

DOCKET NO. 187-SE-0325

STUDENT. b/n/f PARENTS.,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	
	§	HEARING OFFICER FOR
	§	
LAMPASAS INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioners, Student. b/n/f Parents. (collectively, Petitioner), filed a request for an impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA). The Respondent to the Complaint is the Lampasas Independent School District (hereinafter Respondent or District).

The primary issues in this case are whether the District denied the Student a Free, Appropriate, Public Education (FAPE) and whether the Student needs a private placement in order to have a FAPE. The hearing officer finds that the District was, and is, able to provide the Student FAPE and therefore consideration of the appropriateness of the private placement is not addressed, and Petitioner is not entitled to a private placement at District expense.

II. Issues

As noted above, this case is focused on whether the District did and can provide FAPE to the Student, or whether a private placement is necessary for FAPE as set forth in additional detail below.

A. Petitioner's Issues

Petitioner alleges that the District has denied Student a free appropriate public education (FAPE) as follows:

- Whether the District violated the IDEA by failing to develop an appropriate Individual Education Plan (IEP) and Behavior Intervention Plan (BIP), so to provide the student educational and related services, thereby denying the Student FAPE;
- Whether a private placement is necessary, and whether the proposed private placement is appropriate; and
- Whether the District failed to comply with procedural obligations under the IDEA and related laws.

B. Petitioner's Requested Relief

Petitioner requested remedies in the Petition and briefing as follows:

- Find that the Student's right to FAPE has been violated;
- Find that the Student is entitled to a private day placement at the District's expense;
- Find that the Student's parents are entitled to reimbursement for out-of-pocket expenses they have incurred; and
- Any such further relief deemed appropriate.

C. Respondent's Legal Position

Respondent filed a general denial and noted that it has provided, and is able to provide, the Student a FAPE and met the Student's unique needs. Respondent explicitly addressed the Petitioner's claims, denying with specificity each claim. Respondent also set forth affirmative defenses.

III. Procedural History

The Complaint was received by the Texas Education Agency (TEA or Agency) on the 5th day of March 2025, and the Notice of Filing of Request for a Special Education Due Process Hearing was issued by TEA on March ***, 2025. The Respondent to the Complaint is the Lampasas Independent School District (hereinafter District or Respondent). The Agency assigned the matter to this Hearing Officer, who then issued the Initial Procedural Scheduling Order on March *** 2025.

A. Representatives

During the pendency of this case, Petitioner was represented by Mark Whitburn and Sean Pevsner, of the firm Whitburn and Pevsner, LLC. The Respondent District was represented by Amy Foster and Emma Lynch, of Eichelbaum, Wardell, Hansen, Powell & Munoz, P.C. The same counsel appeared at the hearing.

B. Mediation and Resolution

The parties participated in a resolution session on March***, 2025, and no resolution was reached at that time. Further, the parties also participated in mediation in an attempt to settle the matter but were unable to do so.

C. Continuances

There was one continuance granted in this matter to allow the parties the time to participate in mediation.

D. Preliminary Matters

1. Preliminary Motions and Discovery

Petitioner filed a Motion to Compel on August 15, 2025. Thereafter, email communication with counsel indicated that the matter had been resolved without hearing officer involvement. Motions for Issuance for Subpoenas for Witnesses appearance and testimony were submitted to the hearing officer on September 5, 2025. They were subsequently signed and returned to Petitioner for service. No other discovery matters were submitted to the hearing officer.

2. Agreed Extension of the Disclosure Date

On September 7, 2025, one day prior to the Disclosure Deadline, Petitioner informed the hearing officer that that parties had agreed to an extension of the disclosure

deadline and submitted a Rule 11 Agreement noting such agreement. This agreement moved the deadline from September 8, 2025 to September 10, 2025. Likewise, the deadlines for filing Objections and Responses to the admission of the exhibits had to be modified accordingly. Such Order was then issued on September 8, 2025. The parties timely filed their respective Disclosures pursuant to the revised deadline.

3. Objections to Evidence and Rulings

Petitioner timely filed Objections to Respondent's Exhibits on September 12, 2025, and Respondent then timely filed its Response on September 14, 2025. Respondent did not file objections to the Petitioner's Exhibits, and neither party filed objections to any of the witnesses listed in disclosure.

On September 15, 2025, Order No. 6, ruling on the admissibility of the Exhibits was issued. At that time, all of the Petitioner's Exhibits were admitted into evidence. Petitioner's objections to Respondent's Exhibits were overruled, but for Exhibit No. 58, and therefore all of Respondent's Exhibits were admitted into evidence but for Respondent Exhibit No. 58. It was ordered that Respondent would address Petitioner's Objection to that Exhibit at the time it is offered into evidence. During the hearing, Respondent again offered the Exhibit 58, and it was admitted into evidence.

E. The Due Process Hearing

The Due Process Hearing in this case was held on Tuesday, Wednesday, and Thursday, September *** 2025. The above-referenced counsel for Petitioner and Respondent continued their respective legal representation. Additionally, present for the Petitioner was another lawyer with the firm of Whitburn and Pevsner, Ms. Ali Gentry, who attended intermittently. Also attending the hearing were the family's advocate, ***, and the Student's ParentParent. ***, however, left sometime on Tuesday, after the presentation of most of the Petitioner's case.***, Director of Special Education for the District, was present as the Respondent's Representative.

F. Post-Hearing Matters

Upon completion of the evidentiary due process hearing on September***, 2025, but prior to the formal closure of the hearing, the parties acknowledged and agreed to time allotment for the receipt of the transcript and then filing Post-hearing Briefs. The parties agreed to the time for the submission of the Briefs and it was set for October 23, 2025. The Decision Due Date was set for November 10, 2025. The Order so stating was issued October 19, 2025. Both Petitioner and Respondent timely filed their respective Closing Briefs, and the Decision is now timely issued on November 10, 2025.

IV. Findings of Fact*

1. The Student, a ***-old student in the *** grade, resides with Student parents within the jurisdictional boundaries of the Lampasas Independent School District.¹
2. The Student has attended LISD since Student was *** years old.² Student qualifies for Special Education as a Student with Autism and Other Health Impairment (OHI) due to Attention Deficit Hyperactivity Disorder (ADHD).³
3. ***, who has been the District's special education Director for 13 years, testified that the Student had not been on her 'radar' until Student *** grade year. She noted that this indicated that until that time, any situation with the Student was being handled successfully at the campus level.⁴
4. Admission, Review, and Dismissal (ARD) committee meetings were held during the Student's time in special education in the District. Testimony and evidence demonstrated that during this time, the parents were in agreement regarding the students IEPs, and that District staff and the Student's Parent had ongoing communication and worked collaboratively.⁵

* References to the Due Process Hearing Record throughout this section are as follows: Citations to Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "P" or "R" respectively, followed by the exhibit number or letter and page number. Citations to Joint Exhibits are designated with a notation of "J", and followed by the exhibit number and page number. Citations to the transcript are designated with a notation of "T" followed by the page number.

¹ P.15:2

² T. 403; P.15:2.

³ P.15:2.

⁴ T. 622, 624.

⁵ T. 142-143, 424-425, 553, 560-561; P. 7:38; P.8:7; P.9:2; P.10:3; P.11:26.

5. The evidence established that the Student had been receiving private Applied Behavior Analysis (ABA) services for a number of years from the***. Testimony showed that Student started receiving the services when Student was four years old, and at some time during Student *** grade year, as Student had improved, Student was discharged.⁶
6. The Student first started at the District's *** school for the 2022-2023 school year and was in the *** grade. During the Student's *** grade year, an ARD Meeting was held in January of 2023, for an annual review. At that time, the IEP indicated that Student was receiving grade level instruction, with support in two classes. The IEP also included a Behavior Intervention Plan (BIP).⁷
7. The documentation from the ARD also showed that the Student had mastered Student goals for the prior year.⁸ Student also receives consult OT services.⁹
8. ***, a special education teacher, was the Student's case manager from the beginning of the *** grade through Student time at the middle school. As case manager, *** managed Student IEP, Student accommodations, and also provided CAPS support. She was also aware of Student anxiety and worked to manage it. While no one seemed to know what the CAPS acronym stood for, *** did note that it was the school's autism support program.¹⁰
9. During the Student's *** grade year, Student spent time in the general education classroom with support and the use of a co-teach model. The Student was also able to use color-coded cards to signal a need to go to another room for additional support. The color of the card indicated the level of support needed. *** kept data with regard to the cards used.¹¹
10. At some point during the Spring 2023 semester, it appears that the District engaged *** to conduct a Functional Behavioral Analysis (FBA), although there was no conclusive evidence as to whether the FBA was ever completed.¹²
11. During the 2023-2024 school year, the Student was in the *** grade, and continued to attend the ***, Student home campus. Near the beginning of that academic year, specifically on September***, 2023, the ARD Committee met and apparently

⁶ T. 405-407.

⁷ P.7: 2, 28.

⁸ R. 15: 45-48.

⁹ P.15:2.

¹⁰ T. 89-91, 97-98, 173.

¹¹ T. 118-120, 190-191; R. 48.

¹² T. 320 ,356.

reviewed the somewhat mysterious May 2023 FBA. It was noted that ***, a school counselor with the District who was at the *** school, review the FBA, the one completed, or started, by ***. Thus, this meeting was a Revision ARD to review the updated FBA and thereafter update the Student's Behavior Intervention Plan. The Student's parent was in agreement.¹³

12. During that ***-grade year, the Student's placement was in the general education classroom, with resource less than 21% of the time. Beginning in January of 2024, however, Student moved to the applied setting. This was done due to some increases in behaviors, as well as Student struggles with the academic work.¹⁴
13. ***, a paraprofessional who often worked with the Student during the 2023-2024 school year, testified that the behaviors she observed throughout the year were essentially *** and work refusal. She also stated that the conduct of the Student toward her was not to the point of actual ***.¹⁵ *** also testified that she worked both with *** and the ***.¹⁶
14. *** noted that she would go over the Student's EIP with *** as training prior to school starting but did not have any outside training.¹⁷
15. During this year, *** testified that the Student experienced anxiety to task demands, and that she used a number of strategies to help student reduce anxiety. Further, the Student spent time in the *** and worked with ***, who noted that things often went well.¹⁸
16. ***, a special education teacher, also testified as to Student work with the Student, and Student classroom was the *** room. Student also noted that the Student's behavior fluctuated, although Student remembered very little about Student work with the Student, noting that *** had more involvement.¹⁹
17. According to some testimony, the Student spent time in the *** classroom with teacher ***. She worked with the Student at the time, noted that the Student was in the *** class – although she did not know what that stood for.²⁰

¹³ T. 347, 355, 544; P.10.2, 6; R. 11.

¹⁴ T. 93; P.10:1.

¹⁵ T. 71-74.

¹⁶ T. 64.

¹⁷ T. 67.

¹⁸ T. 81, 84.

¹⁹ T.26, 32, 37-38.

²⁰ T.60-62.

18. While***, the behavior teacher, stated that the paraprofessional in this classroom was responsible for taking data for the students, ***, the paraprofessional in that classroom testified that data gathering was not part of her job, and she did not know who would do so.²¹
19. The then school nurse, ***, testified that the Student told her about Student anxiety, and would go to her as Student 'safe place'. During Student ***grad years, she also saw the Student on a daily basis to administer Student medications. She also noted that she would call Student Parent for those medicines that were to be given on an as needed basis.²²
20. There was, however, conflicting testimony as ***testified that she treated ***for ***of the Student, while ***noted that the Student was only ***when she was the paraprofessional. ²³ Thus, it is unclear as to whether the Student had any ***toward ***to the point of actual contact or injury.²⁴ There was no record of nursing visits provided.
21. Testimony also indicates that the Student discussed suicidal ideation at least once, and the suicidal ideation prompted the referral to TCHAT. A Behavioral Threat Assessment was completed by the District.²⁵
22. TCHAT is a mental health service that is provided to all students at the District.²⁶
23. At some point after the TCHAT referral, the treating psychiatrist at TCHAT, a ***wanted to consult with the District, and requested to speak with someone at the District. A consent was signed, and subsequently ***and ***over zoom on August 27, 2024.²⁷
24. The Student's Parent,. testified that the Student's *** behavior increased during the summer of 2024, and that Parent had reached out to *** at the school and was in contact over the summer. Parent then said that she talked with ***, who took over *** position as LSSP, or school psychologist, at the middle school. Parent also noted that the Student did not want to go back to school. In fact, Parent noted that discussions with the Student about the return to school did not go well.²⁸

²¹ T. 38, 79.

²² T. 264-265.

²³ T. 276,

²⁴ T. 71-72, 74,

²⁵ T. 274-275 ,627-628, 698; P.24.

²⁶ T. 627-628.

²⁷ T. 628-631.

²⁸ T.423-425.

25. During the Student's ***-grade year, on September***, 2023 an ADR meeting was held. The alleged new FBA may have been reviewed, and no changes to the Student's BIP were made, as testimony stated they were not needed.²⁹
26. At the beginning of the ***-grade year, the 2024-2025 school year, the testimony established that the Student's behavior had escalated from what was seen in the past. Evidence showed that Student was more ***, and that past behaviors had increased in severity.³⁰ At that time, and in response to the Student's Parent's request, the District began a new FBA through ***.³¹
27. During the time the Student was in *** school, the evidence showed that Student had only one restraint and one ***. These were both at the beginning of Student *** grade year.³²
28. *** testified that she was trained on ***-informed decision-making in the classroom, and she had done her own research as well. She also explained in detail how that would impact the Student, and that she makes all of her decisions in a ***-informed manner.³³
29. Within a few days of the start of school, on August ***, 2024, the District completed an IEP Amendment to change the Student's schedule of services.³⁴
30. Soon thereafter, a Revision ARD committee meeting was held. The District decided to update the Student's BIP, and the process for a new FBA was started. The testimony indicated that, based upon the Student's behavior, that there was a need to update the BIP then, and the August ***, 2024 ARD meeting ended in agreement. It was also noted that hereafter, upon the receipt of the new FBA, the Student's BIP would be updated again.³⁵
31. In August 2024, shortly after the beginning of the school year, two incidents occurred that were considered to be a fairly extreme escalation of behavior for the Student. The first, on August ***, 2024, the Student escalated to the point of ***
32. Another incident, on September ***, 2024 when the Student was highly dysregulated. *** testified that she observed things after they had started as her office is close by. After this incident, the Student did not return to school.³⁶

²⁹ T. 111-113; P.10.

³⁰ T. 152, 466-467,497; P. 23:

³¹ T.557-558.

³² T. 212; P.24.

³³ T.165-167.

³⁴ P. 12.

³⁵ T.147-149; P. 13:1-2.

³⁶ T. 705.

33. After the incident on September ***, 2024, the Student's Parent testified that parent was told by the Student's psychiatrist, ***, to not take the Student to school, and that Student would complete paperwork for a homebound placement. The form was completed and provided to the District around September ***, 2024, and the Student stopped coming to school around September ***, 2024.³⁷
34. While it may be that at one instance, the Student's Parent arrived, such as on September ***, 2024, and in another instance, Student's *** picked student up. It was noted that some of the specific date and times in the notes may have been confusing and conflicting.³⁸
35. From September ***, 2025, the Student's family's advocate, *** began to communicate directly with ***. Evidence clearly indicated that at that time, the collaboration between the District and the parents became strained, as the advocate took a very aggressive approach to the District.³⁹
36. In September of 2024, the District contracted with ***, a doctorate level BCBA and owner of ***, to conduct another FBA on an expedited basis. It was completed on September ***, 2024 and an ARD Committee meeting was held on October *** 2024 to approve the FBA and BIP.⁴⁰
37. *** was directly involved with the September 2024 FBA. She had also worked with the Student in the past.⁴¹
38. For the new 2024 FBA, *** did some of the observations of the Student, while additional data was collected by ***, and Registered Behavior Technicians (RBTs) sent by ***.⁴²
39. *** also testified about effective strategies she thought that would work best or be effective for the student, as also set forth in the FBA that was completed on September ***, 2024.⁴³
40. An ARD committee meeting was then convened on October *** 2024, and at that time, the ARD committee accepted the FBA and reviewed and accepted the updated BIP. It was also noted that the BIP would be implemented when the

³⁷ T. 430-431.

³⁸ T.732-733.

³⁹ T.639-640.

⁴⁰ T. 156-157; P.14.

⁴¹ T. 316-319, 325.

⁴² T. 325,328.

⁴³ T. 337-345, 357.

Student returned to campus from a homebound placement, as that was also agreed to at that meeting.⁴⁴

41. The Student had spent only *** school days in the new self-contained placement before Student stopped going to school. Testimony indicated that this was too short of a time to assess any success.⁴⁵
42. The ARD committee agreed to place the Student in a homebound placement, due to one of the Student's physician's recommendations for the Student to have sufficient time to adjust to medicine changes.⁴⁶
43. On October ***2024 ARD, within two hours of the ARD meeting where the District agreed to a homebound placement, the Student's Parent withdrew the previous given consent for the District to speak with the Student's medical and other treatment providers such as Student BCBA. The homebound placement was premised on the grounds that it was temporary and needed so the Student could adjust to some new medicines.⁴⁷
44. Since that time, October 1, 2024, the parents have continued to decline consent, thereby preventing the District from discussing and collaborating with the Student's outside providers.⁴⁸
45. Several District teachers and staff testified that they have had significant experience dealing with behaviors such as those exhibited by the Student, and that the Student is not the most difficult student they have worked with. It was also noted that Student also does not have the most severe behavior that they have dealt with and agree that Student can be educated in the District.⁴⁹
46. ***, the school psychologist who replaced *** at the *** school, noted that she knew the Student from working with student when Student was much younger. She testified that she and the students Parent communicated at the beginning of the 2024 2025 school year and she had done the paperwork to have the new FBI completed as well as achievement and cognitive testing. However, she did note that the students Parent wanted to wait until the completion of a new neuropsychological evaluation was completed. It appeared that this evaluation was not part of what the District was doing or funding.⁵⁰

⁴⁴ T. 159; P. 14:3.

⁴⁵ T. 692-693.

⁴⁶ T. 159; P.14:15-18.

⁴⁷ P.14:15-18.

⁴⁸ T. 433, 529, 647-648.

⁴⁹ T. 51-53, 258, 491-492, 548, 606, 687-688.

⁵⁰ T. 553-558.

47. The ***, the Student's first homebound teacher, did note that it was difficult for the Student to complete a task when requested and engaged in behavior that impeded any academic learning.⁵¹ It was noted however that by February Student was doing work, and toward the end of the school year, in May 2025,
48. *** testified that while the initial part of homebound was difficult, and Student refused to complete work, the Student did begin to produce work, starting in February 2025, and by May 2025, things, including Student engagement, had improved. As noted, the homebound teacher during the fall 2025 semester, noted that the sessions were going very well.⁵²
49. ***, a special education teacher in the District, is the Student's homebound teacher for the 2025-2026 school year. *** testified that the homebound education was going very well, and that Student was making progress. She also noted that the Student's favorite subject was ***, and that she would love to have student on campus and felt confident that she could educate student there.⁵³
50. During the homebound placement, the District contemplated and planned for a transition of the Student back to the campus. The District also had requested information from the Student's private providers, so to again be able to understand the information, and also be able to coordinate and collaborate with them. The parents, however, declined to provide consent for that collaboration.⁵⁴
51. Testimony demonstrated that some of the teachers had additional training, and in particular that *** and the homebound teacher, ***, had extensive ***-based training.⁵⁵
52. The evidence showed that all of the teachers and staff who worked with the Student were trained or educated *** by going over the Student's then current BIP.⁵⁶
53. Evidence also demonstrated that upon implementation of the Student's IEP, that *** would also conduct training concerning the Student, the BIP, etc. for everyone that would be working with student. This is in addition to having BCBA's conducting therapy at school.⁵⁷

⁵¹ P.15:62.

⁵² T. 605.

⁵³ T.605-606.

⁵⁴ T.663-665.

⁵⁵ T. 166-167, 578-580, 728-729.

⁵⁶ T. 167-168, 713..

⁵⁷ T. 345, 348-350.

54. Documents demonstrate that the BIP in the January 2023 annual meeting and the January 2024 annual were essentially the same, with no changes apparent in the written IEP.⁵⁸ It was noted that changes were not needed.
55. The Student's parents have declined to access in-home parent training offered by the District, and have not availed themselves of the community resources that the District offered.⁵⁹
56. *** testified that the Texas Education Agency (TEA) has issued a document requiring recommending that school districts complete a number of steps before considering a private placement for a public-school student.⁶⁰
57. Those requirements include working in collaboration with local community resources that can provide the Student and family services and help keep the Student in the community.⁶¹
58. The *** offers an opportunity for parents to access community resources. Accessing community resources, so that the students can remain in the community is shown as necessary in the TEA Guidelines for private placement.⁶²
59. An ARD Committee meeting was held on January *** 2025. This was the Student's annual ARD. At that time, the committee reviewed the progress the Student had made during the approximately three months of homebound services. It was noted that the assigned homebound teachers had made nine visits with some canceled by the students Parent due to behavior. It was also noted that the Student's behavior during these sessions was challenging.⁶³
60. At this annual ARD committee meeting, the District put forth the revised IEP and BIP which included a gradual return to campus, and the integration of *** with the return. The parents disagreed and the advocate again requested a private placement.⁶⁴
61. The incremental plan for the Student's return to school in the District, set forth in the *** report, FBA and BIP. These were reviewed and discussed during the

⁵⁸ P. 10; P.11.

⁵⁹ T.654, 655, 662, 695, 706.

⁶⁰ T.660-662; R.57.

⁶¹ T. 661, 706-708.

⁶² R.57.

⁶³ P.15:31.

⁶⁴ T. 653; P.15.

meeting. They were very specific as to the Student's unique need in providing a slow gradual return to school.⁶⁵

62. A re-convene ARD was held on February ***, 2025, and during that ARD, the parent and the advocate were present, and at one point the advocate stopped the District from engaging in a discussion with the parent by asking questions. The ARD committee also continued to offer parent and in-home training, community resources, and the parent declined. The plan for the Student's return, based upon Student unique needs was also reviewed, with the incremental plan as follows: a slow, gradual return, with ABA therapy provided. For example, Student would start with ***. ⁶⁶

63. noted The meeting ended in disagreement, and the parent refused to return the Student to the District and the District did not agree to the private placement.⁶⁷

64. The Student remains in homebound placement as a due process proceeding was then filed.

V. Discussion and Analysis

The following discussion reviews those standards governing the specific considerations and issues brought forward in this case, and examines those issues, considering the documentary evidence, testimony of the witnesses, issues and arguments presented, and the applicable law.

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party challenging the proposed IEP and placement. In essence, the burden of persuasion or proof falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). No distinction has been established between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009).

⁶⁵ P. 15.

⁶⁶ P.16. R.64.

⁶⁷ T.734; P.16.

In terms of application of this approach, the Fifth Circuit went on to establish that a presumption exists “in favor of a school system’s educational plan, placing the burden of proof on the party challenging it”. *White ex Rel. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 377 (5th Cir. 2003); *Teague* at 132. Accordingly, Petitioner bears the burden of demonstrating that the District failed to provide the Student FAPE by not having and implementing an appropriate IEP and violating procedural mandates.

B. Duty to Provide FAPE

The primary purpose of the IDEA is to ensure that all children with disabilities have available a free, appropriate public education (FAPE) that emphasizes special education as well as related services, and that the services are designed to meet the unique needs of that student. Under the IDEA, school districts have a duty to provide a FAPE to all children with disabilities residing in the jurisdictional boundaries of the district between the ages of three and twenty-one. 34 C.F.R. §300.101(a); 201 Tex. Educ. Code §29.001.

More specifically, FAPE is special education, related services, specially designed personalized instruction, and with sufficient support services to meet the unique needs of the child in order that students receive an educational benefit. The instruction and services must be provided at public expense and comport with the child’s IEP. 20 U.S.C. 1401(9); *Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, (1982).

In order to meet its substantive obligation under the IDEA, the school district must offer an individualized education plan (IEP) that is reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances. In fact, the IDEA notes that FAPE consists of specially designed instruction designed to meet the unique needs of a child with a disability and related services as may be required to assist a child with a disability. See 20 U.S.C. §1401(9). Thus, the adequacy of a given IEP is based on unique circumstances of the student for whom it was created. *Endrew F v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 580 U.S. 386 (2017). A determination of whether the program is individualized for each student often turns on the information used to establish the program. Courts have noted that the program must be based on the assessment and

evaluation of the student, as well as any additional student-specific information gathered by the district.

In this case, Petitioner brings forth issues alleging a denial of FAPE. The Fifth Circuit has developed the elements or benchmark for the determination of FAPE. These four factors must be assessed in order to determine whether the IEP in issue, and as developed and implemented, was reasonably calculated to provide the student with the necessary educational benefit under the IDEA. These factors are as follows:

- Whether the program is individualized on the basis of the student's assessment and performance;
- Whether the program is administered in the least restrictive environment (LRE);
- Whether the services are provided in a coordinated and collaborative manner by key stakeholders; and
- Whether positive academic and nonacademic benefits are demonstrated as a result.

Cyprus – Fairbanks Ind. Sch. Dist. v. Michael F., 118 F3d 245,253 (5th Cir. 1997).

There is no requirement that these four factors are considered in any particular order or that the weight given each be in any particular way. Instead, these factors serve as indicators of an appropriate program, and help guide the inquiry needed in evaluating a school district's educational program. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 293-294 (5th Cir. 2009).

Factor I: Was the Program Individualized Based on Assessments and Performance?

The statute also has specifically set forth the elements that the IEP must include. These are a statement of the student's present levels of academic achievement and functional performance (PLAAFP); a statement of measurable goals including academic and functional goals; a description of how the student's progress toward the goals will be measured; an explanation of the extent that the student will not be in general education; and a statement of appropriate accommodations. See: 34 C.F.R. §§ 300.22,300.320.

In this case, the student has been enrolled in the District since Student was *** years old. Since that time, evidence showed that the parents never voiced complaints or made allegations that Student was not receiving a FAPE – until what is at issue here, the fall 2024 start of school. But even then, the parents agreed with the IEPs until January 2025. And during that time, the Student made progress. So, in conducting the *Michael F.* analysis, it is clear that the IEPs and BIPs developed by the District for those school years along with any amendments, were reasonably calculated to provide the Student a meaningful educational benefit. Moreover, while annual ARD meetings were held every January, if during the school year, something changed, the ARD committee met, and made adjustments, such as in January 2024.

1. Academics

The evidence demonstrated that the IEPs at issue include the Student's current levels, goals, education services, opportunities for access to general education students, and objective methods for evaluation. When the Student struggled, such as in spring of 2023, the District provided for accelerated instruction. The record demonstrates that the Student had made academic progress in general education classes, with support, until the spring of 2024. At that time, Student was feeling overwhelmed with the work required, which resulted in behavioral challenges which then interfered with academic objectives. Student was moved to some applied classes, where Student continued to made progress that year.

2. Related Services

The District had been providing, in accordance with the IEP, the related services of consult Occupational Therapy. The related services in this case are not at issue.

3. Behavioral Progress

The primary current challenge for the Student, however, is Student behavior, which often impedes educational objectives. The record is clear that this Student has

behavioral challenges, and the District had recently contracted for a new FBA and BIP. Prior to August of 2024, the Student was served with the IEP and BIP in existence at the time, along with accommodations. The Student's teachers, those who worked with him every day, were involved and provided input as to the BIP and accommodations.

While the data collection could have been more robust, Student teachers, paraprofessionals, and other staff supported student. The evidence establishes that during the Student's time in *** school, there was only one restraint, during the beginning of *** grade. Further, evidence shows that the District had to do one ***, also during the beginning of *** grade. Until that time, early fall semester 2024, the Student's behavior was under control, and not generally escalated.

And, once the Student's behavior escalated significantly, the District did not hesitate to contract for a new FBA, and one that was to be done on an expedited basis. Also, of significance here is that the District contracted for the FBA and BIP with ***, the very same provider that had been providing the Student private ABA therapy, and where the parent also obtained a private evaluation. It appears that the FBA and BIP was completed on an expedited basis, and an ARD was held. The only evidence as to the appropriateness of the BIP was that it was designed entirely for the Student's unique needs and conduct, and testimony indicated that it would be successful in allowing the Student to eventually access Student education in the District.

In summary, the District crafted the IEP based on available information and knowledge, and as such, the IEPs were reasonably calculated to provide the Student an educational benefit, and make non-educational progress, in light of the circumstances and the Student's unique needs. *Endrew F.*, *supra*.

Moreover, the Student's Parent testified that the return to school needed to be incremental, which is exactly what the District's IEP proposes. On the other hand, there was no evidence of any scaffolding or incremental approach by the private school. What is most compelling however, is that the evidence also demonstrated that the BIP called for ABA therapy to be provided at the school, and that school attendance would be alternated with the Student's clinic days for ABA therapy. The Student was also going to

be provided ABA therapy at school. Additionally, the ABA providers are all with ***, thereby having familiarity for the Student, providing consistency for student, and moving into integration with the educational environment. The District's proposal for the Student's return to school in the District will indeed provide this Student a FAPE.

Factor II: Was the Program Delivered in the Least Restrictive Environment

The law is clear that a student's IEP must be administered in the least restrictive environment (LRE). This means that the District is required to educate students with disabilities with others who are nondisabled to the maximum extent that is appropriate. 34 C.F.R. §300.114 (a)(2). That special education students be integrated into the regular classroom has been emphasized by the courts. *Endrew F.* at 1000. The LRE requirement is a key component of an appropriate placement under the IDEA. In fact, removal from general education should occur only if the severity of the behavior or the disability is such that it interferes with the education of others. In addition, 19 Tex. Admin. Code §89.1005 (c) provides the listing for a continuum of placements, and a private, non-public day school, (what is requested in this case) is clearly on the more restrictive end of the continuum.

The evidence showed that the District is committed to ensuring that the Student has access to interaction with nondisabled peers. In fact, until the middle of the Student's ***-grade year, Student was mostly in general education classes, with opportunities to leave for additional needed support services. Subsequently, after the most recent (September 2024) FBA, the Student's placement would still have some access to typically developing peers who are also important for peer modeling.

The District's IEP proposes a slow, gradual return to Student home campus, a general education campus. Yet, the Petitioner proposes a placement at *** School, a private day placement where the Student would have no access to non-disabled peers. Such a placement is far more restrictive than the District's proposal, and not the LRE. The evidence does not support a conclusion that the Student requires such a restrictive placement, completely isolated from non-disabled peers.

Factor III: Were the Services Developed and Provided in a Coordinated and Collaborative Manner by Key Stakeholders.

The third factor for consideration is the extent of coordination and collaboration among the key stakeholders. This factor requires that the educational program be developed and provided in a coordinated and collaborative manner. This is generally focused on the participation of a student's parents or guardians, and their involvement in the IEP review and ARD process. And while the IDEA encourages parental involvement, it is not without some limits. Courts have addressed this issue, noting that while collaboration with key stakeholders is certainly anticipated and expected in accordance with the IDEA, the right of parental participation does not equate to a parent's "veto power" over an IEP team. *White, supra* at 380. Deference is given to the school district, and the right for meaningful input for a student's IEP does not equate to a parent's ability to dictate its terms. *Id.*

While Petitioner has made claims that the District failed to collaborate, no credible evidence of such lack of collaboration was presented. In fact, it was the parents who declined to collaborate with the District and impeded its ability to work with the Student's medical and therapy providers.

The District made significant effort to involve the parents, and the evidence demonstrated that until the fall of 2024, they had a cooperative and collaborative relationship. The District tried to continue that collaboration, but were denied the opportunity to work with the Student's treating physician or psychiatrist, other medical providers, and ABA providers. The District requested, on several occasions, to talk with these providers, so that they could all work together for the Student in a collaborative fashion, support one another, and have consistency across settings for the Student. The Student's parents, however, impeded this effort at collaboration, by withholding the required consent needed for the two-way communication. In fact, at one ARD, consent

was initially given as part of an agreement for temporary homebound placement, only to have it revoked within an hour or two on the very same day.

Further, as noted, the District also had contracted with (or had agreed to contract with upon the Student's return to the *** school campus) a company to provide both direct and consultive behavior services through the presence of BCBAs. The evidence demonstrated that ABA therapy would be provided at school by the very same company, albeit from a different location, that the Student has been seeing privately for several years. This clearly demonstrates an attempt to work with other providers, so to have not only a coordinated approach, but to also guarantee consistency across environments. The parents, however, still declined to provide consent for the District to discuss with the provider any evaluation that had been completed privately.

In addition, the record demonstrated that on numerous occasions the District offered parent training to the Student's parents. The goal was to provide assistance and also coordinate strategies so that there would be consistency across locations with regard to addressing student's behavior. On every occasion, however, the parents declined any parent training, as well as those community resources, as noted in the TEA Guidance for Private Placements.

Factor IV. Did the Student Demonstrate Positive Academic and Non-academic Benefits

This factor is difficult as the IEP has yet to be implemented. No ability currently exists to assess the benefit if the parents will not allow the District to implement the IEP. Yet, the evidence did demonstrate that in past school years, the Student did demonstrate such positive academic and non-academic benefits.

The great weight of the evidence clearly demonstrates that the District did all that it could in terms of designing an IEP that would provide the Student with a program that is designed to provide educational and related services that will make progress in light of the Student's circumstances and Student unique needs. The slow, scaffolded return to school is quite unique and based on this Student's needs.

In this case, considering the four factors, the Petitioner did not meet the burden to establish that the program developed by the District did not provide FAPE.

C. Procedural Considerations

Another consideration is the denial of FAPE based upon procedural violations of the IDEA. The United States Supreme Court provided guidance as to the determination of whether a school district provided FAPE to a student, with both substantive and procedural considerations. Specifically, the school district must: comply with the procedural requirements of IDEA. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

In this instance, Petitioner also raised issues regarding the failure to provide FAPE as a result of procedural violation of the IDEA. Law holds that if procedural violations rise to the level of denying parents the opportunity or ability to participate in the child's education, then it could be considered a denial of FAPE. *Id.*

Specifically, Petitioner has contended that the parents were not provided the opportunity to actively participate in the decision-making during the ARD committee meetings. Petitioner complained that the District considered the parents' input as perfunctory – yet at the Reconvene ARD, the parent's advocate stopped the District from engaging with the parent. Petitioner did not establish that any procedural violation of the IDEA exists in this matter.

D. Private Placement

A student is entitled to reimbursement for a unilateral private placement or to be placed in a private placement where it is demonstrated that the school district's program does not provide the student with FAPE. Where private placement is sought, case law provides that at least three factors are to be considered, in what is often referred to as the three prongs of the Burlington-Carter test. See *Sch. Comm. of Burlington v. Mass. Dept. of Educ.*, 471 U.S. 359 (1985); *Florence Cnty Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). These factors are as follows: whether the district provided a student a FAPE; if the district failed to provide FAPE, then whether the private placement chosen by the

parent is appropriate; and, a consideration of the equities in requirement a district to pay for a unilateral placement for the student. *Id.*

Alternatively, if the Student's IEP in the local public school district was appropriate, then there is no need to inquire further as to the appropriateness of any other program or placement. While at one point the Parent's testimony indicated why ***school was necessary and mentioned what Parent viewed as attributes of the *** school. Yet, this school would be a new and unknown place for the Student. Moreover, no real evidence of any appropriateness of the placement was presented. The only testimony was the Student's Parent's report of what parent learned on a tour of the facility. Information as to just how those factors, viewed by the Student's Parent as attributes of the placement, specifically address the Student's needs was not provided.

To be entitled to tuition reimbursement, Student's Parents must prove (1) that the District did not provide FAPE to Student; and (2) that the Student's private placement at is, appropriate. 20 U.S.C. §1412(a)(10)(C)(i); 34 C.F.R. §300.148(c).

When applying the *Burlington-Carter* test however, a consideration of the appropriateness of the placement is brought into question only after a finding is made that the school district failed to provide FAPE. In this case, since the finding is that the Lampasas Independent School District did in fact provide the Student FAPE, the subsequent inquiry need not be made.

Therefore, considering the presumption in favor of the District's IEP, the burden on Petitioner to demonstrate the failure to provide FAPE, and the evidence in this case, including the record, documents and the foregoing Findings of Fact and Discussion, it is established that the District did not fail to provide the Student a FAPE. Accordingly, consideration of the appropriateness of any placement requested by parents' is not necessary or warranted. Student is not entitled to a District placement at *** School or other private placement at District expense.

VI. Conclusions of Law

1. Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 C.F.R. §300.301 and 19 TEX. ADMIN. CODE §89.1011.
2. The Lampasas ISD is responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.
3. The District, Lampasas ISD, did not deny Student a FAPE. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 998 (2017); *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). Student's BIP and IEP were appropriate. Petitioner did not carry the burden to establish that the District's IEP failed to provide FAPE as the evidence showed that the Student's IEP and BIP were appropriate. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
4. Petitioner did not meet the burden of showing that the District denied the Student's parents meaningful participation in the Student's education. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).
5. Petitioner did not meet the burden to prove any violation of IDEA by the District, including any procedural violation. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). *Schaffer v. Weast*, 546 U.S. 49 (2005).

VII. Order

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that all relief requested by Petitioner is DENIED, and that any and all claims of Petitioner are DISMISSED WITH PREJUDICE.

All other relief not specifically stated herein is DENIED.

Signed this 10th day of November 2025.

Kimberlee Kovach

Special Education Hearing Officer for
the State of Texas

X. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer 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. 19 Tex. Admin. Code §89.1185(n); Tex. Gov't Code, § 2001.144(a)-(b) (g).