

DOCKET NO. 157-SE-0120

**STUDENT, B/N/F PARENT AND
PARENT,
Petitioner**

v.

**DENISON INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by next friends Parent and Parent (Student or, collectively, Petitioner), brings this action against the Denison Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. The main issue in this case is whether the District denied Student a free, appropriate public education (FAPE) during the relevant period. The Hearing Officer concludes the District did not deny Student a FAPE.

II. PROCEDURAL HISTORY

A. Legal Representation

Student was represented throughout this litigation by Student's legal counsel, Martin Cirkiel with Cirkiel & Associates. The District was represented throughout this litigation by its legal counsel, Jan Watson with Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

B. Preliminary Motions

In its response to the complaint, Respondent raised a plea to the jurisdiction, requesting dismissal of any non-IDEA claims, specifically, the reported discrimination based upon disability and constitutional claims. The Hearing Officer granted the plea to the jurisdiction and dismissed those claims and requests for relief arising under statutes other than the IDEA during the initial prehearing conference due to lack of jurisdiction.

III. DUE PROCESS HEARING

The due process hearing was conducted virtually by Zoom December 3-4, 2020. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel, Martin Cirkiel, who was assisted by his co-counsel, Anthony O'Hanlon. In addition, Student's parents attended the due process hearing.

Respondent continued to be represented by its legal counsel, Jan Watson, who was assisted by co-counsel Alexandra Mosser and Meredith Walker. In addition, ***, the Executive Director of Special Education for the District, attended the hearing as the party representative. Both parties filed timely written closing arguments. The Decision in this case is due on February 5, 2021.

IV. ISSUES**A. Petitioner's Issues**

Petitioner raised the following issues under the IDEA for decision in this case:

FREE, APPROPRIATE PUBLIC EDUCATION

1. Whether the District denied Student a free, appropriate public education (FAPE) by failing to develop an Individualized Education Program (IEP):
 - with key stakeholders;

- in a coordinated, collaborative manner;
 - commensurate with Student's unique and individualized needs;
 - reasonably calculated to provide educational services in the least restrictive environment;
 - reasonably calculated to provide educational services in the least restrictive manner; and
 - reasonably calculated to provide educational services in the most inclusive manner.
2. Whether the District denied Student a FAPE by failing to implement an IEP that provided:
- academic benefit;
 - non-academic benefit; and
 - a safe, non-hostile educational environment.
3. Whether the District denied Student a FAPE by failing to ensure staff were well-trained, competent, and properly supervised.

NON-IDEA CLAIMS

4. Whether the District violated Student's rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the United States Constitution.

B. Respondent's Legal Position and Additional Issues

Respondent generally denied the allegations stated in the amended complaint. Respondent also contended it provided Student with a FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

The District raised the following additional issues:

1. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to resolve claims arising under any laws another than the IDEA, and whether such claims should be dismissed.
2. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to grant certain items of requested relief, specifically attorney's fees.

3. STATUTE OF LIMITATIONS: Whether any of Student's IDEA claims that accrued prior to January 21, 2019, should be dismissed as outside the one-year statute of limitations rule as applied in Texas.
4. COUNTERCLAIM: Whether Petitioner is entitled to an Independent Educational Evaluation (IEE) at public expense.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner seeks the following items of requested relief:

1. An IEE in all areas of disability and need;
2. An order directing the District to hire a consultant to develop a peer-reviewed educational program based upon the completed IEE;
3. An assistive technology evaluation;
4. A one-time psychiatric assessment at District expense to evaluate any long-term damage(s) caused by the actions underlying the claims;
5. A one-on-one aide;
6. An order directing the District to develop an inclusive educational program where Student attends non-academic classes with Student's peers;
7. Private school placement at District expense for the remainder of Student's enrollment;
8. Counseling/therapeutic services at District expense for two years;
9. An order directing the District to provide Student a trained service animal;
10. Compensatory educational services;
11. Home and family support services;
12. A parent training stipend of up to \$1,000;

13. An order directing the District to convene a Community Resource Coordination Group;
14. Parent meeting;
15. Family respite services for two years;
16. Extended School Year services for three years;
17. An order directing the District to train campus Student Resource Officers;
18. Reimbursement of out-of-pocket parental expenses incurred due to loss of educational opportunities stemming from the allegations; and
19. Any other appropriate relief.

B. Respondent's Requested Relief

1. Dismiss all claims arising under statutes other than the IDEA.
2. A determination by the Hearing Officer that Petitioner's request for an IEE is premature because a current evaluation has not yet been conducted by the District, or in the alternative, a determination that the District's evaluation IEP is appropriate and Petitioner is therefore not entitled to an IEE at public expense.

VI. FINDINGS OF FACT

Background Information

1. Student is *** years old.¹ Student attended *** school at *** in the District from *** until the 2018-19 school year, when Student completed *** grade. In the 2019-20 school year, Student entered *** grade at *** in the District.²
2. After the District conducted an improper physical restraint of Student on ***, 2019, Student did not return to school in the District.³ At some point before the 2020-21 school year began, Student's family relocated to a different school district. Student now attends school in the school district in which Student now resides and is not seeking to return to

¹ Joint Exhibit 5, at 1 (JE __, at __).

² JE 6; JE 7.

³ Transcript 348 (Tr. __).

school in the District.⁴ Student is doing “very, very well” in Student’s new school district and Student’s parents are happy with the services Student receives there and the progress Student has made.⁵

3. Student receives special education and related services as a student with an intellectual disability, speech impairment, and Other Health Impairment (OHI) for ***.⁶ Student has been diagnosed with ***.⁷
4. Student has a full scale IQ of ***.⁸ Student’s functioning is significantly below average in all academic areas. Student has a ***. For example, Student could tell District staff ***. Student required ***. Student cannot ***.⁹
5. Student is active, happy, and social. Student’s teachers consistently state that Student is a joy to be around. Student enjoys ***. Student also enjoys visiting with friends at school.¹⁰
6. The District conducted a Full and Individual Evaluation (FIE) of Student in October 2017. The evaluation found Student continued to qualify for special education and related services as a student with an intellectual disability, speech impairment, and OHI. The evaluation recommended Student receive educational services in a small, structured classroom. The evaluation made nine behavior management recommendations, including clearly defined limits, positive reinforcement, frequent breaks, a seat near the teacher, and frequent eye contact/proximity control. It made eleven instructional recommendations, including curriculum modifications, a visual daily schedule, short instructions of one or two steps, and emphasis on major points. The evaluation also recommended three areas of speech and communication to work on with Student: ***.¹¹

Student’s Educational Experience

7. While Student was at *** from *** until the 2019-20 school year, Student’s parents were happy with the services Student received and had no concerns.¹² Student’s parents were able to communicate openly with Student’s teachers and participate fully in planning Student’s educational program.¹³ Student passed all State of Texas Assessment of

⁴ JE 45.

⁵ Tr. 132-33.

⁶ JE 6, at 1; JE 7, at 2.

⁷ JE 5, at 6; Tr. 36.

⁸ *Id.*, at 9.

⁹ JE 7, at 4; Tr. 38-40.

¹⁰ Tr. 38-40, 252-54.

¹¹ JE 5, at 14; JE 6, at 15.

¹² Tr. 150.

¹³ Tr. 150-51.

Academic Readiness *** (STAAR***) tests in the *** subject areas tested at the end of the 2018-19 school year.¹⁴

8. The District held an annual Admission, Review, and Dismissal (ARD) Committee meeting on October ***, 2018, while Student was attending ***. Student's mother was present for the meeting. Student's schedule of services called for Student to receive most of Student's classes in the ***, a *** classroom with *** children.¹⁵
9. Student's teachers found Student to be a "joy to have in class." It was noted at that time that, when Student is worried Student is not getting attention from teachers, Student can become aggressive toward peers. In order to control that behavior, the District utilized a number of accommodations, including: clearly defined limits, frequent reminders of rules, positive reinforcement, frequent eye contact and proximity control, frequent breaks, and several other behavior management techniques. These accommodations were identical to those recommended in the 2017 FIE and were effective in addressing Student's behavior.¹⁶
10. The ARD Committee set a number of IEP goals for Student. The ARD Committee set three *** goals for Student, including ***. It also set three speech goals for Student. It also set goals for Student in ***.¹⁷
11. Student began the 2019-20 school year, Student's *** grade year, at ***. To prepare ***, Student visited the new campus and met with the *** teacher in whose class Student would spend the majority of Student's time. That teacher also communicated with Student's *** teacher to understand Student's needs in preparation for working with Student.¹⁸ The *** teacher gave information on some behavioral strategies they had been using, including a chart with different rewards Student could earn. The teacher at *** also spoke with Student's mother about ways to manage Student's behavior. Student's mother suggested *** during the day as a calming mechanism. Student's new teacher implemented the strategies recommended by both Student's *** teacher and Student's mother.¹⁹
12. At the time of Student's annual ARD Committee meeting, seven weeks into the 2019-20 school year at ***, Student's parents had no concerns about Student's education and were in close communication with District staff.²⁰ The District was responsive to any concerns

¹⁴ JE 7, at 5.

¹⁵ Tr. 133.

¹⁶ JE 5, at 14.

¹⁷ JE 6, at 6-12.

¹⁸ Tr. 160, 226.

¹⁹ Tr. 232-33.

²⁰ JE 7, at 37.

Student's parents expressed and sought to redress them. Student's parents frequently text messaged and emailed with staff.²¹

13. Student's annual ARD Committee meeting at *** was held on October ***, 2019. Student's mother was present for the meeting. It was noted that, in the seven weeks since the school year had begun, Student had *** incidents involving aggression toward peers or staff members. Staff were able to deescalate those infrequent behaviors quickly using many of the same behavioral accommodations used in the 2018-19 school year at ***, which were initially recommended in Student's 2017 FIE.²²
14. Student was placed primarily in an *** room at *** with a teacher and *** supporting *** students with disabilities. Student's parents participated fully in the ARD Committee meeting and were able to offer suggestions and comments. By the end of the ARD Committee meeting, Student's parents had no unaddressed concerns about Student's educational program. They were happy with the services Student was receiving.²³
15. The ARD Committee chose to keep in place the behavioral accommodations recommended in the 2017 FIE that had been successful for Student while at ***.²⁴ The ARD Committee added seven additional behavioral intervention strategies, including coordinating school/home behavioral supports, using a reinforcement system, and providing structured sequence of social skills training.²⁵
16. Student's behavior was "overall good" during the first seven weeks of school.²⁶ After that for the remainder of the 2019-20 school year until ***, 2019, Student had a behavioral issue approximately ***. Each time, the District was able to redirect Student quickly and without further issues.²⁷
17. The District continued to provide speech therapy services for *** minutes *** week, as it had also done at ***.²⁸ Student's parents were happy with the speech therapy services Student received.²⁹ The District also provided indirect occupational therapy services.³⁰

²¹ Tr. 152.

²² JE 7, at 4, 25.

²³ Tr. 155-56.

²⁴ JE 7, at 25.

²⁵ JE 7, at 6.

²⁶ JE 7, at 4.

²⁷ Tr. 339-40.

²⁸ JE 7, at 35; JE 6, at 24; Tr. 40.

²⁹ Tr. 54-55.

³⁰ JE 7, at 36.

18. Students in the *** room do not receive grades. Instead, their progress is measured solely by the progress they make toward their IEP goals.³¹ In the time between the October 2018 ARD Committee meeting and the October 2019 ARD Committee meeting, Student mastered two out of three speech language goals and made progress on the other goal. Student also made progress on Student's occupational therapy goals and Student's other IEP goals.³² Student mastered each of Student's *** goals and Student's *** goal. Student made progress on Student's *** goal, going from ***% accuracy in December 2018 to ***% accuracy in September 2019.³³
19. In consultation with Student's mother, the District chose to discontinue Student's *** goals as they were too advanced for Student.³⁴ The ARD Committee developed new goals in all areas during the October 2019 ARD Committee meeting. Student made progress on those goals from October until December.³⁵
20. Student participated in an activity called *** where Student *** and had an opportunity to interact with peers without disabilities. Student also had lunch in the cafeteria with peers without disabilities almost every day. Student had friends in Student's *** class and in other classes.³⁶
21. Student's schedule of services called for Student to attend all classes in the *** with the exception of *** in the general education environment every day.³⁷ However, after the October ***, 2019 ARD Committee meeting, Student's parents requested an additional ARD Committee meeting, because they had concerns about Student's lack of exposure to peers without disabilities.³⁸
22. The ARD Committee reconvened at Student's parents' request on October ***, 2019, in order to discuss Student's exposure to peers without disabilities. In response to the concern, the ARD Committee added a general education *** for Student to attend each day to Student's schedule of services. A paraprofessional would accompany Student to support Student during the general education ***. The ARD Committee also added a new IEP goal to address Student's participation in the general education ***. Student successfully participated in the general education *** without needing to be taken out of the class to return to the *** room.³⁹

³¹ Tr. 405.

³² JE 7.

³³ JE 7, at 6-12.

³⁴ *Id.*

³⁵ JE 17.

³⁶ Tr. 252.

³⁷ JE 7, at 34; Tr. 252.

³⁸ JE 8, at 1.

³⁹ JE 8, Tr. 346-47.

23. Student had a behavioral incident on November ***, 2019, but District staff were able to calm Student down as they always had in the past. Following that, Student's mother requested an opportunity to meet with staff from the District who were working with Student. District staff met with Student's mother the following week and decided, in consultation with Student's mother, to move Student to *** room with a different teacher with whom Student had a good rapport.⁴⁰ The new *** room had the same set-up as the previous one, with one teacher and ***.⁴¹
24. Staff members who worked with Student were trained in Crisis Prevention Institute (CPI) training, which included training on conducting proper restraints.⁴² New teachers in the District attend a weeklong training before school begins.⁴³ There are also ongoing trainings offered by the District and paraprofessionals who work with students receive several training classes as well.⁴⁴

***, 2019 Incident

25. On ***, 2019, Student was involved in a significant incident that resulted in Student's withdrawal from the District. Student was in Student's *** classroom with a teacher and ***. Student's teacher asked Student to do Student's work, but Student refused and then ***. As the teacher attempted to calm Student down and redirect Student using the behavioral strategies from Student's IEP, Student ***.⁴⁵
26. Staff called the School Resource Officer (SRO) ***. The SRO is not a District employee. Staff had asked the SRO to *** on prior occasions and, prior to ***, 2019, it was always effective. Prior to this incident, staff had always successfully calmed Student down and redirected Student quickly when Student ***.⁴⁶
27. On ***, 2019, however, Student ***. The SRO, with help from a paraprofessional, ***. ***.
28. When they reached ***, an assistant principal instructed the SRO and paraprofessional to ***. The assistant principal followed them to ensure Student was ***. During that entire time, the paraprofessional and SRO continued to ***.⁴⁷

⁴⁰ JE 28, JE 29, Tr. 111.

⁴¹ Tr. 362-63.

⁴² P1, at 22.

⁴³ P2, at 23.

⁴⁴ P3, at 20.

⁴⁵ JE 35.

⁴⁶ Tr. 183-84.

⁴⁷ JE 34; JE 39; Tr. 379-80.

29. The District's assistant superintendent conducted a prompt investigation of the incident, concluding that the SRO and paraprofessional improperly restrained Student ***. The assistant superintendent concluded the assistant principal, who was trained in proper procedures for responding to an emergency situation and/or restraining students, did not properly intervene to prevent the action. He also concluded that the classroom teacher should have directed the paraprofessional and SRO to prevent use of any improper restraint techniques in transporting Student.⁴⁸
30. Student did not return to school in the District after the incident. Immediately after the incident, Student's mother met with the head of special education for the District and others to discuss the incident and review video of it.⁴⁹ The assistant superintendent of the District met with Student's parents the week after the incident. They reviewed the video together. The next day, the assistant superintendent again met with Student's parents, along with ***.⁵⁰
31. Petitioner filed this request for a due process hearing on January 21, 2020, without returning to school in the District.

VII. DISCUSSION

A. Duty to Provide a FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). The District has a duty to provide FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

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

⁴⁸ JE 39.

⁴⁹ Tr. 122-23.

⁵⁰ Tr. 372-73.

with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982).

A school district must provide a student an educational program reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017). The student's progress must be something more than mere *de minimis* progress. *Id.*, at 1000. Every child should have the opportunity to meet appropriately challenging objectives. *Id.*, at 992.

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁵¹ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District failed to provide Student a FAPE and offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*

C. FAPE

The Four-Factor Test

The Fifth Circuit has articulated a four-factor test to determine whether a Texas school district's program meets IDEA requirements. Those factors are:

- 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;
- Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
- Whether positive academic and non-academic benefits are demonstrated.

⁵¹ There is no distinction 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).

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997). Even after the Supreme Court’s 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

These four factors need not be accorded any particular weight, nor applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district’s educational program. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). When weighing the four factors in this case, the evidence shows that the District provided Student a FAPE.

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, a school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a).

While the IEP need not be the best possible one nor must it be designed to maximize a student’s potential, the school district must nevertheless provide a student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district “was reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.* 137 S. Ct. at 999.

The District's obligation when developing Student's IEP is to consider Student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs. 34 C.F.R. 300.320(a)(1)(i). The District considered all of those elements in forming an educational plan for Student. The District conducted an FIE in 2017. The FIE made a number of recommendations for Student's IEP. The District implemented the recommendations from the FIE, including the behavior management, instructional, and speech and language recommendations. The District also adjusted their strategies based on what they were observing of Student, including creating a rewards system and offering Student *** during the 2018-19 school year and carrying those forward into the 2019-20 school year.

When Student ***, Student's new teacher communicated with both Student's former teacher and Student's mother to understand what she could do to best accommodate Student and help Student make progress toward Student's IEP goals. The District added several behavioral intervention strategies into Student's IEP at the October ***, 2019 ARD Committee meeting in response to their observations. The strategies were effective in minimizing Student's behavioral incidents and quickly redirecting Student once Student had a behavioral issue. The District individualized Student's program based on observation, performance, and assessment.

2. Least Restrictive Environment

The IDEA requires that a student with a disability must be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling, and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment (LRE) requirement." 34 C.F.R. § 300.114(a)(2)(i-ii). State regulations require a school district's continuum of instructional arrangements to be based on students' individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, resource

room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.63(c).

To determine whether a school district is educating a student with a disability in the LRE, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. El Paso Indep. Sch. Dist., 874 F. 2d 1036, 1048 (5th Cir. 1989).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.* This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting;
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting; and
- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting. *Id.*

In this case, Student's FIE recommended Student be educated in a small, structured classroom. In accordance with that recommendation based on Student's academic ability and needs, the District placed Student in the *** classroom. Student's *** classroom had *** and a teacher to work with Student and *** other students with disabilities. Student also had time with peers without disabilities. Student had lunch with them every day in the cafeteria. Student was able to interact with them in the hallway and during the ***.

In response to concerns from Student's parent, the District held an additional ARD Committee meeting after Student's 2019 annual ARD Committee meeting. During that additional ARD Committee meeting, On October ***, 2019, the ARD Committee added a general education *** during which Student would be accompanied by a paraprofessional. Student also attended *** in the general education setting. Student received education in Student's least restrictive environment.

3. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), *aff'd* 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome, because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

In this case, the District worked closely with Student's parents. Student's mother had consistent communication with Student's teacher and participated in all of Student's ARD Committee meetings. The District was responsive to concerns she raised. For instance, the District held an additional ARD Committee meeting on October ***, 2019, at Student's parents' request. The District also met in person with Student's parent less than a week after she requested it in November 2019 to discuss Student's behavior. The District moved Student to a different *** classroom with a teacher with whom Student had better rapport as a result of that meeting. After the ***, 2019 restraint incident, District staff members met with Student's parents several times.

District staff members remained in close contact with Student's mother by email and text message at all times. Petitioner did not provide examples of services the District refused to provide Student that Student's parents requested. The District, therefore, provided education in a coordinated and collaborative manner.

4. Academic and Non-Academic Benefit

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 812-13 (5th Cir. 2012). In this case, Student received both academic and non-academic benefit. Student made progress on each of Student's academic goals and passed Student's STAAR*** tests at the end of the 2018-19 school year. From the 2018 annual ARD Committee meeting until the 2019 annual ARD Committee meeting, Student met Student's academic goals in *** and ***. Student also met two out of Student's three speech goals. Student made progress on Student's other academic goals.

In terms of non-academic benefit, Student made friends with other students and participated in classes and activities with both general education and special education students. *See Marc V. v. North East Indep. Sch. Dist.*, 455 F.Supp.2d 577, 596 (W.D. Tex. 2006) (noting making friends is a key non-academic benefit). Student was able to participate in activities like ***. Student loves *** and was able to participate in *** with Student's peers without disabilities. Student was a "joy" for both staff and students. Student derived both academic and non-academic benefit from Student's educational program.

5. Conclusion

The evidence showed the District based the services it provided Student on performance and assessment. It then provided those services in Student's least restrictive environment. The District made its educational decisions in a coordinated and collaborative manner with key stakeholders, particularly Student's parents. Student also received both academic and non-academic benefits from Student's IEP. Therefore, the District provided Student a FAPE.

D. Failure to Implement the IEP

In addition to failure to provide a FAPE, Petitioner alleges the District failed to implement Student's IEP with fidelity. To prevail on a claim of failure to implement the IEP, the party challenging implementation of the IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. This approach affords school districts some flexibility in implementing IEPs while also holding them accountable for material failures and for providing each student with a disability a FAPE. *Houston Ind. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). Failure to implement a material portion of an IEP violates the IDEA, but failure to perfectly execute an IEP does not amount to denial of a FAPE. *See Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. T.H.*, 642 F.3d 478, 484 (4th Cir. 2011).

In this case, the District implemented Student's IEP. The District implemented Student's schedule of services, including Student's general education classes. Student received all of the related services Student was entitled to, including speech therapy and occupational therapy. Petitioner argues that the District failed to implement the IEP on ***, 2019. The District did try several of the strategies in the IEP for redirecting Student, all of which had been successful previously. The ***, 2019 incident was unique in that Student was not calming down or accepting redirection unlike previous times. Student had behavioral issues where Student would become upset *** prior to ***, 2019. However, during each of those incidents, which occurred approximately *** in the 2018-19 and 2019-20 school years, the District was able to calm Student and refocus Student after Student had a moment to recollect ***self. The ***, 2019 incident was unique in that Student remained *** despite the District's implementation of their previously-effective behavioral strategies.

The restraint the District conducted on ***, 2019, was improper and not a behavioral strategy listed in Student's IEP. The Hearing Officer's analysis is limited solely to claims under the IDEA, not Section 1983 of the Civil Rights Act or Section 504 of the Rehabilitation Act of 1973 or any other statutes that could be potentially applicable to that incident. Under the IDEA, Student received a FAPE due to the District's implementation of an appropriate IEP.

To prevail on a claim that the District failed to implement Student's IEP, Petitioner would need to demonstrate the District failed to implement substantial provisions of the IEP as opposed to demonstrating, as Petitioner has in this case, one improper restraint. *See Bobby R.*, 200 F. 3d at 349. Student never attended school in the District again after ***, 2019, thus not giving the District a chance to implement Student's IEP for the remainder of the 2019-20 school year. Under the IDEA, the District successfully implemented Student's IEP.

E. Training of District staff members

Petitioner's final issue is that District staff members were not sufficiently well-trained to provide Student a FAPE. While not explicitly addressed in the IDEA, training of staff members is an issue that potentially falls under the IDEA. *Heston v. Austin Indep. Sch. Dist.*, 816 Fed. App'x. 977, 981-82 (5th Cir. 2020). In this case, Student received a FAPE, which in and of itself indicates District staff was sufficiently trained to provide Student a FAPE. The evidence indicates District staff members did receive sufficient training from the District to do their jobs. All staff were trained in CPI. All staff, including paraprofessionals, received training from the District on working with students with disabilities. The District provided Student a FAPE and its staff members were sufficiently trained to provide Student one.

VIII. CONCLUSIONS OF LAW

1. Student was provided FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. 176; *Andrew F.*, 137 S. Ct. 988.
2. The District sufficiently implemented Student's IEP to provide Student a FAPE. *Bobby R.*, 200 F. 3d at 349.
3. The District sufficiently trained its staff members to provide Student a FAPE. *Heston*, 816 Fed. App'x. at 981-82.
4. All of Petitioner's claims arising under any laws other than IDEA are outside the jurisdiction of a special education hearing officer in Texas. 34 C.F.R. §§ 300.503(a); 300.507, 19 Tex. Admin. Code § 89.1151(a).

IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.
2. Petitioner's claims arising under any law other than the Individuals with Disabilities Education Act are **DISMISSED** as outside the jurisdiction of the hearing officer.
3. Petitioner's request for attorneys' fees and litigation costs are **DISMISSED** as outside the jurisdiction of the hearing officer.

All other relief not specifically stated herein is **DENIED**.

SIGNED February 5, 2021.



Ian Spechler
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. 20. U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516(a); 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a-b).