

STUDENT, <i>B/N/F</i> PARENT & PARENT,	§	BEFORE A SPECIAL EDUCATION
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
COPPERAS COVE INDEPENDENT	§	
SCHOOL THE DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

On September 11, 2020, Student, *b/n/f* Parent & Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Copperas Cove Independent School The District (“Respondent” or “the District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On September 11, 2020, TEA assigned this case to Special Education Hearing Officer (“SEHO”) Sandy Lowe. On that day TEA set a copy of the Complaint and Notice of Filing to the District.

Student asserted multiple issues in Student’s Complaint. Specifically, Student asserted that the District procedurally and/or substantively denied Student a Free Appropriate Public Education (“FAPE”) during school year 2019-2020 in the following particulars:

1. whether the District failed to develop an Individualized Education Program (“IEP”) for Student that was reasonably calculated to enable Student to make appropriate progress in light of Student’s circumstances;
2. whether the District failed to ensure that all mandatory members of Student’s Admission, Review, and Dismissal Committee (“ARDC”) were in attendance at the fall 2019 IEP meetings;
3. whether the District failed to consider the Parents’ request for reimbursement of costs and fees for Student’s unilateral placement;
4. whether the District failed to develop and implement an appropriate Behavior Intervention Plan (“BIP”), Transition Plan back to the District, and Transition/Vocational Plan;
5. whether the District failed to educate Student in the Least Restrictive Environment (“LRE”).

Student requests that the Hearing Officer award the following relief:

1. The SEHO will make a finding that *** is an appropriate placement for Student.
2. The SEHO will order the District to reimburse the Parents for out-of-pocket tuition, evaluations, mileage at the Texas Comptroller's rate, and related services for the 2019-20 school year.

The District generally denies all allegations. The District further denies that the SEHO has jurisdiction to determine Student's issues related to any claims under non-IDEA statutes. The District requests a ruling that the SEHO has jurisdiction only over claims arising under the IDEA.

The District pleads the affirmative defense of Statute of Limitations to all allegations prior to October 15, 2019, based on 19 TAC §89.1151(c).

II. PROCEDURAL HISTORY

On September 11, 2020, TEA assigned this case to SEHO) Sandy Lowe. On September 14, 2020, SEHO Lowe issued her First Scheduling Order, which set out the statutory deadlines for the due process procedures: (1) the prehearing telephone conference ("PHC") would convene on September 29, 2020; (2) the Disclosure Deadline would be November 10, 2020; (3) the Due Process Hearing would take place on November 17, 2020; and (4) the Decision would issue on, or before, November 25, 2020.

On September 21, 2020, The District, through its counsel, filed three (3) documents: (1) The District's Plea to the Jurisdiction, and Response to Student's Special Education Due Process Hearing Request, Including Prior Written Notice; (2) The District's Notice to Hearing Officer of Insufficient Due Process Complaint; and (3) The District's First Motion for Issuance of Subpoena *Duces Tecum*, which requested documents from ***, Student's private school placement.

On September 29, 2020, the Parties convened the scheduled PHC. During that PHC, Student's Parents requested a continuance of time to respond to items 1 and 2 above, stating that the Parents were in the process of hiring outside counsel. On September 29, 2020, SEHO Lowe issued her First Prehearing Order, which granted the Parent's continuance request and ordered the Parents to file said responses by October 7, 2020. As there was no issue with the District's requested subpoena *duces tecum*, SEHO Lowe executed the Subpoena *Duces Tecum* to ***.

On October 6, 2020, Student's counsel filed (1) Petitioner's Motion for Leave to Amend Due Process Hearing Request, and (2) Petitioner's Parents' Notice of Appearance of Counsel and First Amended Request for Due Process Hearing. On October 7, 2020, SEHO Lowe issued her Order Granting Petitioner's Parents' Motion for Leave to Amend Due Process Hearing Complaint.

On October 8, 2020, SEHO Lowe issued her First Scheduling Order for First Amended Request for Due Process Hearing, which set out the new statutory deadlines for the amended due process procedures: (1) the PHC would convene on October 26, 2020; (2) the Disclosure Deadline would be November 16, 2020; (3) the Due Process Hearing would take place on November 23, 2020; and (4) the Decision would issue on, or before, December 18, 2020. On October 15, 2020, the District filed its Plea to the Jurisdiction and Amended

Response to Student's Amended Special Education Due Process Hearing Request, Including Prior Written Notice.

On October 19, 2020, the Parties filed their Joint Motion for Continuance of the Due Process Hearing. On October 20, 2020, SEHO Lowe issued her Order Granting Joint Motion for Continuance, Extension of Decision Due Date, and Revised Scheduling Order, which set out the continued deadlines: (1) the Disclosure Deadline would be January 19, 2021; (2) the Due Process Hearing would take place on January 26, 2021; and (3) the Decision would issue on, or before, March 3, 2021.

The Parties convened their PHC on November 3, 2020. On that same date SEHO Lowe issued her First Prehearing Order on First Amended Request for Due Process Hearing. This order set out Student's issues and requested relief, as well as those espoused by the District concerning non-IDEA statutes and the Statute of Limitations. SEHO Lowe dismissed all non-IDEA claims and reserved ruling on any Statute of Limitations matters until the Due Process Hearing. This order confirmed the January 19, 2021, Disclosure Deadline but clarified her disclosure requirements; it set the Due Process Hearing for two (2) days, January 26-27, 2021; and it confirmed the March 3, 2021, Decision Deadline.

On December 22, 2020, TEA reassigned this case to the undersigned SEHO McElvaney.

On January 8, 2021, the District filed its Unopposed Motion for Continuance. Finding good cause, the undersigned granted the continuance and notified the Parties that a new scheduling order would issue.

On January 14, 2021, the undersigned issued Order No. 2: Order (1) Granting Parties' Unopposed Motion for Continuance and (2) Rescheduling Due Process Hearing and Attendant Deadlines. This order confirmed the February 8, 2021, Disclosure Deadline; it set the Due Process Hearing for two (2) days, February 16-17, 2021; and it confirmed the March 24, 2021, Decision Deadline.

Between February 14, 2021, and February 21, 2021, Texas was hit with a winter storm that left many without electricity, water, cable, and Wi-Fi. On Monday, February 15, 2021, counsel for the Parties requested a short continuance of the hearing due to the fact that they and their clients and witnesses were without power. The Parties agreed upon a continuance of the Hearing to March 8-9, 2021. Finding good cause for the continuance, the undersigned issued Order No. 3. This Order No. 3 set out the agreed dates: February 26, 2021, Disclosure Deadline; it set the Due Process Hearing for two (2) days, March 8-9, 2021; and confirmed the April 13, 2021, Decision Deadline.

On February 15, 2021, The District filed a Motion for Summary Judgment related to the Statute of Limitations and perceived complaints by Student that were outside the one-year limitations period. On February 16, 2021, Student filed Student's Response to The District's Motion for Summary Judgment.

On March 2, 2021, Student requested a short continuance based upon counsel's hospitalization. The District agreed to the request. On March 9, 2021, the undersigned issued Order No. 4, which rescheduled the Due Process Hearing and attendant deadlines: April 2, 2021, Disclosure Deadline; April 12-13, 2021, Due Process Hearing; and May 8, 2021, Decision Deadline.

On April 11, 2021, the undersigned issued Order No. 5, which denied the District's Motion for Summary Judgment and determined that Student's limitations period accrued on September 11, 2019, which is one (1) year prior to Student's filing this case.

The Parties made their Disclosures timely and the SEHO convened the Due Process Hearing on April 12-13, 2021. Both Parties introduced documentary evidence; Student called several witnesses, who were cross-examined by the District; the District called several witnesses, who were cross-examined by Student.

During the Hearing, Student was represented by (1) Ms. Elizabeth Angelone, Student's counsel, and Student's mother; the District was represented by (2) Ms. Kelly Janes and Ms. Jamie Turner, its counsel; Ms. ***, the District's Deputy Superintendent of Instructional Services; and Ms. ***, the District's LSSP and expert.

At the conclusion of the Hearing, the Parties requested additional time for filing their written Closing Arguments and for the SEHO's delivery of the Final Decision, which was granted. Accordingly, the Closing Arguments would be due on, or before, June 8, 2021, and the Decision would issue on, or before, June 18, 2021.

Both Parties filed and served their Closing Arguments on the agreed briefing deadline, June 8, 2021. This Decision of the Special Education Hearing Officer is being delivered to the Parties on the agreed Decision Deadline of June 18, 2021.

III. RESOLUTION SESSION

The Parties convened the Resolution Session on October 15, 2020, but were unable to settle.

IV. FINDINGS OF FACT ¹

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District. The District is responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is a *** -year-old *** who was enrolled in the District in Student's *** school year, 2011-12, through the end of the 2016-17 school year. During school year 2017-18, Student enrolled in a virtual public charter school. At the beginning of school year 2018-19, Student reenrolled in the District and attended ***. In February 2019, Student enrolled in ***, a private school in ***, Texas. Student has not returned to the District since enrolling in ***. Student currently is not enrolled in *** due to the family's move to *** in March 2021.
3. Student has demonstrated some struggles since ***: actions leading to disciplinary referrals; aggression; disrespect; insubordination; ***; impulsivity, overreaction when faced with a problem, lacks self-control, failing portions of the State of Texas Assessments of Academic Readiness

¹ References to the Due Process Hearing Record are identified as follows: "T#.#.#" refers to the two-volume Court Reporter's Transcription of testimony made on April 12-13, 2021, and the specific volume, page, and line numbers contained therein; "J# # refers to the Parties' Joint Exhibits by number and page; "P#.#" refers to Student's Exhibits by number and page; and "R#.#" refers to the District's Exhibits by number and page.

("STAAR") exam in *** and *** grade; and failing some courses [Jt.3.2; P.2].

A. BRIEF OVERVIEW OF STUDENT'S EDUCATIONAL HISTORY

School Year 2016-17: ***: Section 504 Plan:

4. In January 2017, Student was evaluated by a medical doctor who diagnosed Student with Attention Deficit Hyperactivity Disorder ("ADHD") [P.4.33.2]. The doctor informed the District that Student would be *** for this disorder and suggested that the District consider individualized educational supports for Student [P.5.4].
5. The District conducted a Section 504 assessment pursuant to Section 504 of the Rehabilitation Act of 1973 ("Section 504") as amended, 29 U.S.C. §79, and determined that Student needed educational support through Section 504 for ADHD.² The Section 504 Committee placed Student in general education with accommodations of preferential seating, reminders to stay on task, and small group instruction [P.5.3].

School Year 2017-18: ***:

6. At the end of school year 2016-17, Student's Parents withdrew Student from the District and enrolled Student in ***, a public charter school, asserting that notwithstanding Student's Section 504 Plan, Student's academic and behavioral challenges continued on a downward trajectory during the 2016-17 school year.
7. Student's enrollment in the *** did not prove to be successful. Student failed *** courses and *** portions of the ***- grade STAAR state assessment [P.3.11]. In spring 2018, Student *** due to behaviors [P.33.1].

School Year 2018-19: Return to ***:

8. At the beginning of school year 2018-19, Student's Parents reenrolled Student in the District. Student's Section 504 Committee convened on September ***, 2018 [P.6]. Prior to the meeting, Student's mother informed the District of Student's additional diagnoses of *** [Jt.2.10; P.2.1; P.6.3 & 5]. The District accepted these new diagnoses and implemented accommodations in Student's general education classes of preferential seating, reminders to stay on task, small group administration, and a cooling off period of a maximum of five minutes as needed [P.6.3 & 5].
9. At the end of October 2018, Student was involved in a *** that led to Student's physical restraint *** [P.2.1]. The District held a Section 504 meeting in response to the restraint incident during which time it developed a Behavior Intervention Plan ("BIP"). The BIP targeted three behaviors: task completion for tasks that require stamina; nervous/fidgeting/self-injurious behavior; and confrontational behavior [Jt. 4.1]. The Section 504 team decided to keep all Student's other accommodations in place [P11.5].

² Section 504 is a civil rights law that prohibits discrimination on the basis of disability. It forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services. This law applies to public elementary and secondary schools.

10. Shortly after the restraint incident in fall 2018, Student's Parents requested a Full and Individual Evaluation ("FIE") to determine Student's eligibility for special education and related services. The District agreed to conduct an FIE and requested the Parents' consent. Student's Parents provided consent in December 2018.
11. On December 4, 2018, Student filed a Request for Due Process Hearing in which Student alleged that the District failed in its Child Find Duty.³ Student requested, *inter alia*, placement at a private school at public expense. The Hearing Officer found that the District did not fail in its Child Find duty and ordered that all of Student's claims were denied.⁴ At the time of the Hearing, Student's FIE had been completed but had not been reviewed by an Admission, Review, and Dismissal Committee ("ARDC").
12. On January ***, 2019, Student ***. Student claimed Student could not *** because Student felt unsafe following the restraints in October 2018 [P.44.16].

School Year 2018-19: Student's Withdrawal from the District and Enrollment in *:**

13. In February 2019, Student withdrew from the District and enrolled at ***, a private school. Student withdrew from *** in March 2021 due to the family's move to ***.
14. The District completed Student's FIE on April ***, 2019, and provided a copy to the Parents a week later [J.2.4]. The District's FIE determined Student met eligibility criteria for special education and related services for a Specific Learning Disability ("SLD") in Reading Comprehension. Additionally, the FIE determined Student would likely meet criteria as a student with Other Health Impairment ("OHI") for ADHD upon a physician's completion of the appropriate paperwork. The FIE also determined that Student did not meet eligibility criteria for special education and related services for ***, Emotional Disturbance, or a Speech Impairment [Jt.1.17].
15. On August ***, 2019, Student's Parents sent the District a renewed request for Student's placement, by the District, at *** or reimbursement for the Parents' unilateral placement for the 2019-20 school year [P.36].

School Year 2019-20: *: August ***, 2019: First ARDC Meeting:**

16. Student's ARDC convened on August ***, 2019, to review the results of Student's FIE. Noting that Student qualified for special education services under SLD and OHI, the Committee developed an IEP for Student for the 2019-20 school year [Jt.1].
17. The ARDC meeting ended without the Parents' consenting to special education services [J.1.18]. Student's Parent stated that although she was not in disagreement with the proposed IEP, Student

³ *Student., b/n/f Parent & Parent., v. Copperas Cove Independent School District*; TEA Docket No. 96-SE-1218. Child Find is the affirmative, ongoing obligation of local education agencies to identify, locate and evaluate all children with disabilities residing within their jurisdictions who need special education and related services.

⁴ Although additional issues were raised by Student in that prior due process proceeding, they did not become ripe because of the SEHO's determination that no Child Find violation occurred.

would not be receiving any special education services from the District because Student would continue at *** [Jt.1.18].

September *, 2019: Reconvened ARDC Meeting:**

18. The ARDC reconvened on September ***, 2019. Student's Parents stated that while they agreed with the special education findings, they declined to implement the proposed services. Student would remain at *** [Jt.1.18]. Student spent school year 2019-20 at ***.

B. STUDENT'S FIE:

19. Although not an issue in this due process hearing proceeding, the evidence established that the District's FIE was an appropriate evaluation. In conducting its evaluations of Student, the District used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student and did not use any single measure as the sole criterion for determining the Student's eligibility and developing Student's educational program.
20. The District's assessments and other evaluation materials used to assess Student were selected and administered so as not to be discriminatory on a racial or cultural basis; were provided and administered in the Student's language (English); were used for the purposes for which the assessments or measures are valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with instructions provided by the producer of the assessments.
21. The District assessed Student in all areas of suspected disabilities: SLD, OHI, ***, SI, and ED [Jt.1.17]. The District's evaluations were sufficiently comprehensive to identify all of Student's needs. The District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs.

C. STUDENT'S PROPOSED IEP:

22. Student's IEP was developed prior to the beginning of school year 2019-20 and was based upon Student's April ***, 2019, FIE [T.2.465.22-25; T.1.266.1-7]. The IEP contained recommendations to address needs flowing from Student's disabilities [T.2.465.5-7].
23. As a result of Student's FIE, the ARDC found that Student qualified for special education and related services under the primary disability of OHI for ADHD and the secondary disability of SLD in Reading Comprehension [Jt.1.17]. Student's Parents agreed with this finding.

Student's PLAAFS were Appropriate Based upon the Information Available to the ARDC:

24. The ARDC was somewhat limited in its review of Student's academic data. The sole current educational records were from Student's time with the District during school year 2018-February 2019. Likewise, the ARDC was limited in its development of Student's Present Levels of Academic

Achievement and Functional Performance (“PLAAFPs”), which were based on the limited data the school had in its possession [Jt.1.17]. At the time of the ARDC meeting, the District had no current levels of functioning from *** [Jt.1.3]:

- a. PLAAFPs in Reading: Student’s 2018-19 reading and English Language Arts and Reading (“ELAR”); Student’s FIE indicated that Student’s reading skills are average; Student had relative areas of strength in phonological awareness, phonics, high frequency words, vocabulary, and literature comprehension, and a relative area of weakness in comprehension of informational texts [Jt.1.3].
 - b. PLAAFPs in Written Expression: Student’s 2018-19 first semester writing/ELAR grade was *** [Jt.1.3].
 - c. PLAAFPs in Math: Student’s 2018-19 first semester grade for math was *** [Jt.1.3]. Student’s FIE indicated that Student’s math skills were in the average range with average scores in math calculation and math problem-solving [Jt1.3].
 - d. PLAAFPs in Functional Ability: Student was able to communicate and address Student’s personal needs; Student was able to independently and safely navigate the entire school campus and follow the Student Code of Conduct without modifications [Jt.1.3].
 - e. PLAAFPs in ***: Student’s 2018-19 first semester grade for *** was *** [Jt.1.4].
 - f. PLAAFPs in ***: Student’s 2018-19 first semester grade for *** was *** [Jt.1.4].
 - g. PLAAFPs in ***: Student’s 2018-19 first semester grade for *** was ***, Student’s 2018-19 first semester grade for *** was passing; Student’s 2018-19 first semester grade for *** was *** [Jt.1.4].
25. The ARDC agreed that if Student reenrolled in the District, additional data would be gathered from *** regarding Student’s then current functional levels to support Student’s needs. Also, if Student’s Parents would give consent to share confidential information with ***, the District would consider that information as part of the PLAAFP statements at Student’s 30-day transfer ARD.
26. Transition planning was impossible at this ARDC meeting because Student was not made available for the ARD and development of a transition plan. The District noted on the IEP that it would work with Student on transition planning when Student reenrolled with the District [T.2.551-552.2; 557-558.11; Jt.1.17-18].
27. The District provides students the opportunity to ***work on vocational pathways*** [T.2.663–664.24; R.14]. The District was required to invite Student to attend the ARDC meeting if transition services would be considered. However, Student did not participate in the ARDC meeting. The ARDC noted on the IEP that it would meet with Student at the time of Student’s reenrollment to ensure Student’s transition planning takes into account “the child’s strengths, preferences and interests” as required by the IDEA.

Student’s Goals and Objectives Were Measurable and Clear:

28. The ARDC drafted IEP goals to address Student's weakness in reading comprehension [T.2.468-469.4; Jt.1.8-9]. The IEP's proposed goals included specific information about progress monitoring and measurement [J.1.8-9]. The District proposed several accommodations taken directly from the FIE. [T.2.470:18-25-474.1-16; Jt.1:10; Jt.2.28-29]. Teachers would track Student's accommodations and support services through an online program [T.2.656-765.]. Student's Parents would be provided with progress reports consistent with the issuance of report cards [J.1.8-9].
29. As part of Student's FIE, the District conducted an Educational Psychological Evaluation [Jt.3]. The District also performed a Functional Behavioral Assessment ("FBA") [J.4]. The assessors did not determine a clear series of targeted behaviors that would require a BIP. Following the suggestion of the District's Board-Certified Behavior Analyst ("BCBA") and LSSP, the ARDC agreed to include a behavior goal for Student as part of the IEP [Jt.1.9]. The ARDC considered supplemental aids and services for behavior and academics through inclusion support [T.2.476-477.15]. Positive Behavioral Intervention and Supports ("PBIS") are part of the program Conversion, Help, Activity, Movement, Participation, Successful ("CHAMPS"), which is embedded in the District's curriculum and implemented by all teachers in the District [T.2.654.8-24].

Student's ARDC Considered Least Restrictive Environment:

30. The ARDC reviewed Least Restrictive Environment ("LRE"). Based on the data that Student was able to make progress in *** grade without an IEP or special education services, there was no indication that Student needed a specialized classroom, program, or school to justify removal for general education peers [Jt.1].
31. Student's Parents attended and participated in the initial ARDC meeting [Jt.1.17-19]. Student's Mother requested Extended School Year ("ESY") services as well as additional inclusion support [Jt.1.17-19]. The ARDC accepted these suggestions [Jt.1.17-19].
32. Student's Mother offered no specific objections to the proposed IEP during the August 2019 and September 2019 ARDC meetings [Jt.1.17-19].
33. Prior to the ARDC meetings, Student's Parents did not provide consent for the attendance of one of Student's current teachers at *** [T.1.315].
34. Prior to the ARDC meetings, Student's Parents neither asked for a Transition Plan nor made Student available for the ARDC meetings [T.1.334].
35. Prior to the ARDC meetings, Student's Parents did not ask for counseling services [T.1.334].
36. Prior to the ARDC meetings, Student's Parents failed to provide Student's records from *** to help establish Student's current level of functioning [T.1.334].
37. Prior to the ARDC meetings, Student's Parents failed to provide consent for the District to speak with staff at *** [T.1.334].

38. Student's Parents never provided consent for Student's placement in special education at the District [T.1.335].

39. Prior to the ARDC meetings, Student's Parents neither provided a copy of Student's IEE nor asked that it be reviewed at the meetings [T.1.336].

D. PLACEMENT AT *: FEBRUARY ***, 2019-MARCH ***, 2021**

40. *** is a private accredited school that serves both special education and general education students. It is accredited through the Texas Public School Accreditation Commission, which is the accrediting body for the Texas Education Agency ("TEA") for private schools [T.2.364]. *** partners with ***, an accredited private *** school, to provide the core curriculum for its *** students [T.2.365-67].

41. *** employs certified teachers who provide the core curriculum to Student on-line [T.2.367]. *** takes one subject at a time so the students are not juggling different subjects all at once [T.2.365].

42. The teachers at *** are not certified [T.2.392.19-25]. There is one teacher for all students. The *** teacher is solely used as support staff to aid students by providing tutoring, mentoring, and encouragement [T.2.366].

43. At the time of the hearing, *** had ten students enrolled in its *** [(T.2.365.5-6)]. Based upon economics, *** could not hire an ELA teacher, a science teacher, or a history teacher [(T.2.365.6-9)]. At the time Student enrolled in ***, the Academy failed to provide a copy of Student's records from the District to Student's teacher [T.2.386.20-23]. Student's Parents enrolled in the ***, but Student's Parents chose to have Student attend *** for the support and for the social aspect [T.2.392.17-18].

44. *** does not provide Student with any of the following: written accommodations; measurable goals; related services; therapies; extracurricular services; counseling services; any transition plans for students to help *** [T.2.404.11-25;422.21].

45. The *** program allowed Student to complete an entire course in just fifteen days [T.2.646.15-18]. Taking one course at a time limited Student's ability to work on reading, language arts, and math skills on a daily basis [T.2.647.3-9].

46. Ms. ***, Student's former *** principal at ***, had the opportunity to observe Student at *** in spring of 2019 [T.2.633.9-21]. Ms. ***'s general impression was that the work provided to Student seemed very easy and rudderless [T.2.634.2-6]. There were concerns over the limited details contained in *** lesson plans; the *** teacher chose what to teach [T.2.645.8-11].

E. PLACEMENT AT * IS APPROPRIATE:**

47. The District provides students with opportunities for online courses, if needed [T.2.651.1-25]. These online platforms are aligned with the Texas Essential Knowledge and Skills ("TEKS") and can be modified in accordance with a child's specific needs [T.2.651.1-25].

48. The District's curriculum is aligned with the TEKS and focuses on important skills or power standards [T.2.641.4-642.3].
49. The evidence failed to prove that Student's proposed IEP was not reasonably calculated to provide Student with a meaningful benefit: Student's IEP was as individualized as it could be based upon Student's assessments and performance; Student's placement in general education, with accommodations and inclusion support, was the LRE; Student's program was developed in a coordinated and collaborative manner; and Student's withdrawal from the District prior to the IEP's implementation precluded the ARDC's ability to track Student's progress academically and non-academically.
50. The evidence failed to prove that Student was entitled to tuition reimbursement for the unilateral placement at ***.
51. The evidence failed to prove that the District interfered in the Parents' ability to be a meaningful participant in Student's ARDC by pre-determining the outcome of Student's ARDC meetings.

V. DISCUSSION

A. Student's Issue:

What this case is about is whether the District denied Student FAPE by fashioning an inappropriate IEP for Student's 2019-20 school year. Student avers that Student's 2019-20 proposed IEP (1) failed to provide Student individualized components on the basis of Student's assessment and Student's performance; (2) failed to provide appropriate PLAAFPS through the August 2019 IEP; (3) failed to identify all of Student's significant deficits; (4) failed to provide appropriate goals through the 2019 proposed IEP; (5) failed to provide individualized goals; (6) failed to provide reading goals that are not just a reiteration of the state standard for all students; (7) failed to provide Positive Behavioral Supports ("PBS") through the August 2019 IEP; (8) failed to provide Social Skills or Counseling Services; (9) failed to provide transition services for Student's return to public school; and (10) failed to provide any transition/vocational services.

B. Legal Support:

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. The Court defined "educational benefit" as one that is meaningful and that provides a "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). In a more recent opinion, the Court affirmed that IDEA cannot, and does not, promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). The correct standard for providing FAPE is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress in light of the student's individual circumstances. *Id.* at 999.

The well settled method for determining whether a school district's IEP is reasonably calculated to provide a meaningful educational benefit originated in the Texas case of *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997). The method utilizes a four-factor test: (1) Is the program individualized on the basis of the student's assessment and performance? (2) Is the program administered in the LRE? (3) Are the services provided in a coordinated and collaborative manner by the key stakeholders? and (4) Does the student demonstrate both positive academic and nonacademic benefits?

The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. It is well-settled that a party challenging the district's eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d at 754, 762-63 (citing *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).

C. Provision of FAPE:

IDEA defines FAPE as special education and related services that (1) are provided at public expense; (2) meet the standards of the state education agency; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§300.320-324.

This analysis concerns the District's proposed August and September 2019 IEP. In conducting the *Michael F.* analysis, it is clear that the IEP developed by Student's ARDC was reasonably calculated to provide Student a meaningful educational benefit under the IDEA.

Michael F. Factor I: Was the Program Individualized Based on Student's Assessments and Performance?

Student's ARDC met in August and September 2019 to develop Student's IEP for school year 2019-20 at ***. The ARDC thoroughly reviewed (1) Student's FIE, completed in April 2019; (2) information from school personnel, information/records from other agencies or professionals; (3) Student's communication needs; and (4) the Parents' concerns for enhancing the education of the child.

The IEP included statements of Student's PLAAFPs based upon information that the District had on hand. Some of the PLAAFPs could not be precise due to the fact that Student had not been enrolled in the District since February ***, 2019; the most current educational information was developed in fall 2018; no one from *** participated in the ARDC meeting to inform the ARDC of Student's current functioning level; no educational records were made available from *** to Student's ARDC. Recognizing that more information would be forthcoming if Student reenrolled in the District, the ARDC stipulated that upon Student's reenrollment, additional data would be gathered about Student's current functioning; the ARDC further stipulated that if and when the Parent provided consent to share confidential information from ***, the District would consider that information as part of the PLAAFPs.

The ARDC considered Transition and Transitional/Vocational Services at the August 2019 ARDC meeting and committed to addressing Transition and Transitional/Vocational Services when Student

reenrolled in the District. Student did not attend either ARDC meetings so these Services could not be discussed thoroughly.

The ARDC determined that Student's behavior impeded Student's learning and that of other children; accordingly, behavioral accommodations were developed. These included chunking assignments, frequent breaks, private conversation about behavior, and private, individual reminders about behavior expectations.

The ARDC crafted two goals and short-term objectives in Reading/English Language Arts. The ARDC developed a goal in Adaptive Behavior.

As to additional goals or short-term objectives, Student's Parents did not request anything other than development of EYS goals, which the District agreed to prepare when Student returned to the District.

Based upon the sparse information the District had in its records, the Parents' failure to have Student attend the 2019 ARDC meetings, the Parents failure to obtain then current records from *** and a teacher from the ***, Student's proposed IEP was developed based upon Student's evaluations and performance.

Michael F. Factor 2: Was the Program Delivered in the LRE?

It is well-settled that a student's IEP must be administered in the least restrictive environment. This means that the District was required to educate Student with others who are nondisabled to the maximum extent appropriate. 34 C.F.R. §300.114(a)(2). Likewise, the District was required to offer Student a continuum of placements to address Student's needs. 34 C.F.R. §300.115. In *Andrew F.*, the Supreme Court reiterated the IDEA's long-standing preference that students be "fully integrated into the regular classroom." *Andrew F.* at 1000.

In making a determination of LRE, a hearing officer weighs the benefits of education in the regular classroom, with the use of supplemental aids and services, against those of others. Where feasible, a district should educate the disabled student with Student's peers. However, this mandate is not limitless. A district is not required to establish a "class within a class" or to modify the general education curriculum beyond recognition to accommodate a handicapped student. Student's needs, and the impact of those needs on other children, must be considered. *Daniel R.R. v. State Board of Educ.* 874 F.2d 1036, 1043-4 (5th Cir 1989)., 874 F.2d at 1048-49.

In the instant case, the evidence overwhelmingly demonstrates that Student's placement in the general education program at *** would have been Student's LRE. Based on the data that Student was able to make progress in *** grade without an IEP or special education services, there was no indication that Student needed a specialized classroom, program, or school to justify removal for general education peers. Student's Parents attended and participated in the initial ARDC meeting. Student's Mother requested Extended School Year ("ESY") services as well as additional inclusion support. The ARDC accepted these suggestions. Student's Mother offered no specific objections to the proposed IEP during the August 2019 and September 2019 ARDC meetings.

The LRE requirement is one of the central components of an appropriate placement under the IDEA. Compliance is mandatory. The educators who worked with Student on a daily basis were committed to

ensuring that Student had the benefit of exposure to grade-level instruction and interaction with nondisabled peers to the extent possible.

Michael F. Factor 3: Was the 2019-20 Program Developed in a Coordinated and Collaborative Manner:?

This third factor requires that all members of the ARDC, including parents, must have the opportunity to participate in a collaborative manner in developing the IEP. 34 C.F.R. §300.322(a). A decision of the ARDC concerning required elements of the IEP must be made by mutual agreement if possible. 19 TEX. ADMIN. CODE §89.1050(g). Courts emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances, which is entirely consistent with the third *Michael F.* factor. *Andrew F.* at 994.

For the relevant period in the present case, the record reflects that multiple individual stakeholders, including the Parents, met to develop Student's IEP. Student's Parents were involved in Student's educational decision making. Student's Parents attended and participated in in the ARDC meetings. Student's Mother made recommendations regarding ESY services, which the ARDC accepted. They voiced concerns and approval when necessary. Notwithstanding that fact, it was clear that no IEP would be accepted if Student had to be placed in the District. Indeed, Student's Mother vocalized no problem with the IEP, no problem with the Plan, or results of Student's evaluations. To the extent the Parents worked with the District in developing IEP in a coordinated and collaborative manner, Student's Parents were not going to allow the implementation of the IEP at ***.

Michael F. Factor 4: Did Student Demonstrate Positive Academic and Nonacademic Benefits?

The fourth and final factor is whether there have been demonstrable academic and non-academic benefits from the IEP. *Houston Indep. Sch. Dist. V. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). An IEP must aim to enable a student to make progress because the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Andrew F.* at 992. A student's development should be measured not by Student's relation to the rest of the class, but rather with respect only to Student.

In this case, there is nothing to measure Student's anticipated positive academic and nonacademic benefits because Student never ever reenrolled at the District. The IEP would have led to academic and nonacademic benefits based upon the contents of the goals and general education placement. Student is capable of doing grade-level work, and is on grade-level at ***, which requires students to be able to work at grade-level. The IEP strengthen Student's accommodations by adding accessibility features, behavior supports, designated supports, and instructional supports [Jt.1.10]. Further, the amount of time offered as inclusion support for math, *** would have enhanced Student's acquisition of skills and better behavior.

D. Tuition Reimbursement for Private School Placement

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

The foregoing Findings of Fact and Discussion manifest that the District did not fail to provide Student FAPE. Accordingly, Student is not entitled to reimbursement for the unilateral placement at ***.

**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. CCISD is responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA, 20 U.S.C. §§1412 & 1414; 34 C.F.R. §300.301; 19 TEX. ADMIN. CODE §89.1011.
3. Student failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984).
4. Tuition reimbursement for Student's unilateral placement in *** is not appropriate because CCISD did not deny Student a FAPE. 20 U.S.C. §1412(a)(10)(C)(i); 34 C.F.R. §300.148(c).

**VII.
ORDER**

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested is DENIED.

SIGNED this the 18th day of June 2021.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

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