Stip.

<sup>9</sup> J. Stip.

<sup>10</sup> J. Exs. 31, 32, 45.

included a review of records; the Childhood Autism Rating Scale, 2<sup>nd</sup> Edition (CARS-2); classroom observations; teacher information; the Kaufman Test of Educational Achievement, 3<sup>rd</sup> Edition (KTEA-3); the Woodcock-Johnson Test of Cognitive Abilities, 4<sup>th</sup> Edition (WJ-IV Cog); the Kaufman Assessment Battery for Children, 2<sup>nd</sup> Edition, Normative Update (KABC-II NU); a parent interview for speech; a teacher interview for speech; the Communication Sample and Informal Observations Arizona Articulation and Phonology Scale, Fourth Edition (AAPS 4); the Comprehensive Assessment of Spoken Language – 2 (CASL 2); the PLANO Pragmatics Criterion Referenced Measure; the Vineland Adaptive Behavior Scales, 3<sup>rd</sup> Edition (Vineland-3); the Autism Spectrum Rating Scales (ASRS) Teacher Response Form Autism Teacher Questionnaire and Parent Response Form Autism Parent Questionnaire; the Behavior Assessment System for Children, 3<sup>rd</sup> Edition (BASC-3) Teacher Rating Scales; a review of medical documentation; the Autism Spectrum Rating Scales (ASRS)-Parent Response Form Autism Parent Questionnaire; a teacher screener; a parent evaluation form; and a home language survey.<sup>11</sup>

11. A Functional Behavior Assessment (FBA) was conducted as part of the evaluation. The report noted that Student had received \*\*\* discipline referrals so far in the 2023-2024 school year. The referrals related to Student's refusal to follow directives; \*\*\*It was reported that these behaviors occurred on an almost daily basis all throughout the day in and out of the classroom. Strategies were recommended to address Student's \*\*\*, noncompliance, and \*\*\*.<sup>12</sup>
12. The assessments indicated that Student's pragmatic language skills \*\*\* in the expected range, but Student receptive and expressive language skills \*\*\* in the expected range. Student could be understood but struggled with \*\*\*. Articulation, voice, and fluency were within the expected range.<sup>13</sup>

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<sup>11</sup> J. Ex. 7.

<sup>12</sup> J. Ex. 7.

<sup>13</sup> J. Ex. 7.

13. The FIE concluded that Student's behavior impeded Student learning or the learning of others.<sup>14</sup>
14. Student demonstrated strengths in all areas of intellectual functioning and demonstrated an IQ of \*\*\*.<sup>15</sup>
15. The report recommended that Student met the IDEA eligibility criteria for autism and speech impairment. Speech therapy services were recommended for articulation and pragmatic language.<sup>16</sup>
16. The report did not recommend that Student met the IDEA eligibility criteria as a student with an other health impairment for ADHD or emotional disturbance.<sup>17</sup>
17. The report's recommendations included speech therapy; front loading to help with transitions; picture supports; no penalty for articulation errors; work on social skills in the moment when appropriate; direct social skills training; structured opportunities to participate in social interactions; interactive play games with other children; social stories; participation in verbal interchanges; and a BIP. The evaluator noted that Student needed to participate in skills in many environments with as many people as possible.<sup>18</sup>
18. Regarding behavioral supports, the evaluator recommended a first/then system, as well as frequent breaks; a structured environment; visual supports; prepare for changes in routine; positive reinforcement; work to establish eye contact when giving instructions; make instructions concise; allow Student to work with preferred peers, but do not force Student to join if Student is overly

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<sup>14</sup> J. Stip.

<sup>15</sup> J. Ex. 7.

<sup>16</sup> J. Ex. 7; J. Stip.

<sup>17</sup> J. Ex. 7.

<sup>18</sup> J. Ex. 7.

stimulated; teach expected behaviors; and remembering that facial expressions and social cues may not work.<sup>19</sup>

19. Student exhibited school refusal behaviors while enrolled in general education in the District before being enrolled in special education.<sup>20</sup>
20. Student's initial ARD Committee meeting convened on November \*\*\* 2023. Parent and\*\*\*, Student's educational advocate, attended the ARD Committee meeting. Student's evaluations were reviewed, and the parties discussed strategies to support Student when Student became dysregulated.<sup>21</sup>
21. Student's present levels were reviewed and accepted. Student continued to struggle with participating in reciprocal conversations on non-preferred topics; knowing what to say in social situations; and producing the \*\*\* in medial positions of words. Student also struggled with following directions; had difficulty expressing Student feelings and emotions appropriately; and needed help working through problems and \*\*\*.<sup>22</sup>
22. Parent shared that Student was experiencing heightened anxiety.<sup>23</sup>
23. The committee reviewed and accepted Student's annual goals. Student had three behavioral goals focused on reducing episodes of non-compliance; using pre-taught coping strategies instead of becoming \*\*\*and using pre-taught coping strategies\*\*\*.<sup>24</sup>
24. Student had two speech therapy goals, one to work on the \*\*\* phoneme in the initial position, and the other to work on \*\*\* blends in words.<sup>25</sup>

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<sup>19</sup> J. Ex. 7.

<sup>20</sup> P. Ex. 45.

<sup>21</sup> J. Ex. 14.

<sup>22</sup> J. Ex. 14.

<sup>23</sup> J. Ex. 14.

<sup>24</sup> J. Ex. 14.

<sup>25</sup> J. Ex. 14.

25. Student did not have any academic goals.<sup>26</sup>
26. The ARD committee reviewed and accepted Student's accommodations, which included an \*\*\*; chunking assignments and extra time; clearly defined limits; a BIP; frequent breaks; frequent eye contact; frequent reminders of rules; an \*\*\*; positive reinforcement; verbal and/or visual supports in advance of changes in routine; reminders to stay on task; and utilizing first/then options for non-preferred activities.<sup>27</sup>
27. Student's BIP was also reviewed and accepted. Student had three targeted behaviors (\*\*\*), with listed prevent strategies, teach strategies, and reinforce strategies to help address the behaviors.<sup>28</sup>
28. Student's BIP included a section discussing the suitable staff-to-student ratio for Student. The appropriate staff-to-student ratio for unstructured time such as lunch and recess as well as for transitions was \*\*\*. It was noted that the ratio may change based upon Student's ability to perform or participate in a particular activity.<sup>29</sup>
29. The ARD Committee discussed Student's least restrictive environment. The District recommended the \*\*\* program. The \*\*\* Program is discussed below. Parent disagreed, requesting a one-to-one aide for Student. The ARD Committee meeting was tabled and rescheduled for December \*\*\*, 2023.<sup>30</sup>
30. On December \*\*\*, 2023, Parent withdrew Student from the \*\*\* Program.<sup>31</sup>

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<sup>26</sup> J. Ex. 14.

<sup>27</sup> J. Ex. 14.

<sup>28</sup> J. Ex. 14.

<sup>29</sup> J. Ex. 14.

<sup>30</sup> J. Ex. 14.

<sup>31</sup> J. Ex. 110; J. Stip.

31. The ARD Committee reconvened on December \*\*\*, 2023, and agreed on Student's schedule of services. The schedule included in-class support for behavior and/or transitions for \*\*\* minutes weekly; in-class monitoring support for behavior/social/emotion/transition for \*\*\* minutes weekly; in-class supports for behavior in physical education and general education for \*\*\* minutes three times per week; and social skills pullout for \*\*\* minutes weekly. Student also received speech therapy for \*\*\* minutes three times per four weeks.<sup>32</sup>
32. The ARD Committee agreed that Student would begin attending the \*\*\* program at \*\*\*, another campus in the District. To address Parent's concerns regarding adjustment, it was agreed that Student would not start at the new campus until January \*\*\*, 2024, after the winter break.<sup>33</sup>
33. The ARD Committee meeting ended in agreement.<sup>34</sup>
34. Between the beginning of the school year and December \*\*\*, 2023, the date the initial IEP was agreed upon, Student received \*\*\* discipline referrals due to Student behaviors, which included\*\*\*.<sup>35</sup>
35. Between the beginning of the school year and December \*\*\*, 2023, Student was restrained on \*\*\*. For each restraint, the written summary of restraint use shows that efforts were made to de-escalate the behavior before the restraint; that Student \*\*\*; and that Student was considered to be an imminent serious physical harm towards Student, others, or property.<sup>36</sup>

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<sup>32</sup> J. Ex. 14.

<sup>33</sup> J. Ex. 14.

<sup>34</sup> J. Ex. 14.

<sup>35</sup> J. Exs. 39-55; J. Stip.

<sup>36</sup> J. Exs. 67-69; J. Stip.

**B. \*\*\* PROGRAM**

36. The \*\*\* program is a special education program designed to increase a student's understanding and ability to demonstrate expected school behaviors through the use of a social skills curriculum. Behavior services and supports are designed to meet the individual needs of students who require significant behavioral interventions and emotional supports due to \*\*\* and other problematic behaviors. This is done by direct daily social skills instruction. Students in the \*\*\* program are expected to follow the Student Code of Conduct. In addition to social skills instruction, students receive behavioral monitoring in the general educational classroom.<sup>37</sup>
37. When a student enters the \*\*\* program, they participate in \*\*\* an introduction to the program and to work on social skills before entering the general education environment. \*\*\* takes place in the Making Connections classroom. If a student demonstrates significant behavioral issues, they are taken to \*\*\*, a more intensive intervention in the classroom, to address those behaviors before being gradually reintegrated back into the general education environment with \*\*\* support. Student attended \*\*\* all day on January \*\*\*, 2024.<sup>38</sup>
38. The purpose of the social skills instruction in the \*\*\* program is to provide direct instruction in the areas where the student demonstrates social or behavioral deficits. The instruction focuses on developing reinforcement and replacement behaviors, building social reciprocity among peers, and using role-playing to build those skills. The program is tailored to address each student's individual needs and deficits and respond to behavioral concerns that arise during the school day. There is no prescribed curriculum.<sup>39</sup>

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<sup>37</sup> J. Ex. 95.

<sup>38</sup> J. Ex. 90; Tr. at 554-561, 728-729, 757, 766-767, 770-771, 801, 853.

<sup>39</sup> Tr. at 606-607.

39. To match Student's needs on any given day while in the general education setting, Student's special education support services could be increased to provide additional behavior and emotional support through in-class services and/or pull-out to a special education setting. When pulled back into the \*\*\* classroom, staff would review social stories with students, discuss behaviors, and target any significant behavior incident. Students would then practice and role play the relevant social skills throughout the day.<sup>40</sup>
40. The \*\*\* program is not designed to offer all-day one-on-one support. Generally, students in \*\*\* receive 25 minutes a day of monitoring and 30 minutes a day of social skills instruction.<sup>41</sup>
41. During the spring of the 2023-2024 school year, the District would frequently provide pull out social skills instruction to Student while Student was still in the general education classroom to prevent dysregulation. On some occasions, Student received shortened social skills instruction due to refusal. At other times, Student did not have transition support or support arrived late, and Student occasionally lacked direct support during \*\*\* or lunch, which had a 1:60 student-to-teacher ratio.<sup>42</sup>
42. On some days, Student's \*\*\* schedule was not updated to reflect fire drills and other changes, and sometimes Student did not have Student \*\*\* schedule because Student left it in another location.<sup>43</sup>
43. Student became dysregulated in both the \*\*\* classroom and the general education classroom, even with one-on-one support provided by a preferred person.<sup>44</sup>

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<sup>40</sup> J. Ex. 14; Tr. at 554-555.

<sup>41</sup> Tr. at 702, 706, 825, 830.

<sup>42</sup> P. Exs. 20, 21; Tr. at 45.

<sup>43</sup> Tr. at 44, 78-79.

<sup>44</sup> P. Ex. 20; Tr. at 164-165, 178.

44. Student attended \*\*\* in \*\*\* for 120 minutes on January \*\*\*, 2024.<sup>45</sup>
45. On February \*\*\*, 2024, the District convened a Revision ARD Committee meeting at Parent's request to review Student's present levels and progress and to update the IEP to reflect Student's current needs. Parent and \*\*\* attended the ARD Committee meeting.<sup>46</sup>
46. Parent requested an occupational therapy evaluation, which the District agreed to. Parent also requested an IEE because she believed that Student's current program may not be appropriate and that the FIE completed by the District may have had some gaps. Parent was provided with the necessary information to make a request for an IEE.<sup>47</sup>
47. A new goal was proposed and accepted in the area of pragmatics for speech.<sup>48</sup>
48. The ARD committee reviewed and amended Student's accommodations. The \*\*\* was removed because Student did not require a device to communicate. It was replaced with a \*\*\*. New accommodations were added for extra time and/or shortened assignments; independent work folders upon completion of assignments; daily behavior tracking; meaningful choices to support autonomy; front-loading; task analysis; think sheets; and a token economy.<sup>49</sup>
49. Parent shared concerns regarding discrepancies in Student's \*\*\* schedule. The District offered her an opportunity to discuss the schedule with Student teacher and to collaborate on making any necessary revisions.<sup>50</sup>

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<sup>45</sup> J. Ex. 90.

<sup>46</sup> J. Ex. 17.

<sup>47</sup> J. Ex. 17.

<sup>48</sup> J. Ex. 17.

<sup>49</sup> J. Ex. 17.

<sup>50</sup> J. Ex. 17.

50. The District offered special education transportation services, but Parent declined.<sup>51</sup>
51. \*\*\* requested a one-to-one aide for Student so that Student behaviors could be addressed proactively rather than reactively. The District responded that the \*\*\* program was designed for social skills instruction rather than for providing intensive behavioral or one-on-one supports. The District offered to increase support from \*\*\* to \*\*\* minutes per week. Parent rejected this offer.<sup>52</sup>
52. All members of the ARD Committee agreed that Student understood appropriate social skills and did not have a deficit in that area, but that support was needed primarily in developing impulse control and generalizing social and coping skills to promote positive responses by Student and decrease negative behaviors.<sup>53</sup>
53. While the language of one of Student's targeted behaviors was updated, the committee agreed that no substantive changes were needed to Student's BIP.<sup>54</sup>
54. The ARD Committee agreed to table the meeting and come back at a mutually agreeable time.<sup>55</sup>
55. Student attended \*\*\* in the \*\*\* room on February \*\*\*, 2024, for 300 minutes.<sup>56</sup>
56. Student attended \*\*\* in the \*\*\* room on February \*\*\*, 2024, for 120 minutes.<sup>57</sup>

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<sup>51</sup> J. Ex. 17.

<sup>52</sup> J. Ex. 17.

<sup>53</sup> J. Ex. 17.

<sup>54</sup> J. Ex. 17.

<sup>55</sup> J. Ex. 17.

<sup>56</sup> J. Ex. 90.

<sup>57</sup> J. Ex. 90.

57. Student attended \*\*\* in the \*\*\* room on February \*\*\*, 2024, for 120 minutes.<sup>58</sup>
58. On February \*\*\*, 2024, staff working with Student received de-escalation training specific to Student.<sup>59</sup>
59. From February \*\*\*, 2024, to March \*\*\*, 2024, Student attended \*\*\* again for \*\*\* minutes each day.<sup>60</sup>
60. The ARD Committee reconvened on February \*\*\*, 2024, and discussed Parent's formal request for an IEE and request for counseling to be included as a related service. It was agreed to request a Related Services Counseling Evaluation.<sup>61</sup>
61. Parent requested that Student's present levels be amended to include Student previous medical diagnosis; a statement of Student's early \*\*\*; and a statement regarding Student's participation in the \*\*\* program. The District agreed to these requests. Parent also requested support in \*\*\*. Support in \*\*\* was already included in Student's existing schedule of services. The District members of the ARD Committee stated that Student was doing well in \*\*\* and participating.<sup>62</sup>
62. Regarding support in the cafeteria, the District members of the ARD Committee noted that lunch was not included in the \*\*\* minutes of daily instruction time, but they discussed addressing this need through \*\*\* minutes.<sup>63</sup>
63. The ARD committee observed that Student preferred certain staff members and that Ms. \*\*\*, the \*\*\* teacher, appeared to be a

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<sup>58</sup> J. Ex. 90.

<sup>59</sup> J. Ex. 94.

<sup>60</sup> J. Ex. 90.

<sup>61</sup> J. Ex. 17.

<sup>62</sup> J. Ex. 17.

<sup>63</sup> J. Ex. 17.

trigger for Student. Parent requested a Registered Behavior Technician (RBT) as a one-on-one aide, who would be supervised by a Board Certified Behavior Analyst (BCBA). The District members of the ARD Committee responded that while the ARD Committee determines services, the District controls staffing. The District also noted that Student and \*\*\* do get along at times and that Student is sometimes triggered even by preferred people. Although some District employees hold BCBA certification, they are not employed in that capacity. The District does not provide Applied Behavior Analysis (ABA) services.<sup>64</sup>

64. One of the reasons the District did not want a single person to be designated as Student's one-on-one aide was fear of negative impact if the aide was absent or left the District.<sup>65</sup>
65. Student's BIP was updated and restructured to reflect strategies that were effective for Student and to address Parent's concerns. The revisions included ensuring staff stay near Student to ensure Student was truly calm and did not need additional support and teaching Student how to appropriately ask for a structured cool down break. The District also agreed to explore options for providing Student with a private place, comparable to a tent, where Student could calm down. Parent requested an updated FBA because she did not feel it was thorough or accurately depicted Student's needs.<sup>66</sup>
66. The meeting was tabled, and the committee agreed to meet again on March\*\*\*, 2024. On March \*\*\*2024, a District member of the ARD committee met with Petitioner and \*\*\* advocate to finish the review of the BIP and answer questions. The ARD Committee agreed to and subsequently adopted proposed revisions to the BIP.<sup>67</sup>

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<sup>64</sup> J. Ex. 17.

<sup>65</sup> P. Ex. 20.

<sup>66</sup> J. Ex. 17.

<sup>67</sup> J. Ex. 17.

67. On March \*\*\* and \*\*\*, 2024, Student attended \*\*\* again for 300 minutes each day. On March \*\*\*, 2024, Student attended \*\*\* for 210 minutes each day.<sup>68</sup>
68. On March \*\*\* 2024, the ARD Committee reconvened. The information from the previous ARD Committee meetings was reviewed. Parent agreed to the implementation of the new IEP.<sup>69</sup>
69. On April \*\*\*, 2024, staff working with Student received additional training on Student's BIP.<sup>70</sup>
70. On April\*\*\*, 2024, a Revision ARD Committee meeting was convened to address Student's recent medical diagnosis of \*\*\*. The District proposed a one-on-one aide for Student. This position would be filled by approximately four staff members across Student's day.<sup>71</sup>
71. New accommodations were proposed, including for tests to be given by a special education teacher/familiar adult, as needed; individual administration of tests as needed; frequent breaks, scheduled or timed as needed; a chair band on legs of chair for frequent movement; and notes were added for the \*\*\*.<sup>72</sup>
72. Student's proposed schedule of services included in-class support for behavior in \*\*\* and general education for \*\*\* minutes 3 times per week; social skills pull out special education for \*\*\* minutes daily; and behavior, social, emotional monitoring for \*\*\* minutes weekly in general education. The committee also proposed that Student receive speech therapy for \*\*\* minutes three times per every four weeks; in-class behavior support for

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<sup>68</sup> J. Ex. 90.

<sup>69</sup> J. Ex. 17.

<sup>70</sup> J. Ex. 94.

<sup>71</sup> J. Ex. 19.

<sup>72</sup> J. Ex. 19.

\*\*\* minutes daily; social skills for \*\*\* minutes daily; and personal care services for \*\*\* minutes daily, going up to \*\*\* minutes daily on April \*\*\*, 2024.<sup>73</sup>

73. The meeting did not end in consensus or non-consensus, and Parent was given until April \*\*\*, 2024, to notify the District if she did not agree with the proposed IEP.<sup>74</sup>
74. On April \*\*\*, 2024, Student attended \*\*\* in \*\*\* for 20 minutes.<sup>75</sup>
75. On April \*\*\*, 2024, staff working with Student received training on Student's BIP.<sup>76</sup>
76. On April \*\*\*, 2024, Parent notified the District that Parent disagreed with the proposed IEP. Parent disagreed with the type of personnel assigned to provide one-on-one support, requesting instead that an RBT supervised by a BCBA serve in that role. Parent also objected to the District not providing ABA therapy and the variability in the schedule of services.<sup>77</sup>
77. On April \*\*\*, 2024, a related services evaluation was completed regarding Parent's request to determine possible sensory needs. The sensory needs evaluation concluded that occupational therapy, provided as skill-based consultative support, was needed for Student to access Student education and make progress in Student IEP. In the general classroom, recommendations included access to noise reducing headphones; a \*\*\* area for calming within the general education classroom and \*\*\* classroom; environmental placement consideration; allowance for seating/work in area of choice; and the embedding of calming strategies throughout the day. Assistive technology recommendations included \*\*\* headphones

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<sup>73</sup> J. Ex. 19.

<sup>74</sup> J. Ex. 19.

<sup>75</sup> J. Exs. 64, 90; J. Stip.

<sup>76</sup> J. Ex. 94.

<sup>77</sup> J. Ex. 19.

and trials of a \*\*\* and chair band to support calming through heavy-work activities.<sup>78</sup>

78. On May \*\*\*, 2024, Student attended \*\*\* for 20 minutes.<sup>79</sup>

79. On May \*\*\*, 2024, Student attended \*\*\* for 20 minutes.<sup>80</sup>

80. From May \*\*\* to May \*\*\*, 2024, Parent sent \*\*\* emails notifying the District that Student would not be coming to school due to stress and anxiety.<sup>81</sup>

81. On May \*\*\*2024, the ARD Committee reconvened. Student had been diagnosed with generalized anxiety disorder and attention deficit disorder. Parent had previously requested an IEE, but the District also wanted to discuss additional evaluations related to these diagnoses. Because Student was already involved in an IEE, Parent did not want Student to undergo further assessments by the District.<sup>82</sup>

82. The ARD Committee discussed new academic goals and revised Student's behavior goals to reflect a proposed change in placement. A new goal for speech therapy pragmatics was proposed. The District recommended extended school year (ESY) services and goals.<sup>83</sup>

83. The District members of the ARD Committee proposed that Student receive special education services through the District's \*\*\* Program located at the \*\*\*. Parent requested placement in a private program or private school. The ARD Committee meeting ended in disagreement.<sup>84</sup>

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<sup>78</sup> J. Ex. 12.

<sup>79</sup> J. Ex. 90.

<sup>80</sup> J. Ex. 90.

<sup>81</sup> J. Exs. 90, 128; Tr. at 520.

<sup>82</sup> J. Ex. 20.

<sup>83</sup> J. Ex. 20.

<sup>84</sup> J. Ex. 20.

84. The District's service logs show variance in the daily minutes for the direct and in-class supports provided, with Student receiving as few as 10 minutes on some days and as many as 300 minutes on other days.<sup>85</sup>
85. By the time Student's participation in the \*\*\* program ended, Student was receiving support for the majority of the day from a \*\*\* staff member.<sup>86</sup>
86. Between January 2024, when Student entered the \*\*\* program, and May 9, 2024, when Student was scheduled to begin in the \*\*\*, Student received at least \*\*\* discipline referrals due to Student behaviors, which included \*\*\*
87. Between January 2024 and May 9, 2024, Student was restrained at least \*\*\* times. For each restraint, the written summary of restraint use shows that efforts were made to de-escalate the behavior before the restraint; that Student \*\*\* and that Student was considered to be an imminent serious physical harm towards Student, others, or property.
88. During the 2023-2024 school year, Student mastered Student two speech goals but did not master Student behavioral or social skills goals. Student did not make adequate progress in addressing Student behavior deficits and social skills needs while in the \*\*\* program, and Student was not safe in the general education environment.<sup>89</sup>
89. Student's third quarter report card showed that Student had mastered all but two of the measured concepts, with the remaining two concepts being scored at the "\*\*\*" level. Student received an incomplete grade in \*\*\* because Student did not

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<sup>85</sup> J. Ex. 89-90.

<sup>86</sup> Tr. at 702, 706, 792, 825, 830.

<sup>87</sup> J. Exs. 56-66; J. Stip.

<sup>88</sup> J. Exs. 70-83; J. Stip.

<sup>89</sup> J. Ex. 87; Tr. at 577, 594.

complete an \*\*\* project, but Student teacher was developing a plan for Student to complete the project through the \*\*\* program.<sup>90</sup>

90. Student made academic progress while in the \*\*\* program, showing improvement in both reading and math.<sup>91</sup>
91. Some days, Student would be the only student in the \*\*\* classroom. Other days, Student would be with peers the entire day.<sup>92</sup>
92. \*\*\*, Student's general education teacher, spent approximately 80 percent of her day focused just on Student. This resulted in other students getting behind on lessons, becoming distracted, and occasionally needing to \*\*\* the class.<sup>93</sup>

C. \*\*\*

93. On May \*\*\*, 2024, the District placed Student at the District's \*\*\*. Student never attended classes at the \*\*\*.<sup>94</sup>
94. The \*\*\* is the most restrictive setting in the District. It has a very small population, with approximately \*\*\* students ranging in age from kindergarten to 18-plus. For \*\*\*grade, which is Student's current grade, there are two teachers and three paraprofessionals for \*\*\* students. The program has a school counselor, a related services counselor, and a school psychologist. The program also includes "behavior technicians" who are trained to support students during periods of escalation.

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<sup>90</sup> J. Exs. 35, 118.

<sup>91</sup> Tr. at 152.

<sup>92</sup> Tr. at 578.

<sup>93</sup> Tr. at 161.

<sup>94</sup> J. Stip.; Tr. at 715.

Staff have experience working with students who \*\*\*. The goal of the program is to return students to the general education setting.<sup>95</sup>

95. While in the \*\*\*, students are taught grade level curriculum. Students who are Gifted and Talented (GT) also have GT services provided.<sup>96</sup>
96. On May \*\*\*, 2024, the ARD Committee convened again. The Related Services Counseling and Occupational Therapy evaluations were reviewed. The District proposed that Student receive psychological services for \*\*\* minutes one time per three weeks. Amendments to goals were proposed to incorporate collaboration between the LSSP and occupational therapy.<sup>97</sup>
97. The committee proposed new accommodations, including allowing seating/work area choice as long as Student was engaged; access to a separate private area for calming within the classroom; and trial with a \*\*\* for calming.<sup>98</sup>
98. Parent agreed to occupational therapy services but did not accept the psychological services because Parent felt they did not address school refusal. The ARD Committee meeting ended without agreement.<sup>99</sup>
99. On August \*\*\*, 2024, Parent formally withdrew Student from enrollment in the District.<sup>100</sup>

#### **D. 2024-2025 SCHOOL YEAR**

100. During the 2024-2025 school year, Student received instruction in a homeschool setting with Parent serving as Student teacher. \*\*\* the

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<sup>95</sup> Tr. at 942-950.

<sup>96</sup> Tr. at 954-956.

<sup>97</sup> J. Ex. 21.

<sup>98</sup> J. Ex. 21.

<sup>99</sup> J. Ex. 21.

<sup>100</sup> J. Stip.

principal from Student's \*\*\* helped to manage Student's curriculum and instruction.<sup>101</sup>

101. On January \*\*\*, 2025, \*\*\* provided her psychoeducational evaluation and FBA, which was updated on March \*\*\*, 2025. \*\*\* reviewed Student's pervious evaluations and information from Parent, watched videos of Student engaged in homeschool activities, and had Parent compete the Adaptive Behavior Assessment System for Children, 3<sup>rd</sup> edition; the Autism Spectrum Rating Scales; the Comprehensive Executive Functioning Inventory; and the Developmental Profile- 4<sup>th</sup> Edition. The Wechsler Intelligence Scales for Children-5<sup>th</sup> Edition and Wechsler Individual Achievement Test-4<sup>th</sup> Edition were attempted but unsuccessful due to significant behavioral difficulties.<sup>102</sup>
102. \*\*\*'s classroom observations consisted of 17 short video clips provided by Parent, each lasting between two and 23 minutes, showing Student participating in academic activities.<sup>103</sup>
103. Parent reported to \*\*\* that Student does not do well in therapies that require work completion like ABA or occupational therapy.<sup>104</sup>
104. \*\*\* did not find significant deficits in Student's executive functioning and found that Student had adaptive behaviors in the average range.<sup>105</sup>
105. \*\*\*'s recommendations include placing Student in a one-on-one environment with the goal of transitioning Student, over the next two years, to a small group environment outside of the public-school setting. She recommended that Student initially be instructed at home by a qualified teacher. Additionally, a behavioral specialist should work with Student's teacher to implement appropriate behavior strategies. Consultation with a

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<sup>101</sup> P. Ex. 5.

<sup>102</sup> J. Ex. 96.

<sup>103</sup> J. Ex. 96.

<sup>104</sup> J. Ex. 96.

<sup>105</sup> J. Ex. 96.

therapist and/or LSSP was recommended. Counseling as a related service was recommended, as well as social skills training and ESY services.<sup>106</sup>

106. On March \*\*\* 2025, a Revision ARD Committee meeting was convened to consider Student's IEE. Changes to the BIP were recommended, but Parent requested five days to review the BIP before agreeing. The District members of the ARD Committee continued to recommend that Student receive services at the \*\*\*, where Student would receive small group instruction with a teacher and two or three paraprofessionals, an individualized cool down space, access to behavior technicians, a classroom with a door, and access to a school psychologist.<sup>107</sup>
107. Additional services, including social skills instruction and ESY services, were discussed and agreed contingent upon Student's re-enrollment in the District. The committee also discussed Student's transition back to school. \*\*\* stated that Student was not ready to return due to the trauma experienced at the District and Student \*\*\*. Parent preferred a system of gradually phasing Parent out as the teacher in the home school setting, then gradually phasing in instruction in a traditional school. The District disagreed, stating that placement should be at the \*\*\*, where data could be collected to determine whether a shortened day or other accommodations were needed to support a smooth transition.<sup>108</sup>
108. Parent requested that the District provide ABA therapy. The District responded that, while it uses components of ABA, it does not employ staff as BCBAs and therefore cannot provide formal ABA therapy.<sup>109</sup>
109. The ARD Committee meeting did not end in agreement or disagreement, with Parent requesting five days to review proposals before agreeing or disagreeing.<sup>110</sup>

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<sup>106</sup> J. Ex. 96.

<sup>107</sup> J. Ex. 23.

<sup>108</sup> J. Ex. 23.

<sup>109</sup> J. Ex. 23.

<sup>110</sup> J. Ex. 23.

110. The \*\*\* where Student attended \*\*\* produced a report card for Student's second grade year indicating that Student was receiving high grades in all areas.<sup>111</sup>
111. On August \*\*\*, 2025, \*\*\* prepared a report on behalf of Parent with the purpose of determining if there was a denial of a FAPE. \*\*\* reviewed the documents identified by the District as exhibits, observed Student virtually for one hour and ten minutes, and interviewed Parent and \*\*\*.<sup>112</sup>
112. \*\*\* opined that some of the functions of behavior in the BIP were not functions but rather antecedents, that some of the teaching strategies, such as "compliance with directives within 2 minutes" were not actually teaching strategies, that the replacement behaviors did not adequately address the function of the targeted behaviors, and that the District should have performed a preference assessment.<sup>113</sup>
113. In her report, \*\*\* states that it was appropriate for the District to deliver social stories in the general education environment despite the IEP calling for pull-out services because it reduced the number of transitions in Student's day.<sup>114</sup>
114. \*\*\* also reported that, during \*\*\* attempts to conduct virtual sessions with Student in Student home during the 2023-2024 school year, Student's behaviors would escalate, leading to \*\*\* behaviors in the home setting.<sup>115</sup>
115. \*\*\* concluded that the District did not meet Student's educational needs during the 2023-2024 school year and, as a result, did not meet Student educational needs during the 2024-2025 school year. She based her conclusion on Student's lack of progress; the District's failure to provide a Section 504

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<sup>111</sup> P. Ex. 39.

<sup>112</sup> P. Ex. 5.

<sup>113</sup> P. Ex. 5.

<sup>114</sup> P. Ex. 5; Tr. at 439.

<sup>115</sup> P. Ex. 5.

plan at the beginning of the 2023-2024 school year; the failure to complete an occupational therapy evaluation earlier in the 2023-2024 school year; the District's alleged failure to timely identify Student as a student with a disability; the failure to develop and implement effective IEPs, FBAs, and BIPs.<sup>116</sup>

116. \*\*\* recommended compensatory services in the amount of 200 hours of direct counseling/psychological services; 350 hours of social skills training; 24 hours of social skills group; 250 hours of consultative behavior supports; 80 hours of speech-language therapy; 150 hours of occupational therapy; 1500 hours of academic skills; and 30 hours of parent training. \*\*\* calculated these amounts based on two years of missed instruction, including the year that Student was homeschooled.<sup>117</sup>
117. Petitioner submitted a request for reimbursement for \$15,607.27, including expenses for a chiropractor, homeschool expenses and support, therapy, trial expense, and tutoring/education coaching.<sup>118</sup>

## **VI. DISCUSSION**

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

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). School districts have a duty to provide a FAPE to all children with disabilities ages

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<sup>116</sup> P. Ex. 5.

<sup>117</sup> P. Ex. 5.

<sup>118</sup> P. Ex. 40.

3-21 in their jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; 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. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

## **B. 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). The burden of proof in this case is on Petitioner to show that the District failed to provide Student with a FAPE and to offer a program that was reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *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).

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

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

An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize

Student's potential, 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).

**a) 2023-2024 School Year**

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).

When developing Student's IEP, the District relied upon a variety of data sources to gather information regarding Student's strengths and needs. These included the FIIE, which utilized a variety of assessment tools and observations, as well as behavior data from Student's participation in the \*\*\* program and feedback from Parent regarding what worked and did not work for Student. The initial IEP included speech and behavioral goals targeted to Student's needs, numerous accommodations to help manage Student behaviors, and services from the \*\*\* program to help monitor behaviors and provide social skills instruction while allowing Student to attend academics in the general education environment. When Student received additional medical diagnoses, new ARD Committee

meetings were convened where additional feedback was received from Parent, Parent's requests for independent evaluations were discussed and agreed to, and modifications were made to the IEPs. Throughout the 2023-2024 school year, the District worked closely with Parent to develop IEPs based on Student's needs and strengths that were supported by evaluation data and that took into account Parent's concerns.

Petitioner points to Student's lack of progress in Student behavioral goals as proof that the District failed to individualize Student's IEP. However, Student was enrolled in special education at the District for less than one semester. Placement in the \*\*\* program was agreed to based on Student's evaluations, Parent feedback, and the data gathered from Student's time in general education at the District. When Student's behavior did not improve while in the \*\*\* program, Student's ARD Committee convened five times in the four months Student participated in the \*\*\* program to address Student behavioral needs. New accommodations were proposed and adopted, changes were made to Student's BIP based on staff observations and Parent input, and ultimately a change in placement was proposed when the District was unable to address Student's behavioral needs in the general education environment.

\*\*\*, Petitioner's expert, pointed out what she perceived as errors in Student's BIP. Specifically, she testified that the functions of behavior in the BIP were not functions but rather antecedents, that some of the teaching strategies were not actually teaching strategies, that the replacement behaviors do not adequately address the function of the targeted behaviors, and that the District should have

performed a preference assessment. When developing an IEP for a student whose behavior impedes Student learning and that of others, the District's obligation is to consider positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). The IDEA does not provide any specific format for an IEP. Outside of conclusory statements that the IEP was improper due to these perceived errors, Petitioner has not shown how these perceived errors indicate the District did not consider positive behavioral interventions or supports for Student or that these perceived errors in any way impeded Student's behavioral progress.

Petitioner complained that the District failed to provide ABA therapy to Student. While parents are important members of the ARD Committee and their opinions must be considered, they do not have a right under the IDEA to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their child. *Lachman v. Illinois St. Bd. of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988). The District considered positive behavioral interventions and supports and other behavioral strategies when developing Student's IEP and BIP and adopted strategies to help Student manage Student behaviors. While these are not the ABA therapy that Petitioner prefers, these strategies were individualized to Student, incorporated components of ABA therapy, and were reasonably calculated to enable Student to make progress appropriate in light of Student unique circumstances.

Taken together, Student's IEPs for the 2023-2024 school year were developed in consideration of Student's strengths, parent's concerns, the most

recent evaluation data, and Student's needs, as well as positive behavioral interventions and supports.

**b) 2024-2025 School Year**

Although Parent had withdrawn Student from the District, the District reconvened the revision ARD Committee meeting on March 5, 2025, to consider Parent's IEE and make any necessary revisions to the IEP. The main disagreement at this meeting was over how Student should return to school. Petitioner proposed a transition of up to two years, starting with instruction provided by a teacher in Student's home. The District proposed that Student return to the \*\*\* so that data could be gathered in an academic setting to determine what accommodations would be needed. While Petitioner disagreed with the District's proposal, Petitioner did not demonstrate that the District failed to individualize Student's IEP. Rather, after an extended absence from school, the District sought additional information to determine how to best meet Student's educational needs. Therefore, Petitioner has not proven, by a preponderance of the evidence, that the District failed to properly individualize Student's IEP for the 2024-2025 school year.

**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). State regulations require a school district’s instructional arrangements be based on students’ individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained, nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

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)

\*\*\*

When Student began receiving special education services in the District, Student was placed in the general education environment with support from the \*\*\* program. Supplemental aids and services included observation and social skills instruction; a BIP; an interactive visual schedule; extra time; clearly defined limits; frequent breaks; positive reinforcements; and reminders to stay on task. As the semester went on, the level of support increased, with Making Connections staff providing one-on-one assistance to Student for most of the day. Despite these efforts, Student continued to \*\*\*

Student did not need or receive modifications to the curriculum. Although the parties disagree as to whether Student was receiving an educational benefit in the general education environment, the evidence shows that Student was passing Student classes with high marks. Although Petitioner argued that Student's high intelligence meant that Student grades reflected stagnation, not growth, Student continued to receive high grades despite new concepts being introduced. Student teacher testified that Student was receiving an academic benefit. Petitioner did not prove, by a preponderance of the evidence, that Student failed to receive an academic benefit from participation in the general education classroom with \*\*\* support.

Student's behaviors, however, had a serious impact on the education of other students in the general education environment. Student \*\*\*

\*\*\*. Student's behaviors were so extreme that the District was forced to \*\*\* on several occasions to keep other students safe.

Taken together, while Student was intellectually capable of receiving a benefit in the general education environment, Student behaviors could not be adequately managed in the general education environment. Therefore, placement in the general education environment, even with \*\*\* or one-on-one supports, was not Student's least restrictive environment. The evidence supports the conclusion that a more structured placement was necessary to provide Student with a FAPE in Student least restrictive environment.

**b) \*\*\* Program**

Near the end of Student's time at the District, in response to the lack of progress in Student behavioral goals, the District proposed placement in the \*\*\* Program. The \*\*\* Program is the most restrictive placement offered on any campus in the District. In the \*\*\* Program, Student would receive small group instruction with a teacher and two or three paraprofessionals; an individualized cool down space; access to behavior specialists; a classroom with a door; and access to a school psychologist. This environment, while very restrictive, would allow Student to work on Student behavioral needs while still receiving instruction in a school environment. The end goal would be to return Student to general education. While Parent disagreed with the placement, Petitioner failed to show that this placement was inappropriate for

Student or that a less restrictive placement would have been appropriate for Student given Student \*\*\* behaviors.

**c) In-Home Instruction**

Parent advocated for in-home instruction, requesting that the District provide Student with a certified teacher and supports in the home environment for two years before transitioning Student to a private school at public expense. While this approach was supported by Petitioner's experts and Parent, the underlying basis for their position was Student's \*\*\* diagnosis. According to Parent, Student was traumatized by the District's restraints and is now incapable of returning to school. However, the actual diagnosis was not offered into evidence and the medical professional who made the diagnosis did not testify. No legally competent evidence was given regarding this diagnosis or the medical needs of Student related to this diagnosis. Given the highly self-interested, hearsay nature of this relayed diagnosis, the Judge finds that the evidence offered is insufficient to prove that Student was not able to attend school due to Student \*\*\*. Therefore, Petitioner failed to prove, by a preponderance of the evidence, that a very restrictive home placement would mainstream Student to the maximum extent possible.

**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.*

Although Student was enrolled in special education at the District for less than one semester, the ARD Committee met a total of seven times in the 2023-2024 school year to develop and refine Student's IEP. The District actively sought input from Parent and incorporated that input into Student's IEP. When Parent received new medical diagnoses for Student, new ARD Committee meetings were called and the new information was incorporated. When Parent disagreed with evaluations, new outside evaluations were provided at District expense. Although the final ARD Committee meetings ended in non-consensus, the record does not support a finding that the District excluded Parent or refused to listen to her. Therefore, Petitioner did not meet Student burden of showing that the District failed to provide services in a coordinated and collaborative manner.

#### **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).

As discussed above, although Petitioner contends that Student's high grades show stagnation given Student high intelligence, the fact that Student continued to master new concepts indicates that Student was receiving academic benefit from Student program. However, Student's \*\*\* behaviors continued. Based on the continuing nature and severity of those behaviors, the Judge concludes that Student did not receive an appropriate non-academic benefit from Student time in the \*\*\* program.

While Student never attended the \*\*\* Program proposed by the District, the principal of that program testified that Student would have full access to the general education curriculum and, as an intellectually gifted student, would also have access to enrichment activities for students in the GT program. Given Student's past success in academics in the general education environment and the availability of both general education and GT opportunities in the \*\*\* Program, Petitioner has not proven by a preponderance of the evidence that Student would not receive an appropriate academic benefit in that program.

Regarding non-academic benefits, the \*\*\* Program's low staff-to-student ratio and specialized behavioral instruction are designed to help Student develop the necessary pre-requisite skills to return to the general education environment. Petitioner has not proven by a preponderance of the evidence that

Student would fail to receive an appropriate non-academic benefit from participation in the \*\*\* Program.

## **5. Restraints, Exclusions, and Isolation**

Petitioner alleged that the District denied Student a FAPE by use of restraints, exclusions, and isolations. While Student experienced a high number of restraints during the 2023-2023 school years, both before and during Student time in special education, the records for those restraints show that each restraint was proper. Each restraint was performed only after other efforts to de-escalate failed; was in response to situations where Student was a significant threat to Student, others, or property; and was only for the length of time necessary to protect Student, others, or property. Petitioner has not shown that any of the restraints were improper or that, taken individually or together, they denied Student a FAPE.

Petitioner alleged that the District denied Student a FAPE by exclusions and isolations. While Student was regularly removed to the \*\*\* special education classroom, each removal was due to specific instances of \*\*\* so Student could calm down and work on the social skills needed to return to the general education classroom. Other students would enter the classroom throughout the day to work on their own social skills. Nothing in the record supports the contention that the classroom was used as punishment. Petitioner did not show that the \*\*\* room was used to isolate or exclude Student. Additionally, Student's IEP specifically allowed Student to be taken to the \*\*\* classroom for additional time as needed to work on Student social skills, so this additional time in the \*\*\* classroom was in accordance with

Student's IEP. Taken together, Petitioner has not proven, by a preponderance of the evidence, that Student was denied a FAPE by restraint, exclusions, or isolations.

## **6. Failure to Implement**

Petitioner alleges that the District failed to properly implement Student's IEP related to the appropriate staff to student ratio and social skills instruction. To prove that the District failed to adequately implement Student's IEP, Petitioner must show more than a de minimis failure to implement all elements of an IEP. Petitioner must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

Regarding the appropriate staff-to-student ratio, Student's BIP states that Student should be provided with a staff-to-student ratio of no more than \*\*\* for transitions and during unstructured time, such as lunch and recess. The text messages from Student's teacher indicate that Student sometimes attended lunch unsupported with a staff-to-student ratio of 1:60, was similarly unsupported in \*\*\*, and on several instances did not have a \*\*\* ratio for transitions. The text messages also show that Student would \*\*\*

However, Student's concerning behaviors—\*\*\*—continued even with appropriate supports in place, including during one-on-one instruction with a preferred staff member. While Petitioner has shown that the District failed to fully implement Student's BIP by

failing to provide for the appropriate staff-to-student ratio on several occasions for unstructured time and transitions, Petitioner has not shown that this failure materially contributed to Student's lack of non-academic progress under the fourth *Michael F.* factor. Therefore, while the failure to provide Student with the staff-to-student ratio called for in Student BIP was a procedural violation, Petitioner has not proven, by a preponderance of the evidence, that the District's failure was material.

Petitioner also complains that the District was providing "pull out" social stories in the general education classroom. Generally, the assignment of a child to a specific classroom or teacher is an administrative determination at the discretion of school personnel. *See Letter to Wessels*, 16 IDELR 735 (OSEP 1990). In this case, the District determined that pulling Student out of Student general education classroom was a trigger for dysregulation and decided to keep Student in the general education classroom on some occasions while providing social stories. This determination was within the discretion of the District and Petitioner has not shown, by a preponderance of the evidence, that this decision denied Student a FAPE.

Petitioner alleges that the District did not provide the required \*\*\* minutes of daily social skills instruction to Student. The District's service logs do show variance in the direct and in-class supports provided, with Student receiving as few as 10 minutes on some days and as many as 300 minutes on other days. Districts retain some flexibility in scheduling services and, when necessary, providing compensatory services. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). In

this case, the variations in time for Student's social skills instruction were due to Student's refusal. District staff did not force Student to participate in social skills instruction after refusal to avoid causing dysregulation. Any missed minutes of social skills instruction were made up for with the additional social skills instruction Student received in the \*\*\* classroom. Petitioner failed to show that these variations in amount of social skills instruction student received were significant, in any way denied Student a FAPE, or contributed to Student lack of progress in Student behavioral goals.

## **7. FAPE Conclusion**

Despite Student's intelligence and academic performance, the general education setting, even with \*\*\* support, did not provide Student with the tools Student needed to manage Student behaviors and keep other students and staff safe. While the \*\*\* program was not appropriate for Student, the ultimate question in this IDEA hearing is whether the District provided Student with a program that was reasonably calculated to provide Student with the requisite educational benefit. *Endrew F.*, 580 U.S. at 403. In this case, the initial placement of Student in the \*\*\* program was based on the information the District had when the IEP was developed, feedback from Parent, and the District's obligation to educate Student in Student least restrictive environment. While the District's efforts to educate Student primarily in the general education environment ultimately failed, based on the supports and services put in place as well as the brevity of time Student was in the \*\*\* program, the Judge concludes that Petitioner has not proven, by a preponderance of the evidence, that Student's placement in the \*\*\* program was not reasonably calculated to provide Student with the requisite educational benefit.

Regarding placement in the Therapeutic Education Program, testimony from District staff show that, while it is a restrictive program, it was designed to meet Student's behavioral needs while providing Student with educational benefit. The goal of the program was to help Student develop necessary behavioral skills to return to the general education environment. Petitioner has not shown, by the preponderance of the evidence, that this environment would not provide Student with a FAPE.

#### **D. REIMBURSEMENT**

Petitioner is seeking reimbursement of the costs associated with Parent's unilateral private placement of Student in in-home instruction. When a student is unilaterally placed, reimbursement is available as a remedy under the IDEA if: 1) the school district did not make a FAPE available to the student in a timely manner prior to the private enrollment; and 2) the private placement is appropriate. *Florence Cty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 12-13 (1993); *Sch. Comm. of Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). *See also* 34 C.F.R. § 300.148(c). Because Petitioner has not proven by the preponderance of the evidence that the District failed to make a FAPE available to Student, Petitioner is not entitled to reimbursement.

#### **VII. CONCLUSIONS OF LAW**

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner did not meet Student burden to prove, by a preponderance of the evidence, that the District failed to offer Student a FAPE during the

relevant time period. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 253 (5th Cir. 1997).

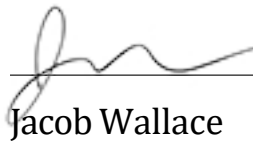
3. Petitioner did not meet Student burden to prove, by a preponderance of the evidence, that the District denied Student a FAPE through the use of improper restraints, exclusion, and timeouts. *Schaffer*, 546 U.S. at 62; 19 Tex. Admin. Code § 89.1053(a)-(c).
4. Petitioner did not meet Student burden to prove, by a preponderance of the evidence, that the District failed to materially implement Student's IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).
5. Petitioner did not meet Student burden to prove, by a preponderance of the evidence, that Petitioner was entitled to reimbursement for Student's private placement. 34 C.F.R. § 300.148; *School Comm. Of Town of Burlington, Mass. v. Dept. of Educ.*, 471 U.S. 359, 369 (1985).

### **ORDER**

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

**Signed November 5, 2025**

ALJ Signature:

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

Jacob Wallace

Presiding Administrative Law Judge

**NOTICE TO THE PARTIES**

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