

STUDENT § BEFORE A SPECIAL EDUCATION
b/n/f PARENT and PARENT §
v. § HEARING OFFICER FOR THE
FRISCO INDEPENDENT §
SCHOOL DISTRICT § STATE OF TEXAS

DECISION OF HEARING OFFICER

The parties convened for a due process hearing October 27-29, 2021. Karen Mayer Cunningham, authorized non-attorney representative, appeared on behalf of Petitioner, *** (“Student”) by next friends, *** and *** (“Parents”). Parents were present during the hearing. Nona Matthews, attorney with Walsh Gallegos Treviño Kyle and Robinson, P.C., and Naomi Harper, District’s Director of Legal Affairs and Senior Counsel, appeared on behalf of Respondent, Frisco Independent School District (“Frisco ISD” or “District”). ***, Managing Director of Special Education for District, was present as party representative. At Petitioner’s request, the virtual hearing was open to the public.

Procedural History

The parties participated in an initial prehearing conference July 26, 2021 at which time the hearing officer granted the parties’ joint request for continuance and entered a first revised scheduling order. The hearing was continued to October 27-29, 2021, and the decision due date was extended to December 10. Following a second prehearing conference on October 18, 2021, the instant action was reassigned to this hearing officer.

At the conclusion of the due process hearing, the parties jointly requested, and were granted, an extension of the decision due date. The decision due date was extended to December 17. On December 1, Petitioner requested additional time for submission of closing arguments and an extension of the decision due date. Respondent had no objection. The request was granted and additional time for submission of closing arguments was given. The decision due date was extended to January 7, 2022.

Issues for Hearing

The following are the issues over which the undersigned has jurisdiction:

1. Whether the District has failed to allow Parents to participate appropriately in planning Student’s education by predetermining Admission, Review, and Dismissal (“ARD”) Committee decisions, ignoring the input of Parents, and failing to explain appropriately the ***;

2. Whether the District denied Student a Free Appropriate Public Education (“FAPE”) by developing an Individualized Education Plan (“IEP”) with inappropriate Present Levels of Academic Achievement and Functional Performance (“PLAAFP) and IEP goals that are not sufficiently measurable or individualized to Student’s unique needs;
3. Whether the District denied Student a FAPE by failing to have an appropriate Behavior Intervention Plan (“BIP”) in place for Student;
4. Whether the District’s proposed education plan provides education for Student in Student’s Least Restrictive Environment (“LRE”); and
5. Whether the District has provided Parents the records it was required to provide in a timely manner.

Petitioner’s Requested Relief

Petitioner requested the following items of relief:

1. Order the District to place Student at the ***;
2. Order the District to train its employees who work with Student on the IDEA, IEP implementation, data collection, and Student’s records; and
3. Order the District to provide additional relief the Hearing Officer deems appropriate.

Stipulation of Facts and Findings of Fact

The parties filed Joint Stipulations of Facts that are contained below as numbers 1-20. Based on the parties’ documentary evidence and testimony of witnesses before this hearing officer and beginning with number 21, below are the findings of fact in the instant action.

Citations to Petitioner’s Exhibits, Joint Exhibits, and Respondent’s Exhibits are designated with a notation of “P,” “J,” or “R,” respectively, followed by exhibit number, and page numbers as appropriate. Citations to the transcript are designated with a notation of “T” followed by the page numbers.

1. Petitioner enrolled in *** at *** in Frisco ISD at the beginning of the 2016/2017 school year.
2. Frisco ISD completed Petitioner’s initial Full and Individual Evaluation (“FIE”) on April ***, 2018, when Petitioner was in *** grade in response to concerns related to social, behavioral, and emotional functioning, and suspicions of Autism (“AU”), Speech Impairment (“SI”), Other Health Impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”), and Emotional Disturbance (“ED”). The multidisciplinary evaluation team recommended eligibility for special education services based on an identified ED and OHI due to ADHD.
3. The District conducted Petitioner’s initial ARD Committee meeting on May ***, 2018.
4. Petitioner continued at *** for *** grade during the 2018/2019 school year.

5. The District prepared another FIE report on March ***, 2019, incorporating additional information, including acknowledgement of medical data to substantiate the disability category of OHI due to *** (“****”) and the identification of dyslexia.
6. Petitioner’s Parents withdrew Petitioner prior to the end of the 2018/2019 school year. The District granted Petitioner’s Parents request for a transfer to *** for the 2019/2020 school year.
7. Petitioner’s Parents enrolled Petitioner in *** grade at *** at the beginning of the 2019/2020 school year.
8. The ARD Committee met on September ***, 2019, to conduct an annual review. The ARD Committee changed Petitioner’s placement to a *** (“****”) classroom.
9. Petitioner began attending the *** class at *** on October ***, 2019.
10. The District completed a Functional Behavior Assessment (FBA”) on December ***, 2019, an Occupational Therapy (“OT”) evaluation on December ***, 2019, and an Assistive Technology (“AT”) evaluation on December ***, 2019.
11. On August 17, 2020, Parents filed a Request for Due Process Hearing, *** *b/n/f**** and *** *v.* *Frisco ISD*; Dkt. No. 311-SE-0820.
12. On October ***, 2020, ***, Ph.D., LSSP, ABPP, completed an Independent Educational Evaluation (“IEE”) of Petitioner. The results of the IEE confirmed Petitioner met the criteria as a student with an ED and OHI, and Student did not meet the criteria as a student with AU.
13. On October ***, 2020, the District and Parents participated in a mediation session. The parties settled all claims and causes of action of any kind whatsoever, asserted or un-asserted, which Parents had arising out of transactions and occurrences through the date of the Mediation Agreement. Parents released the District from all claims based upon or arising from any alleged action or alleged omission of the District through the date of the Mediation Agreement.
14. On October ***, 2020, Parents withdrew Petitioner from Frisco ISD and enrolled Student at *** (“****”) for private schooling for the remainder of the school year.
15. On April ***, 2021, the ARD Committee convened at 2:16 p.m. for Petitioner’s annual ARD Committee meeting. Parents participated in the meeting, along with representatives from ***. The ARD Committee considered the IEE completed by Dr. *** and recommended further evaluation, specifically additional assessment in the areas of speech/language (expressive, receptive, and pragmatic), emotional/behavioral (AU, ED, OHI, and counseling), cognitive and achievement (including dyslexia and dysgraphia), OT (handwriting and sensory), and in-home/Parents training. The ARD Committee reviewed and revised draft goals and accommodations that were sent home to Parents prior to the ARD Committee meeting. District

staff proposed goals in Adaptive Behavior (follow break routines, decrease noncompliance, avoid physical aggression, and improve self-regulation skills), Counseling (identify physiological cues associated with emotions, identify triggers for Petitioner’s own feelings, role play use of a coping strategy or relaxation skill, demonstrate problem solving skills in social conflict and produce statements of positive self-talk), and Social Skills (demonstrate social skills steps of working with others). Parents did not agree with the proposed goals or accommodations but indicated they would provide their suggested revisions prior to the ARD Committee reconvening to continue the meeting. Before recessing, the ARD Committee also reviewed the proposed schedule of services. The District members of the ARD Committee proposed placement in a *** class, general education dyslexia services with special education support, counseling, psychological services, and OT support. Following a discussion with Parents and representatives from ***, the District’s Licensed Specialist in School Psychology (“LSSP”) increased her recommended counseling and psychological services. The District requested information from the representatives from *** regarding its provision of counseling. The representatives agreed to provide the requested information prior to the ARD Committee reconvening. Parents disagreed with the proposed schedule of services. They did not want Petitioner to return to Student’s prior *** classroom and teacher. The District’s Managing Director of Special Education assured Parents that there were other campuses with *** classrooms. Parents wanted Student to continue at ***. Based on a review of records from ***, collaboration with *** staff, and observations at ***, the District members of the ARD Committee did not identify any supports provided by *** that could not be implemented in Frisco ISD. The ARD Committee recessed at 5:35 p.m. due to the late hour.

16. The ARD Committee reconvened on May ***, 2021. Parents participated in the meeting in addition to their Advocate, Karen Cunningham, and representatives from ***. The ARD Committee re-reviewed Petitioner’s PLAAFP. Petitioner’s academic skills were reported by *** to be on grade level. Ms. Cunningham expressed that she did not think that the proposed *** would be appropriate for Petitioner due to Student’s medical needs related to ***. The District’s Behavior Coach responded that the *** could be modified for Petitioner’s individual needs. The Behavior Coach offered to prepare a document for the ARD Committee to reflect the individualized nature of the proposed ***. The ARD Committee agreed to recess to prepare the information requested and to collaborate with *** staff to develop a proposed reintegration plan.

17. The ARD Committee reconvened on May ***, 2021. Parents participated in the meeting along with Ms. Cunningham and representatives from ***. The ARD Committee reviewed the proposed BIP. Parents confirmed that the behaviors in the proposed BIP were consistent with the behaviors

demonstrated at ***. The ARD Committee discussed the District's proposed counseling services. The District also assured Parents that Petitioner's former *** teacher, with whom they were concerned, would not be Petitioner's *** teacher if Petitioner returned to Frisco ISD. The ARD Committee proceeded to discuss how Petitioner's program in *** would be individualized and tailored to Student's needs. The ARD Committee next addressed Petitioner's AT needs and dyslexia services. The ARD Committee then address least restrictive environment. If Petitioner returns to Frisco ISD, Student will have access to nondisabled peers at Student's school. The next reviewed the proposed FIE and determined that the FIE would be completed within 45 school days following receipt of written parental consent. The ARD Committee returned to a discussion regarding Petitioner's PLAAFP, and made additional changes based on parental input. The ARD Committee ran out of time and agreed to recess and reconvene.

18. The ARD Committee reconvened on June ***, 2021. Parents again participated in the meeting along with Ms. Cunningham and representatives from ***. The meeting started with additional proposed revisions by District staff to Petitioner's PLAAFP, including a description of Petitioner's manifestations of *** and the frequency and duration of *** as reported by Parents, and information from Petitioner's private Occupational Therapist. The ARD Committee then discussed the least restrictive environment appropriate for Petitioner and the District members of the ARD Committee recommended Petitioner's IEP be provided on a general education campus in Frisco ISD. Parents and Ms. Cunningham disagreed. The ARD Committee reviewed the proposed schedule of services, including instruction in a special education *** classroom for behavior support, social skills instruction, and instruction in reading, writing, math, ***; dyslexia intervention with special education support; individual counseling services; indirect OT; and psychological services. The ARD Committee next discussed the revised proposed reintegration plan. Parents disagreed with the proposed schedule of services and proposed reintegration plan.
19. The ARD Committee reconvened on June ***, 2021. Parents again participated in the meeting along with Ms. Cunningham and representatives from ***. A representative from the *** also joined the ARD Committee meeting. The ARD Committee again discussed the proposed reintegration plan and how the *** program could be modified to meet Petitioner's individual needs. In addition to previously recommended staff training regarding Petitioner's BIP, the ARD Committee added staff training on *** to Petitioner's IEP using the ***training program. The ARD Committee reviewed the proposed IEP in light of information provided by the representative from the ***. The ARD Committee again discussed the individualized nature of the proposed *** and the proposed reintegration plan. The District's Behavior Coach

recommended removing the *** and using a point system as an alternative. Parents disagreed with the proposed IEP and LRE. The District offered, and Parents accepted, an opportunity to reconvene within ten school days. The parties agreed to reconvene on August ***, 2021; however, Parents later declined to reconvene the ARD Committee.

20. On July 1, 2021, Petitioner filed Petitioner's Request for Special Education Due Process Hearing.
21. At the time of hearing (2021/2022 school year), Student was in *** at ***.
22. *** operates within a therapeutic milieu. Its curriculum is based in the ***. ***'s curriculum is developed with its BCBA and the Director of Admissions and Clinical Services. Core classes at *** are Math, English, Science and Social Studies. In addition, *** has what is called a *** class that is held three days a week during which time social emotional and behavioral tools are taught. The core classes and *** class along with *** make up a school day in ***. The classes have up to ten students and one teacher. T-pgs. 116,118, 143, 144
23. In the 2020/2021 school year, *** used a point (token) system in which a student earned points that could be used to gain privileges; a student also could lose points. *** changed the point system for the current school year such that Student would only earn point and privileges, but not lose points. T-1, pgs. 92, 139-140, 157, 184
24. *** has a therapist for the ***. It has a BCBA and a speech-language pathologist. T-pg. 117
25. One time per week, *** students participate in a more traditional group therapy. During that time, the therapists provide students opportunity to talk through or process things that may be occurring in their lives. T-pg. 118
26. ***'s philosophy is that it meets the students where they are whether it is academically or therapeutically. If a student needs to begin by coming one or two hours a day, *** facilitates that need. T-pg. 119
27. *** staff uses *** for de-escalation process. *** teaches various forms of "containment" including "assist to ground" containment. Student is allowed to take breaks. At times, such breaks are either with or without Student's being monitored. When a child has a behavioral event, *** waits until he/she is regulated. That may be within ten minutes or as late as the next day. Student's behaviors are triggered by loud noises, whether it is calling Student out in praise or correction. T-pgs. 122-123, 128, 130-132, 134-135
28. At the time of the May *** ARD Committee meeting, *** had documented eight behavior incidents since Student began at that school, two of which resulted in containment. Student's behaviors included verbal aggression, physical aggression, elopement, or noncompliance. Student continues to engage in unsafe behaviors at the time of the due process hearing. In the current

school year, Student has had *** reported behavior incidents. The majority of behaviors in both school years have been a level ***, the highest severity level on ***'s report forms. P-19, pg. 8; R-1, pgs. 52-70, 73-81; J-7, pg. 6; T-pgs. 150-152

29. Every child in *** is there because he/she is struggling with issues. All *** students require intensive social-emotional intervention. Almost every student in *** has some diagnosis. Some students at *** have had a §504 or IEP. The vast majority of *** students are ones who could access an IEP or §504 program and have chosen not to do so. P-19, pg. 15; T-pg. 141, 168, 186
30. All students at *** receive the following accommodations: low student ratios, low visual distraction, preferential seating, prompting, and visual cues. *** then looks at the students' diagnoses and determines additional accommodations for each student. P-19, pg. 11
31. Students at *** are grouped according to academic ability as well as age levels. Most classrooms have an age range of approximately *** years. P-19, pgs. 11, 22, 23; J-7, pg. 32
32. All lower school students at *** get approximately 55 minutes per week of *** counseling that focuses on social-emotional health. Students also receive 55 minutes per week in what is called the social-thinking group, based on Michelle Garcia Winner curriculum. Students receive 55 minutes of language and social pragmatic language skills. P-19, pg. 20
33. All *** teachers receive social emotional learning training. P-19, pg. 13
34. At ***, Student has no specific counseling goals. Neither is Student provided a specified amount of counseling. *** offers any child the opportunity to talk with the counselor or the Board Certified Behavior Analyst ("BCBA"). The time with the counselor varies depending the child's needs. Outside counselors are allowed to come onto campus to counsel with their clients. *** offers parent training and support groups. Student's IEP at *** does not include support by an occupational therapist. P-9 pg. 1; P-19, pg. 15; J-7, pg. 32, 37; T-1, pgs. 156, 210-211
35. During the 2020/2021 school year, Student received instruction at *** in a self-contained special education setting. J-7, pg. 36
36. During the 2020/2021 school year while at ***, goals to support Student's social-emotional development included demonstrating an increased self-awareness, improved self-esteem by identifying positive characteristics about self and eliminating self-disparaging remarks, and establishing and maintaining positive and lasting peer relationships. J-7, pg. 9
37. *** provides physical space for Student to work through Student's elevated behaviors. P-19, pg.

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38. Per ***'s fall 2020 assessment, Student was on an early *** grade level in ***, and *** grade level in ***. In ***, Student was on a *** grade level. At the end of the 2020/2021 school year, Student was on the same levels as when Student began at ***. R- 3; T- pg. 220, 223-225
39. During the 2020/2021 school year at ***, Student had one teacher who was certified in special education. In the current school year at ***, in Student's four core classes, one teacher is a certified special education teacher. T-pgs. 228-230
40. On March ***, 2021, Parents acknowledged their intent to enroll Student in *** for the 2021/2022 school year. At the time of hearing, Student was attending ***. R-1, pgs. 24-29; T-pg. 219
41. At the time of the annual review ARD meeting, ***'s component of current methods for Student included a token system, work break system, social thinking, and understanding nonverbal communication and facial expressions. J-7, pg. 33
42. During the Spring 2021, Student showed a significant increase in *** related to ***. New *** exhibited were ***. Additionally, Student continued to ***. At the end of the 2020/2021 school year, Student's *** were worse than when Student attended District. P-21, pg 4-6; J-7, pgs. 3, 7, 34
43. *** does not have a dyslexia specialist and does not provide dyslexia services to Student. T-1, pg. 145
44. At Student's annual review ARD meetings in April-June 2021, the Committee found Student eligible for special education services as a child with ED, OHI, and Specific Learning Disability ("SLD"). J-7
45. Both District and *** use social skills curriculum such as the Michelle Garcia Winner series, Zones of Regulation, Social Thinking curriculum and Superflex. T-2, pgs. 479-480
46. District's *** classroom is designed for students who require intensive support after previous efforts have been unsuccessful. In that instructional setting, students have an opportunity to interact with their typical peers to the fullest extent possible. Intensive social skills instruction is provided along with individualized academic instruction and behavior modification. *** students are assigned to a general education teacher who provides the *** teacher lesson plans for implementation in the *** classroom. This is intended to facilitate a student's re-integration into the general education classroom when the student is ready for a less restrictive environment. T-3, pgs. 595-596
47. District uses a specialized classroom model called *** in its *** classrooms. *** provides structured behavior support through positive plan teaching. Its foundation is behavior change

through teaching coupled with positive praise and reinforcement. It uses a motivation system (token economy) and provides a framework for positive behavior supports in the classroom. Strategies and supports used are evidence-based trauma informed care. The behavior management portion of *** is based on applied behavior analysis, and is evidence and research based. The social skills curriculum focuses its social skills instruction around 16 skills. Examples of the skills are: gaining teacher attention, having conversations, asking for help, and accepting “no”. The *** monitors progress daily. As students progress up the ***, the amount of support is faded out. P-19, pgs. 25-27; J-10, pgs. 3, 4, 22; T-2, pgs. 372-373, 379-380, 538-539

48. The *** methodology is made up of three levels: Daily, Progress, and Merit. A student begins on level one, Daily level. This level encourages at least an eight to one ratio of positive to negative feed back. As a student’s need for reinforcement decreases the student moves to level two, Progress level. When a student is ready to move from extrinsic to intrinsic motivation, the student moves to level three: Merit level. The *** system uses a decreased rate of reinforcement in order for students to generalize the skills being taught. T-1, pg. 263; T-2, pgs. 374-376
49. In the *** system, a student can earn points when demonstrating pro-social behaviors and can lose points for demonstrating negative behaviors. The goal is for a student to have a high positive to negative ratio- a 10:1 ratio. From October 2019 to February 2020, Student had *** positive points and lost *** points, making the ratio *** to ***, indicating progress. J-7; T-1, pg. 272-273
50. In order to make individualized decisions for students’ specific needs, District’s *** is tailored for its students rather than rigidly following the *** model. For example, the use of losing points for inappropriate behavior can be removed. The *** can be removed as long as the motivation system through the use of the token economy is maintained as long as the proactive replacement skills, social skills and life skills are taught. District Staff recommended removal of the *** for Student. P-19, pgs. 18-19, 31-32; T-2, pgs. 377-379
51. District reflected ***’s use of a point sheet and token system in its development of Student’s present levels and in the creation of Student’s goals. P-19, pgs. 9
52. For the 2021-2022 school year, District recognized Student’s assistive technology needs, and proposed the following: visual/written schedule and supports, ***. J-7, pg. 12
53. In addition to accommodations for adapted classroom instruction, material, and altered assignments or testing, District recommended a myriad of accommodations for Student to manage behavior. Examples include ability to leave class for recommended accommodation, ability to utilize a work break system as needed, allow for frequent rest breaks, preferential seating, ***, check in/check out beginning/end of day, frequent reminder of rules, calming/cool

down location, placed with a familiar teacher when there is a substitute teacher in Student's classroom, opportunity to leave class to regain appropriate behavior, offer choices, positive behavior support with ability to earn awards, and proximity control (keep within line of sight). J-7, pg. 19-20

54. For the 2021/2022 school year, District proposed providing Student's services in a self contained special education setting (***) classroom) with the exception of dyslexia services that would be provided in the general education setting. District proposed 30 minutes per week of Counseling Services, 60 minutes per 9 weeks of OT indirect services, and 30 minutes each *** weeks of psychological services. District proposed Student's IEP included flexibility of time in the *** classroom depending upon Student emotional and /or behavioral stability. It pointed out that access to the *** classroom should be for therapeutic intervention. If a student's schedule of service no longer reflects the student's typical daily schedule for more than 10 school days, an ARD meeting would be held to make necessary adjustments. As an example, the *** teacher could offer options to Student to go out of the *** classroom for a particular subject or lunch on a trial basis. P-22, pgs. 62-65; J-7, pgs. 26-27
55. District's proposed IEP and BIP incorporated several strategies recommended by the ***. J-7, pg. 34
56. District updated Student's accommodations and the BIP to target the identified behaviors in its proposed BIP: physical aggression, elopement, and noncompliance. The targeted behaviors are the same behaviors *** addressed. J-7, pgs. 7, 32

Burden of Proof

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE.¹ The burden of proof is therefore on Petitioner to show the District violated its obligations under the IDEA and did not provide Student a FAPE.

Discussion

Issue No. 1: Whether the District failed to allow Petitioner's parents to participate appropriately in planning Petitioner's education by predetermining ARD Committee decisions, ignoring the input of Petitioner's parents, and failing to explain appropriately the ***

Under the IDEA, a public school must ensure that the ARD Committee includes the parent of a child with a disability.² "To avoid a finding of predetermination, there must be evidence the state has an

¹ *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. West*, 126 U. S. 528 (2005)

² 34 C. F. R. §300.321(a)(1).
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open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child."³ The IDEA does not require a school district, in collaborating with a student's parents, to accede to all of a parent's demands.⁴ 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.⁵ 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.⁶

Student's annual ARD meeting took place on five occasions beginning in April and ending in June 2021. Parents and *** staff members attended all five meetings that occurred cumulatively for at least nine hours. Parents' advocate attended most of those meetings. During the meetings, Parents, *** staff members and Parents' advocate actively participated in the discussions.

District staff provided drafts of proposals in advance of the meetings and offered opportunities for Parents to provide input regarding areas of disagreements requested additional services. District's LSSP significantly increased her recommended time for both direct and indirect counseling services. Parents disagreed with the *** and District agreed to remove the *** and use the token economy as is used at ***. District members invited Parents to add other behaviors to Student's BIP. Parents confirmed that the behaviors in District's proposed BIP were consistent with the behaviors that Student exhibited at ***. At the advocate's request, a *** teacher attended the meetings, and detailed the *** program for Parents. Parents did not want Student to earn negative points. District members agreed to remove those from the IEP. District staff added strategies recommended by the ***.

Parents requested that Student remain at *** rather than return to District. While District made many changes to Student's IEP throughout the five meetings, it did not acquiesce to that request. While District ARD Committee members did not accede to Parent's insistence that Student continue at ***, as above reflected, they worked diligently with Parents throughout the ARD process, and were responsive to Parents' input. Parents did not want Student to be educated by a former teacher. District assured that Student would not have that teacher. The evidence is clear that District ARD Committee members had open minds as reflected by the several adjustments to the IEP in response to parental input. Respondent met the IDEA's requirements regarding collaborating with a student's parents. Petitioner failed to show that Respondent denied Parents the right to participate in the ARD Committee meetings or that Respondent predetermined Student's program.

³ *E. R. by E. R. v. Spring Banch Indep. Sch. Dist.*, 909 F.3d 754, 769 (5th Cir. 2018), citing *R.L. ex rel. O.L. v. Miami-Dade Cty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014)

⁴ *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999).

⁵ *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003).

⁶ *Id.*

Issue No. 2: Whether the District denied Petitioner a FAPE by developing an IEP with inappropriate PLAAFP and IEP goals that are not sufficiently measurable or individualized to Petitioner’s unique needs

Under the IDEA, students with disabilities are entitled to a FAPE that provides special education and related services designed to meet their unique needs, and prepare them for further education, employment, and independent living.⁷ A school district must offer a FAPE to all students with disabilities living in its jurisdiction between the ages of three and twenty-one.⁸ These students must receive specially designed, personalized instruction with sufficient support services to meet their unique needs and confer educational benefit. Instruction and services must be at public expense, and comport with the IEP developed by the student’s ARD Committee.⁹

The school district’s plan is presumed to be appropriate.¹⁰ The party attacking the plan bears the burden of proof, by a preponderance of the evidence, of demonstrating why it does not comply with the IDEA.¹¹

When a parent challenges the appropriateness of an IEP, two questions must be asked: whether the state has complied with the procedural requirements of the IDEA, and then, whether the IEP developed through such procedures was “reasonably calculated to enable the child to receive educational benefits.”¹² The IEP must be reasonably calculated to enable a student not integrated in the regular classroom to make progress appropriate in light of the student’s circumstances.¹³ The educational benefit the IEP is designed to achieve must be “meaningful.”¹⁴ Crafting an appropriate program of education requires a prospective judgment by school officials”.¹⁵ *Andrew F.*, 137 S. Ct. at 999 (emphasis added) (citation omitted).

The PLAAFP is the starting point for the development of an IEP.¹⁶ In developing the proposed PLAAFP for Student, District staff took information from various evaluations including the most recent FIE, District’s Dyslexia evaluation, an IEE Neuropsychological Report, FBA, District data, observations, and data and teacher input from ***. The ARD Committee including Parents discussed Student’s disabilities, how they are observed and how they impact Student educationally. District staff adjusted the proposed PLAAFP to include Parents’ information. After receipt of information regarding Student’s

⁷ 20 U.S.C. § 1400(d)(1)(A)

⁸ 34 C. F. R. § 300.101(a); Tex. Educ. Code § 12.012(a)(3)

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

¹⁰ *R. H. v. Plano Indep. School Dist.*, 607 F.3d 1003 (5th Cir. 2010).

¹¹ *Id.* at 1010-11.

¹² *Rowley*, 458 U.S. at 206-07.

¹³ *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 at 1001(2017).

¹⁴ *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 246-248 (5th Cir. 1997).

¹⁵ *Andrew F.*, 137 S. Ct. at 999 (emphasis added) (citation omitted).

¹⁶ *Id.* at 1000 (citing 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa)).

increase in *** due to ***, District members updated Student's PLAAFP. Upon receipt of information from Student's private OT, District updated the PLAAFP. Parents and their advocate were invited to add additional information that they believed was needed in Student's PLAAFP and did not do so. Petitioner was unable to show what was inappropriate in the proposed PLAAFP.

The PLAAFP was then used in the development of Student's IEPs. Student's proposed goals were in the following areas: following break routines, decreasing noncompliance, avoiding physical aggression, and improving self-regulation skills, identifying physiological cues associated with various emotions, identifying triggers for Petitioner's own feelings of sadness, worry, frustration, and anger, role playing use of a coping strategy or relaxation skill with a hypothetical scenario and/or processing actual incident/trigger, demonstrating problem solving skills in social conflict, producing statements of positive self-talk, and demonstrating social skills steps of working with others.

Each of the proposed goals was specific in the way it would be measured. For example, Goal Number 9.3 states, "****" Goal Number 10.1 states, "****." District's proposed IEP addresses Student's needs by not only developing measurable goals based on Student's PLAAFP, but also by including related services such as 30 minutes per week of counseling, indirect occupational therapy in the amount of 60 minutes per *** weeks, and 30 minutes each *** weeks of psychological services. The proposed IEP includes dyslexia services with a special education assistant's support. The IEP included many accommodations including similar ones that *** offers.

Petitioner failed to show that any goal was not measurable. Further, Petitioner failed to show that any goal was not individualized to meet Student's unique needs. Thus, Petitioner failed to carry the burden of proof for issue number two.

Issue No. 3: Whether the District denied Student a FAPE by failing to have an appropriate BIP in place for Student

Petitioner brought forth no evidence to support Issue No. 3. The evidence supports a finding that Parents had no disagreement with the behaviors identified in the BIP. Student's targeted behaviors are consistent with Student's behavioral deficits. The BIP contains antecedents, consequences, and functions of the targeted behaviors. Nothing in evidence supports a finding that the proposed BIP is inappropriate. Petitioner failed to carry Petitioner's burden in this issue.

Issue No. 4: Whether the District's proposed education plan provides education for Student in Student's Least Restrictive Environment

In general, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the

disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁷

In the multiple meetings held for Student's 2021 Annual Review, District members of the ARD Committee recommended that Student have support through *** with access to the general education curriculum and classroom setting. Parents and advocate wanted Student's placement to be more like Student's classes at *** that consist of a self-contained classroom populated by students who require intensive social-emotional intervention. District members ultimately proposed placement of Student in an *** classroom on a general education campus. The proposal included access to general education students to the maximum extent possible including time in a general education dyslexia program with special education support. As Student progressed in Student's education program, the proposed reintegration plan allows for Student's transition into the general education setting.

District's proposed setting is the LRE appropriate for Student in that it offers opportunities to be among typically developing peers that provide Student can observed as peer role models. The program in the proposed setting allows for increased participation in the general education curriculum. These opportunities are not available at ***. The proposed program is in the LRE for Student.

Issue No. 5: Whether the District provided Parents the records it was required to provide in a timely manner

The parents of a child with a disability must be afforded, in accordance with the procedures in the IDEA, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.¹⁸ Petitioner failed to introduce evidence in support of this issue.

FAPE and the Four Factors Test

The Fifth Circuit delineated four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated?¹⁹

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program.²⁰ [L]
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¹⁷ 20 U.S.C. 1412(a)(5); 34 C. F. R. §300.114 (a); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989).

¹⁸ 34 C. F. R. §300.501(a).

¹⁹ *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997)

²⁰ *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 297 (5th Cir. 2009)

While Petitioner challenged the District's proposed IEP, Petitioner failed to show that District failed to comply with procedural requirements of the IDEA. The evidence supports a finding that Student's proposed education program is individualized on the basis of Student's assessments and performance. The proposed program correctly includes provision of services in the LRE.

The program is designed to include services by District's LSSP, dyslexia staff, *** teacher and assistant, and Occupational Therapist. The general education teacher is to work with the *** teacher and provide lesson plans for Student. The evidence supports a finding that District's proposed services will be provided in a cooperative and collaborative manner by key stakeholders.

After review of the IEP, this hearing officer determines that unlike Student's lack of academic progress at ***, the District's proposed education program is reasonably calculated to enable the child to receive educational benefits. It includes provision for Student's adaptive behavior, counseling, and social skills needs. It includes dyslexia intervention. It addresses Student's needs while allowing Student opportunities to be among Student's typically developing peers. It also includes an opportunity for increased exposure to the general education population as Student progresses in Student's program. The District's proposed education program for Student is calculated to produce academic and non-academic benefits in light of Student's circumstances.

Conclusions of Law

1. Student is eligible for special education services as a student with a disability under IDEA, 20 U.S.C. §1400 et. seq. and its implementing regulations. Frisco Independent School District is responsible for providing the student with a FAPE. ^[I]_[SEP]
2. Respondent's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983). Petitioner bears the burden of proving that the education program is not appropriate. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).
3. Respondent's proposed educational program is appropriate in light of Student's circumstances and provides Petitioner a FAPE. Regarding Petitioner's specific issues, District's proposed educational program is designed to provide a FAPE by: a) the development of an IEP with appropriate PLAAFP and IEP goals that are sufficiently measurable and individualized to Petitioner's unique needs; and b) the development of an appropriate BIP for Student. Petitioner failed to carry Petitioner's burden of proof. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000-01 (2017); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d.

4. Respondent allowed Parents to appropriately participate in planning Petitioner's education and did not predetermine ARD Committee decisions, ignore Parents' input, or fail to explain appropriately the ***. Petitioner failed to carry Petitioner's burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).
5. District's proposed education program for Student is in Student's Least Restrictive Environment. 20 U.S.C. 1412(a)(5); 34 C. F. R. §300.114 (a); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989).
6. Petitioner failed to carry the burden of proving that District failed to timely provide Petitioner's Parents the required records. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); 34 C. F. R. §300.501(a).

Order

IT IS ORDERED that all requests for relief are DENIED.

SIGNED AND ENTERED on December 23, 2021.

BRENDA RUDD
Special Education Hearing Officer
For the State of Texas

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 his or her written decision in the due process hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).