

DOCKET NO. 245-SE-0420

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

v.

**LAKE DALLAS 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

Petitioner, Student, by next friend Parent (“Student” or, collectively, “Petitioner”) brings this action against the Lake Dallas Independent School District (“Respondent” or “District”) under the Individuals with Disabilities Act, 20 U.S.C. §§1400-1482 (IDEA) and its implementing state and federal laws and regulations.

The main issue in this case is whether the District failed to provide Student with a Free, Appropriate Public Education (FAPE). The Hearing Officer concludes that the District did provide Student a FAPE in Student’s Least Restricted Environment (LRE) and appropriately implemented the education plan it prepared for Student.

II. PROCEDURAL HISTORY

A. Legal Representation

Petitioner was represented throughout this litigation by Petitioner’s non-attorney representative, Carolyn Morris. The District was represented throughout this litigation by its legal counsel, Gigi Driscoll of Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

III. DUE PROCESS HEARING

The due process hearing was conducted remotely via Zoom August 27-31, 2020. The parties were not able to have an in-person hearing due to safety concerns related to COVID-19. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's authorized non-attorney representative, Carolyn Morris. Student's mother also attended the due process hearing.

Respondent continued to be represented by its legal counsel Gigi Driscoll of Walsh, Gallegos, Treviño, Russo & Kyle, P.C. In addition, ***, the Executive Director of Special Education for the District, attended the hearing as the party representative. Both parties filed written closing briefs in a timely manner. The Decision in this case is due on October 30, 2020.

IV. ISSUES

A. Petitioner's Issues

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

- EVALUATION: Whether the District failed to evaluate Student in a timely manner.
- EVALUATION: Whether the District denied Student a FAPE related to statements made by staff and the evaluator who conducted a psychological evaluation.
- FAPE: Whether the District denied Student a FAPE by failing to offer educational opportunities in the areas of inclusion, mathematics, ***, writing, organizational skills, and ***.
- FAPE: Whether the District denied Student a FAPE by failing to advise Student's parents which staff are responsible for implementing and revising Student's Individualized Education Program (IEP).
- FAPE: Whether the District denied Student a FAPE by failing to implement IEP goals and services.

- FAPE: Whether the District denied Student a FAPE by failing to provide progress reports.
- FAPE: Whether the District denied Student a FAPE by failing to provide Student's parents the information used to determine Student no longer required inclusion services in math, ***, and writing, and failing to address organizational difficulties.
- FAPE: Whether the District denied Student a FAPE by failing to propose and implement measurable goals and services to allow Student to make academic and functional progress in math, ***, and writing.
- FAPE: Whether the District denied Student a FAPE by failing to inform Student's parents of regression in ***.
- FAPE: Whether the District denied Student a FAPE by failing to consider present levels of academic and functional performance before proposing Student no longer receive services under the IDEA.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Student's Complaint. The District contends it provided Student with a FAPE during the relevant time period, developed Student's IEP based on evaluation data and performance in coordination and collaboration with the key stakeholders, implemented the IEP in the least restrictive environment (LRE) appropriate for Student, and as a result, Student demonstrated both academic and nonacademic progress.

The School District raises the following additional issues:

1. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to resolve claims arising under any laws other than the IDEA, and whether such claims should be dismissed.
2. STATUTE OF LIMITATIONS: Whether any of Student's IDEA claims that accrued prior to April 8, 2019 should be dismissed as outside the one year statute of limitations rule as applied in Texas.
3. COUNTERCLAIM: Whether the District's full and individual evaluation (FIE) of Student is appropriate, and Student is not entitled to an IEE at public expense.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. An Independent Educational Evaluation (IEE) and psychological evaluation at District's expense;
2. An order directing the District to develop an inclusive program for Student with appropriate supports that address Student's academic needs;
3. An order directing the District to develop an IEP that addresses the classroom needs and supports identified in evaluations;
4. An order directing the District to provide necessary related services; and
5. An order directing the District to continue Student's eligibility for services under the IDEA.

B. Respondent's Requested Relief

1. Dismiss all claims arising under laws other than the IDEA; and
2. An order finding the District's FIE appropriate.

VI. FINDINGS OF FACT

Background

1. Student is *** years old and attends *** grade at *** in the District, which Student began attending during the *** school year. Student lives with both parents. Student enjoys ***. Student also enjoys ***.¹
2. Student is eligible for special education as a student with Other Health Impairment (OHI) for Attention Deficit Hyperactive Disorder (ADHD).²

¹ Respondent's Exhibit (RE) 1, p. 5.

² RE 57, p 2.

3. Student was not enrolled in public school until the *** school year, when Student was a *** grade student in a different school district. During the spring of 2015, Student began receiving supports through Section 504 for *** and ADHD.³
4. Student's parent requested a special education evaluation when Student was in the *** grade attending *** during the 2016-2017 school year. Student's parent had concerns that Student's disability could be a contributing factor to emotional and academic issues⁴

The 2017 FIE

5. Student's parent signed a consent to evaluate on October ***, 2016.⁵ The FIE consisted of a language/communication evaluation, physical-including visual/motor, emotional/behavioral using various measures including staff observations, rating scales, parent and teacher information forms, and review of Student's background/history and educational records. The District administered the Woodcock-Johnson Tests of Oral Language to test Student's language proficiency.⁶
6. The District administered The Woodcock-Johnson IV (WJ-IV) to test Student's cognitive abilities. The WJ-IV measured seven areas of cognitive ability: Comprehension Knowledge, Long-term Retrieval, Visual Processing, Fluid Reasoning, Processing Speed, and Short-term Working Memory. In each area, Student scored at least in the "average" range. Student scored in the "high average" range in Comprehension-Knowledge, Visual Processing, Processing Speed, and General Intellectual Ability. Student scored in the "superior" range in Long-term Retrieval.
7. Student's overall level of intellectual functioning (***) falls into the high-average range at the *** percentile.⁷ The District administered the WJ-IV Achievement Test, which also measures academic achievement. Student performed within the average range in basic reading skills, reading comprehension, reading fluency, calculation, applied problems, number matrices, and math problem solving. Student scored in the low average range in math facts fluency and math calculation skills.⁸
8. The FIE included a notation from *** that Student has a "****." An Occupational Therapy (OT) Evaluation concluded that Student did not qualify for OT services in the school setting.⁹

³ RE 1, p. 3.

⁴ *Id.*, p. 2.

⁵ *Id.*, p. 2.

⁶ *Id.*, p. 7.

⁷ *Id.*, p. 11-14.

⁸ *Id.*, p.17-20.

⁹ *Id.*, p. 8, 42-44.

9. OHI Documentation dated October ***, 2016, indicates Student has the physical condition of ADHD which may affect Student's ability to profit from the educational process. Student was not *** for Student's ADHD until March 2020.¹⁰
10. The FIE also utilized the Gilliam Autism Rating Scale (GARS-3)--a 58-item norm referenced screening instrument used to assess individuals for autism in a school setting. The GARS-3 gathers information from items grouped into six subscales: Restrictive/Repetitive Behaviors, Social Interaction, Social Communication, Emotional Responses, Cognitive Style, and Maladaptive Speech. The GARS-3, teacher and examiner observations, discipline reports, information from Student's doctor, attendance history, and social engagement on campus all indicate it is unlikely that Student has Autism Spectrum Disorder (ASD).¹¹
11. As part of the FIE, a psychological evaluation was conducted by a Licensed Specialist in School Psychology (LSSP). Characteristics of Student's behavior, as manifested in school and/or out of the school setting, do not influence Student's ability to follow the school's disciplinary rules. Therefore, a Behavior Intervention Plan was not needed. Additionally, Student was not eligible for special education as a student with Autism or a student with Emotional Disturbance (ED).¹²
12. Student's academic performance was evaluated through formal and informal testing. These measures included parent, teacher, and school input; report cards; and school assessments such as the Measure of Academic Progress (MAP) results. On MAP testing for reading in fall 2016, Student scored in the *** percentile. MAP testing for reading in spring 2017, Student scored in the *** percentile. In the fall of 2016, Student scored in the *** percentile for math on the MAP testing. In the spring of 2017, Student scored in the *** percentile for math on the MAP testing.¹³
13. Student met advanced academic standards on the STAAR ***, which is a State-administered assessment of curriculum expectations. Student met satisfactory standards on the STAAR *** (***). However, on the *** grade *** STAAR, Student ***. Student requires extra re-teach and small group help to progress in the *** curriculum, despite accommodations and having access to *** in class.¹⁴
14. Student has academic challenges in written expression. Student's ability to spell adequately, write legibly, and exhibit organization in accomplishing tasks were below average. Student participated in the Response to Intervention (RTI) program in the area of writing, with the following accommodations: ***. Student performed in the average range on the WJ-IV Achievement Test in writing samples, sentence writing fluency, and written

¹⁰ *Id.*, p. 9.

¹¹ *Id.*, p.9-10.

¹² *Id.*, p.10.

¹³ *Id.*, p. 15-16, 18.

¹⁴ *Id.*, p. 15-19.

expression. These findings were not in agreement with teacher and parent concerns related to Student's writing ability, which emphasized issues with Student's handwriting, spelling, and frustration with writing.¹⁵

15. On January ***, 2017, a psychological evaluation was conducted at the request of Student's parents due to concerns of anxiety, feelings of being overwhelmed, withdrawal, organization, and social skills. The evaluation included parent and teacher information, and information from an interview with Student. Student, Parent, and Teacher completed the Behavioral Assessment System for Children-3rd Edition Self-Report of Personality (BASC-3 SRP), which is used to obtain information regarding the significance of school problems, internalizing problems, inattention/hyperactivity, and emotional symptoms. Student rated Student's behaviors associated with internalizing problems, school problems, and adaptive skills as being within the average range.¹⁶
16. The psychological evaluation revealed that Student is well-behaved at home and at school. Behaviors associated with anxiety and disturbances in mood are reported in the home setting by parent, but not observed at school or acknowledged as problematic by Student. Student did not meet the criteria as a student with ED.¹⁷
17. Student was evaluated in the areas of speech and language. Student presented with above-average range abilities in all areas of language. Student's speech intelligibility is excellent without any concerns with language, articulation, voice, fluency, or oral motor abilities. Student did not meet eligibility criteria for special education for a speech impairment.¹⁸ The FIE did not recommend any related services for Student.¹⁹
18. The January 2017 FIE concluded that Student has academic difficulties in Math Calculations and Written Expression that can be attributed to factors resulting from Student's ADHD. The evaluator determined that Student has a qualifying disability and meets the need for specially designed instruction within the general curriculum. The FIE recommended accommodations and instructional interventions for math and writing, which include provide ***.²⁰

Student's 2018-19 Individualized Education Plan

19. On February ***, 2018, the ARD Committee met to approve the FIE and adopt an IEP. Student continued to qualify for special education services as a student with OHI-ADHD. Student's parent and advocate attended the meeting.²¹

¹⁵ *Id.*, p. 20-23.

¹⁶ *Id.*, p. 34-36.

¹⁷ *Id.*, p. 40.

¹⁸ *Id.*, p. 46-49.

¹⁹ *Id.*, p. 45, 50.

²⁰ *Id.*, p. 24-25.

²¹ RE 2, p. 23.

20. The ARD Committee developed seven annual goals for the 2018-19 school year. In Mathematics, Student had two goals targeting ***. In Language Arts, Student had one goal targeting Student's ability to ***. In ***, Student had three goals, one targeting ***. Student had one behavior goal targeting Student's organizational skills.²²
21. The ARD Committee adopted accommodations recommended in the January 2017 FIE, including ***. Accommodations were also adopted for Student during STAAR testing and District assessments such as ***.²³
22. Student's schedule of services called for content mastery *** minutes per week to support Student's academic progress and inclusion support for *** minutes per week.²⁴
23. Student's parent requested that she be provided an IEP progress report every four weeks. The ARD Committee agreed to this request.²⁵

The 2018-2019 School Year

24. On August ***, 2018, Student began *** grade at *** as *** for the 2018-19 school year.²⁶ Student continued to qualify for services as a student with OHI: ADHD based on the 2017 FIE. Student's IEP included instruction in the general education classroom with inclusion support for *** minutes per week, content mastery for *** minutes per week, accommodations, and goals in math, language arts, and ***.
25. Student's parent was informed at an enrollment meeting, which is where the parent meets with academic advisors to help develop Student's schedule to ensure it matches Student's IEP with Student's required classes, that Student would receive comparable services at the District.²⁷ Student enrolled in ***, including *** classes in ***.²⁸
26. Student's ARD Committee convened on October ***, 2018 for a thirty-day placement ARD Committee meeting. Student led the meeting and provided input for Student's IEP, which was also attended by Student's parent and advocate.²⁹ The Present Levels of Academic Achievement and Functional Performance (PLAAFP) demonstrate that Student mastered all IEP goals, save for *** in the area of math because it was just being introduced at the time of the ARD. PLAAFPs are a snapshot of how a student is doing at the time of the ARD. Student passed the *** STAAR exams, and functions within normal limits both

²² *Id.*, p.9-11.

²³ *Id.*, p. 12-15.

²⁴ *Id.*, p. 19-20.

²⁵ *Id.*, p. 23.

²⁶ RE 5; Transcript (TR) Vol. I, pg. 156.

²⁷ Tr. Vol. I, p.165, 169, 229.

²⁸ RE 21.

²⁹ RE 9, pg. 10, 24; Tr. Vol I., p.184.

academically and functionally, and in some areas at an advanced level. Student was passing all classes, including ***, where Student performed above-average on tests.³⁰

27. The ARD Committee found the *** goals in Student's transferred IEP to be unmeasurable for *** because they did not have mastery criteria. Additionally, *** goals are typically for students with significant cognitive delays or intellectual disabilities who are unable to be independent.³¹ Student expressed interest in ***. The ARD Committee put into place measurable *** goals: Student will ***. Student did not require ***. Student expressed an interest in *** and indicated Student was already ***.³²
28. Student rated above-average for *** students on academic competencies, which measure class attendance, class preparation, instruction following, effort, attention and focus, note-taking skills, general studying skill, organizational skills, and meeting deadlines.³³
29. After considering Student's progress in the classroom, performance on testing, and feedback from Student's teachers, the ARD Committee discussed discharging Student from instruction through special education. Student's parent and advocate were not in agreement and insisted that special education services remain in place. The ARD Committee agreed to leave Student in special education and develop goals to target self-advocacy. A copy of the ARD committee documents were provided to Student's parent.³⁴
30. The ARD Committee developed two annual goals:
 - a) By the end of the ARD year, ***, Student will increase Student's confidence using ***. This will be measured using self-assessment on a ten-point scale with ten being complete confidence and one being no confidence as to ***.
 - b) By the end of the ARD year, using feedback and reminders, Student will seek assistance through ***. This will be measured by at least ***.³⁵
31. *** is small group instruction which also offers end of course remediation and content mastery online. It is available to any ***.³⁶ The goals developed by the ARD Committee were not modified or specially designed, they were developed because Student's parent wanted Student to advocate or seek assistance for ***self. Student's schedule of service

³⁰ *Id*, pg. 5-9, 23; Tr. Vol. I. p. 239.

³¹ Tr. Vol. I, p. 220-224.

³² RE 9, p. 10-13,23; RE 27, p.20; Tr. Vol. III., p. 698-699.

³³ RE 7; Tr. Vol I., p. 180-181, 234.

³⁴ RE 9, p. 23; Tr. Vol I; p. 241.

³⁵ *Id*, p.16.

³⁶ Tr. Vol. I, p. 231-232.

called for instruction in general education, with special education instructional support, which involves consulting with teachers and monitoring student's progress.³⁷

32. On Dec ***, 2018, the ARD Committee met at the request of Student's parent for the purpose of discussing Student's classes, grades, testing, and ***. Student's parent requested a special education counseling evaluation, notification of all failing grades, progress reports every three weeks of Student's IEP goals, and a change in contact teachers. The contact teacher is responsible for making sure Student's IEP is implemented. To that end, she provided consult support to both Student and Student's teachers, checked Student's grades, updated the progress on Student's IEP goals, and gathered data on Student's classroom performance.³⁸
33. The ARD Committee reviewed Student's grades and determined that Student passed all major tests except for one. The ARD Committee agreed to do a psychological evaluation despite Student not exhibiting anxiety or *** behaviors at school at the request of Student's advocate. Additionally, the ARD Committee agreed to provide the IEP progress reports every three weeks and change Student's contact teacher.³⁹ Student's parent received Student's progress reports via the U.S. Postal Service every third Friday beginning on January ***, 2019, as the District only had consent to send ARD meeting notices electronically.⁴⁰
34. The District sent out a written notice of evaluation or reevaluation to Student's parent on January ***, February ***, and March ***, 2019. Student's parent notified the District on April ***, 2019 that they did not wish to pursue the evaluation because Student didn't feel like it was needed. Student's parent never signed the consent to evaluate.⁴¹ On January ***, 2019, the ARD Committee amended Student's IEP to add a testing accommodation ***.⁴²
35. Student finished the school year with a ***.⁴³ Student also passed all of Student's STAAR exams.⁴⁴ Additionally, Student met Student's two IEP goals prior to the end of the school year. Student demonstrated an increase in confidence in *** as measured by Student's self-assessment of nine on a scale of ten, although Student admits to struggling with ***. Student did not require prompting or reminders to attend *** as needed, thus Student mastered the goal of seeking assistance through ***.⁴⁵

³⁷ RE 9, p. 21, 23-25; Tr. Vol. I., p. 243-246.

³⁸ RE 14; Tr. Vol. II, p. 6-9, 13.

³⁹ RE 15.

⁴⁰ Tr. Vol. I, p. 251.

⁴¹ RE 17; Tr. Vol. II, p. 10-11.

⁴² RE 1; Tr. Vol II, p.12.

⁴³ RE 21.

⁴⁴ RE 27, p. 2; RE 8, p. 1.

⁴⁵ RE 19, RE: 28, p. 9, 15; Tr. Vol. I, p. 247.

The 2019-2020 School Year

36. Student began the school year ***. Student also ***.⁴⁶ Student's contact teacher described Student as very impressive and well organized when ***, as called for by Student's IEP. Student was able to produce any paper that was requested because Student had a system established for keeping up with school work and missing assignments.⁴⁷
37. On September ***, 2019, the District convened an ARD Committee meeting to conduct a Review of Existing Evaluation Data (REED) to determine Student's need for additional evaluations and continued eligibility and/or need for special education and related services. The ARD Committee considered Student's PLAAFPs using data from end of unit exams, current goals and objectives, STAAR testing, grades, parent/student input, teacher input/observations, and the 2017 FIE, this information was given to Student's parent prior to the ARD meeting.⁴⁸ Student did not participate in the ARD at the request of Student's parent.⁴⁹
38. Student met grade-level expectations on each of the STAAR end of curriculum (EOC) exams during the 2018-2019 school year in ***. In the area of ***, Student scored the same or better than ninety-one percent of all students. In ***, Student scored the same or better than sixty-five percent of all students. In ***, Student scored the same or better than sixty-nine percent of all students. Student scored either satisfactory or at an advanced level on End of Unit exams in ***.⁵⁰ End of Unit exams are given to prepare Students for the STAAR exam and offer a measure of current standing.⁵¹
39. Based upon Student's academic, social, and behavioral performance at school, the District found it challenging to continue to qualify Student for special education services.⁵² Student's parent and advocate continued to insist that Student's anxiety and depression at home had an effect on Student's grades at school because Student was not making 100's in all of Student's classes.⁵³ Each of Student's teachers provided input to the ARD Committee and described Student's daily work and homework as timely and above average. Student's strengths are class preparation, peer relations, effort, focus, organization, attendance, and meeting deadlines.⁵⁴ The September ***, 2019 ARD meeting did not end in consensus.

⁴⁶ RE 73.

⁴⁷ Tr. Vol. II, p. 27.

⁴⁸ RE 26 1-13; RE 27, p. 8.

⁴⁹ *Id.*, p. 32; Tr. Vol. II, p. 456.

⁵⁰ *Id.*, p. 8-15.

⁵¹ Tr. Vol. II, p. 463.

⁵² RE 38, p. 41.

⁵³ Vol. II, p. 457-458.

⁵⁴ RE 23; RE 27, p. 8-14.

40. The ARD Committee reconvened again on September ***, 2019, in order to determine Student's continued eligibility for special education services. Student's parent and advocate requested a full psychological evaluation, inclusion support in math, and support services for instruction in organization. Student's parent refused to discuss a less rigorous academic load for student. The meeting ended in non-consensus and the ARD Committee and Student's parent agreed to a recess until October ***, 2019.⁵⁵
41. On September ***, 2019, Student's parent called for a postponement of the October *** ARD meeting, while also requesting an independent mediator through the Texas Education Agency (TEA) to help facilitate a consensus with the ARD Committee. The District suggested that they reconvene on October ***, 2019 in order to put into place the components where there is likely agreement, such as classroom accommodations, state testing accommodations, and IEP goals.⁵⁶ Student's parent did not agree to reconvene the ARD meeting on October ***, 2019.
42. On December ***, 2019, the ARD Committee reconvened to design an IEP to address Student's parent's concern with some missing assignments, zeros, and organization. The ARD Committee agreed to conduct an FIE and psychological evaluation as part of Student's three year reevaluation to be due by March ***, 2020. One annual goal was developed to address organization strategies for due dates, assignments, and materials.⁵⁷ This goal was mastered by the March ***, 2020 grading period.⁵⁸
43. The ARD Committee added an additional accommodation to Student's existing classroom accommodations: ***. Additionally, accommodations were added for end of unit and EOC testing online: ***.⁵⁹
44. Student's placement was the general education classroom. As accommodations to support Student in the general education classroom, the District provided inclusion support for math and instructional support for *** minutes twice per week and consult instructional support for *** minutes per grading period.⁶⁰
45. The accommodations in Student's IEP were implemented in each of Student's classes, but Student did not utilize most of them. *** ere accommodations student either did not require or did not utilize because Student did not need it. Other accommodations in Student's IEP were available to all students, such as spelling assistance, content mastery, and opportunity to retest on failing tests/quizzes or make corrections after remediation.⁶¹ In ***, Student

⁵⁵ *Id*, p.33; RE 38, p. 2

⁵⁶ RE 31, p.1-2; Tr. Vol. I, p. 101-102.

⁵⁷ RE 27, p. 25, 34; RE 38.

⁵⁸ RE 66, p. 3.

⁵⁹ RE 27, p. 26-27.

⁶⁰ *Id*, p. 30.

⁶¹ *Id*, p. 26.

chose to make corrections in class rather than tutorials or retest for quizzes for a higher grade, even when the original grade was passing.⁶²

46. Student fell behind on assignments in some of Student's classes *** during Spring 2020. Student had *** full days of absences for the school year. Student completed the school year with *** A's and *** B's, without any modifications in any of Student's classes.⁶³ Student did not demonstrate emotional distress or anxiety at school, nor did Student express concerns to Student's general education teachers or contact teacher regarding anxiety or distress. Student stated that Student did not feel comfortable opening up to Student's teachers or contact teacher about Student's issues with school.⁶⁴

2020 FIE

47. Student's parent signed a consent to re-evaluate on December ***, 2019.⁶⁵ The FIE consisted of cognitive functioning and academic achievement testing and a psychological evaluation.⁶⁶ Student's parent had not returned a completed OHI form back to the District before the completion of the report on February ***, 2020. An addendum was added to the FIE on March ***, 2020, after a medical doctor confirmed Student experiences moderate ADHD ***. The doctor never consulted with anyone at the District⁶⁷
48. The FIE included an administration of the WJ-IV in order to test Student's language and communication, cognitive abilities, and academic achievements. The WJ-IV, administered over the course of three sessions, measured two areas of language and communication: Oral Expression and Listening Comprehension. In each area, Student scored in the "average" range. In the area of cognitive ability, seven areas were measured: Comprehension Knowledge, Fluid Reasoning, Short-Term Working Memory, Cognitive Processing Speed, Auditory Processing, Long-Term Retrieval, and Visual Processing. In each area, Student scored at least in the "average" range. Student scored in the "above average" range in Auditory and Visual Processing Speed.⁶⁸
49. The FIE included an administration of the WJ- IV Tests of Achievement, which measures academic achievement. Student performed within normal limits in basic reading skills, reading comprehension, reading fluency, math problem solving, written expression, and spelling. Student's teachers ranked Student average to above average in reading fluency, reading comprehension, test taking, note taking, and organizational skills, with superior

⁶² Tr. Vol. III, p. 623.

⁶³ RE 73; Tr. Vol. II, p. 290.

⁶⁴ Tr. Vol. II, p. 290-295; Tr. Vol. III, p. 730.

⁶⁵ *Id.*, p. 40.

⁶⁶ RE 55.

⁶⁷ Tr. Vol. II, p.360; RE 57 1-2; RE 61.

⁶⁸ RE 55, p. 3-5.

on-task behaviors. Math calculation and math reasoning were reported as above average, while spelling was reported as below average.⁶⁹

50. The FIE used the BASC-3 to evaluate Student's adaptive behavior. As part of the BASC, two of Student's teachers, Student's parent, and Student filled out the BASC questionnaire, although the self-report from Student does not include the scale. On the BASC-3 rating scale, Student received an average range score in overall adaptive skills. Student received at-risk scores for Adaptability, Social Skills and Functional Communication from the parent, while one of Student's teachers reported at risk scores in Social Skills and Leadership⁷⁰. At-risk is defined as "may need monitoring but doesn't require formal intervention because Student sometimes works well under pressure, sometimes is uncomfortable in certain social situations and sometimes Student doesn't want to start a conversation."⁷¹
51. Three formal, peer-reviewed testing instruments were used to test Student's behavioral and psychological characteristics: the BASC-3, Multidimensional Anxiety Scale for Children, 2nd edition (MASC-2), and Multi-score Depression Inventory for Children (MDIC). The BASC-3 is an overall assessment, MASC-2 assesses anxiety-related symptoms in youth, and the MDIC looks specifically at multiple aspects of depression.⁷²
52. The BASC-3 self-report found Student rated in the average range. Student scored in the at-risk range for anxiety, hyperactivity, and interpersonal relations. Student indicates Student ***.⁷³ The BASC-3 parent rating score were all rated in the acceptable range. Student's parent rated Student in the at-risk range for internalizing problems, somatization, and withdrawal. The BASC-3 teacher rating score were all rated in the average range, except Student's *** teacher rated Student in the at-risk range in the areas of learning problems and withdrawal.⁷⁴
53. The Attention-Deficit/Hyperactivity Disorder Test, 2nd edition (ADHD) Index, which is a test used to identify students who have ADHD was given to Student's teachers. Student's probability of ADHD fell into the unlikely range based on the teacher's ratings in the areas of inattention and hyperactivity/impulsivity.⁷⁵
54. The FIE found Student experiences ***. Student's overall generalized anxiety (GAD) index measured in the slightly elevated range for both the home and school setting, neither

⁶⁹ *Id.*, p. 7-8.; Tr. Vol. II, p. 492.

⁷⁰ *Id.*, p. 6-7.

⁷¹ Tr. Vol. II, p. 360-361.

⁷² Tr. Vol. II, p. 366; RE 55, p. 3, 10-11.

⁷³ *Id.*, p. 410-412.

⁷⁴ RE 55, p. 15.

⁷⁵ *Id.*, p. 16; Tr. Vol. II, p. 416-418.

- of which indicates a need for intervention. The MDI-C depression assessment did not have any elevated scores.⁷⁶
55. The FIE was conducted by staff members who are appropriately certified and credentialed to administer each test using a technically sound instrument so as not to be culturally or racially biased and provided in Student's native language. The instrument was used in a way that is valid and reliable in assessing Student's language and communication, cognitive abilities, and academic abilities.⁷⁷
56. The FIE concluded Student did not meet eligibility for special education as a student with ADHD or ED. Student demonstrated no need for special education services.⁷⁸ Student's parent was in agreement with the protocols of the FIE but not with the eligibility determination and requested an Independent Educational Evaluation (IEE). The district denied the request for the IEE, but did provide Student's parent a full copy of the FIE via email on March ***, 2020. While meeting with Student's parent about the FIE prior to the ARD Committee meeting, the LSSP commented that, "Student's self-esteem and confidence will rise if Student can *** without the supports of special education since it is Student's intent to ***".⁷⁹
57. On March ***, 2020, Student's contact teacher sent an email to Student's parent, attaching a copy of some of the documents that were to be reviewed and discussed at the upcoming ARD Committee meeting: Student's IEP progress report, current report card, benchmark scores, and state testing scores.⁸⁰
58. The ARD Committee convened remotely via Zoom on April ***, 2020 to review the FIE and the addendum to the FIE to consider Student's continued eligibility for special education services. Based upon Student's cognitive functioning, academic achievement data, psychological evaluation, and teacher input, the District determined that Student does not meet eligibility for special education services.⁸¹
59. Student's parent and advocate had concerns that Student's cognitive and achievement scores "decreased" from Student's 2017 FIE, they requested the raw scores. The diagnostician explained that regression cannot be determined with a standard score, you have to look at the rate of progress of Student in comparison to same-age peers. In terms of the WJ-IV Academic Achievement, a comparison cannot be made between the scores to determine regression because the 2017 FIE was scored on grade-based normative samples and the 2020 FIE was scored on age-based normative samples.⁸²

⁷⁶ RE 55, p. 11; Tr. Vol. II, p. 369-371.

⁷⁷ Tr. Vol. II, p. 494-495.

⁷⁸ Tr. Vol. II, p. 419.

⁷⁹ Tr. Vol. II, pg. 327, 422-423; RE 62.

⁸⁰ RE 63; p. 1-12.

⁸¹ RE 66.

⁸² *Id.*, p. 5; Tr. Vol. II; p. 488-495.

60. The April ***, 2020 ARD Committee meeting ended in non-consensus.⁸³ A week after the meeting, Petitioner filed the due process Complaint.

VII. DISCUSSION

A. Statute of Limitations

A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415(b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503(a)(1)(2); 300.507(a)(1)(2).

The two-year statute of limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. 20 U.S.C. §1415 (f) (3)(C); 34 C.F.R. § 300.507(a)(2). Texas has an explicit statute of limitations rule. In Texas, a parent must file a request for a due process hearing within one year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request. 19 Tex. Admin. Code § 89.1151(c).

The one year statute of limitations rule will not apply in Texas if the parent was prevented from requesting a due process hearing due to either:

1. Specific misrepresentations by the school district that it had resolved the problem that forms the basis of the due process hearing request; or
2. The school district withheld information from the parent that it was required to provide under IDEA. 20 U.S.C. § 1415 (f)(3)(D); 34 C.F.R. § 300.511 (f)(1)(2).

Petitioner raised the first exception, alleging the District specifically misrepresented that it had resolved the problem that forms the basis of the due process hearing request.⁸⁴ The District raised

⁸³ RE 66, p. 5.

⁸⁴ Order No. 9 – Memorializing the Prehearing Conference (July 7, 2020) at p.2. PHC Transcript (June 30, 2020) at p.7.

the one-year statute of limitations as an affirmative defense.⁸⁵ In order for the “specific misrepresentation” exception to apply, “the alleged misrepresentation must be intentional or flagrant”. Petitioner must establish not that the school district’s provision of FAPE was objectively inappropriate but instead that the school district subjectively determined Student was not receiving FAPE and intentionally and knowingly misrepresented that fact to Student’s family. *D.K. v. Abington Sch. Dist. (696 f3d 233)*, 2012 U.S. App. LEXIS 21060 (3d Cir. 2012) (student could not show misrepresentations caused failure to request a hearing or file a complaint on time – teachers did not intentionally or knowingly mislead parents about extent of academic and behavioral issues or efficacy of solutions and programs attempted).

Petitioner contends that the District misrepresented to Student’s parent that Student mastered the goals and objectives from the prior school district and that Student’s parent was unaware that those goals and objectives were discontinued after the October ***, 2018 ARD meeting. However, the District discussed discharging Student from instruction through special education based upon Student’s mastery of IEP goals, performance on testing, and feedback from Student’s teachers with Student’s parent and advocate at the ARD meeting. Additionally, Student’s parent received a copy of the prior written notice which indicated a proposal for new goals, a new *** plan, and revision of accommodations. Student’s parent was also provided a copy of the October ***, 2018 ARD document reflecting the changes in the goals and services. Petitioner knew, or should have known, that the District proposed new goals and services for Student on October ***, 2018 and failed to file a timely request for a due process hearing regarding disagreement with the changes.

The record in this case does not support a finding that the District’s action beginning on October ***, 2018 rose to the level of flagrant, intentional misrepresentation required by the first exception to the statute of limitations rule. In order to apply this exception, Petitioner had to establish that the District knew that it was not providing Student with a FAPE and intentionally misled Student’s parent into believing otherwise. There is no evidence to support that conclusion. *D.K., supra*.

⁸⁵ Respondent’s Response to Petitioner’s Amended Complaint (June 15, 2020) at p. 2.

Student's causes of action accrued when Student's parent knew, or should have known, of the injury forming the basis of the complaint. *See Doe v. Westerville City Sch. Dist.*, 50 IDELR, 132, p. 5-6 (D.C. Ohio 2008). Petitioner filed a due process complaint on April 8, 2020. Texas courts have consistently ruled that claims arising prior to one year before the date of filing of a request for a due process hearing are time-barred. *Marc V. v. North East Indep. Sch. Dist.*, 455 F.Supp.2d 577, 591 (W.D. Tex. 2006) (noting that "the statute of limitations precludes recovery for any procedural violations occurring prior to one year from the date that Plaintiffs filed their request for a due process hearing."); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918, 944 (W.D. Tex. 2008); *T.C. v. Lewisville Indep. Sch. Dist.*, 2016 WL 705930, *9 (E.D. Tex. 2016). The date one year prior to the filing of the Complaint was April 8, 2019, the date on which Petitioner filed the Due Process Complaint. Any violations of the IDEA that may have occurred outside of those dates will not be considered in this case.

B. Duty to Provide 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). The school district has a duty to provide a FAPE to all children with disabilities ages three and twenty-one who are enrolled in the school district. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a) (3).

The school district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁸⁶ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case, the District was obligated to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. The burden of proof in this case is on Petitioner to show the District did not do so. *Id.*

D. Parental Right to IEE

A parent of a student with a disability has the right to obtain an IEE at school district expense if the parent disagrees with the school district's evaluation. 34 C.F.R. § 300.502(a)(b)(1). However, a school district may challenge the parental right to the IEE at school district expense by filing a request for a due process hearing to show its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2)(ii). If the school district meets its burden on that issue, although parents are still entitled to secure an IEE, they do so at their own expense. 34 C.F.R. § 300.502 (b) (3).

In this case, the District conducted an FIE and psychological evaluation as part of Student's three-year reevaluation to be due by March ***, 2020. Petitioner claims that the District failed to evaluate Student in a timely manner. However, the evidence shows that the District completed the FIE on February ***, 2020. Prior to the ARD meeting in April 2020, the LSSP met with Student's parent and advocate to review and discuss the results of the FIE. It was not until Student's parent learned of the LSSP's recommendation that Student did not qualify for special education services that she disagreed with the FIE and requested an IEE at the District's expense. The District denied Student's parents request for the IEE on the grounds that the District's FIE is appropriate.

An FIE must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, to determine whether the child qualifies for special education and the content of the

⁸⁶ 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).

child's IEP. 34 C.F.R. § 300.304(b)(1). It should use technically sound instruments of evaluation to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b)(3). It must also be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

The FIE in this case used a wide variety of assessment tools: two in-person classroom observations of Student over the span of two days; interviews with Student, Student's parent, and Student's teachers; surveys completed by Student, Student's parent, and Student's teachers; several formal, peer-reviewed assessment tools to test for intelligence, academic functioning, psychological functioning, and other areas in which the District suspected Student might have deficits. It found Student does not meet criteria for the educational disability of Emotional Disturbance and Student's diagnosis of ADHD is not supported by the data and the symptoms do not adversely impact Student's educational performance.

Petitioner did not meet Petitioner's burden on the claim for an IEE at school district expense and the District's evaluation was appropriate.

E. FAPE

The Four Factors Test

The Fifth Circuit has articulated a four-factor test to determine whether a Texas school district's program meets IDEA requirements. 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). 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. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).

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

1. Individualized on the Basis of Assessment and Performance

First, the IEP implemented during the relevant time period was individualized on the basis of assessment and performance. In meeting the obligation to provide FAPE, the 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 Student's potential, the school district must nevertheless provide 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." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017).

The District's obligation when developing Student's IEP and BIP 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). For Student, whose behavior impedes Student's learning and that of others, the District must also consider positive behavioral interventions and supports and other behavioral

strategies when developing Student's IEP and BIP. 34 C.F.R. § 300.324(a)(2)(i); *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir.2012).

Student transferred into the District in August 2018, with an existing IEP that was developed from an initial FIE in January 2017. On October ***, 2018, the District held a thirty-day placement ARD Committee meeting. The ARD Committee considered Student's PLAAFP's, classroom progress, testing performance and teacher input as the basis for determining that all IEP goals were mastered, except for one which was just being introduced. The District considered discharging Student from special education instruction in the ***grade, but after taking Student's parent and advocate's concerns into account, the ARD committee developed two IEP goals to address Student's parent concern that Student self-advocate for ***self.

Student's inclusion supports were removed during the 2018-2019 school year because Student was successful and did not need additional help academically or functionally. Additionally, Student's *** goals were developed into measurable goals that were in line with ***. Student's program was individualized on the basis of assessment and performance.

Petitioner also argues that the District failed to implement Student's goals and services. In *O.W.*, the Court determined when a plaintiff brings a claim based on a failure to *implement* an IEP, the first factor (whether the program is individualized) and second factor (whether the program is administered in the least restrictive environment) are generally "not at issue." *Spring Branch Independent School District v. O.W. by next friend Hanna W.* 961 F. 3d 781, 795-96, *citing Bobby R.*, 200 F.3d at 348. Rather, a court must decide whether a FAPE was denied by considering, under the third factor, whether there was a "substantial or significant" failure to implement an IEP; and under the fourth factor, whether "there have been demonstrable academic and non-academic benefits from the IEP." *Id.* at 796, *citing Bobby R.* at 349. Student's contact teacher met with Student for *** as required by Student's IEP, although this wasn't necessary because Student is described as being organized with a system for keeping up with school work and missing assignments. Student mastered this IEP goal by March 2020. Further, most of Student's accommodations were available to all students in the District, so they were already implemented into each of Student's classes, although Student did not need or utilize most of them such as***.

Student did utilize the opportunity to retest on failing tests/quizzes or make corrections after remediation, often to obtain a higher grade, which is an accommodation available to all students. Petitioner failed to prove that Student's goals and services were not implemented.

ARD committees may conduct a REED, and as part of any reevaluation, must consider evaluations and information provided by the parent(s); current, classroom-based, local or state assessments and classroom-based observations; observations by teachers and related service providers; and on the basis of that review, to include input from the student's parent(s), identify what additional data, if any, is needed to determine: whether the student continues to be eligible for services under the IDEA, and his or her educational needs, PLAAFPs, related service needs, and whether additions or modifications to the student's program are needed to allow the student to meet his or her IEP goals and participate, as appropriate, in the general education curriculum. 20 U.S.C. §§ 1414(c)(1)(A)(i)-(iii); (B)(i)-(iv).

Student was first identified as eligible for special education services as a student with an OHI for ADHD in January 2017. Student's IEP goals and objectives were developed to address deficits in *** based upon deficits identified in the FIE. By April 2020, the ARD Committee determined that Student was no longer eligible for special education services as a student with an OHI for ADHD. The ARD Committee considered Student's PLAAF's, assessments, progress reports, standardized tests, teacher input, parental input, as well as observations. Despite, Student's parent's reports of depression and anxiety displayed by Student in the home setting, it was not displayed or noticed by any of Student's teacher, nor did Student express it to anyone at the District.

2. Least Restrictive Environment

Second, the District's program was delivered in the LRE. The IDEA requires that a student with a disability shall be educated with non-disabled peers to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as

the “least restrictive environment requirement.” 34 C.F.R. § 300.114(a)(2)(i)(ii). State regulations require a school district’s continuum of instructional arrangements be based on students’ individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, resource room/services, self-contained – 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. State Bd. Of Ed., 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.*

Student spent all Student’s time in a mainstream, general education environment. Student benefited from that environment and neither Petitioner nor Respondent felt Student needed a more restrictive placement.

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.*

The evidence showed Student's services were provided in a coordinated and collaborative manner by key stakeholders. Student's parent participated in four ARD Committee meetings since Student entered the District during the 2018-2019 school year. Student's parent had an advocate with her at four of the five ARD Committee meetings she attended during this time, including one that took place via Zoom. Parent was in frequent contact with the school via email when she was seeking information regarding Student's grades, missing assignments, and test performance. District personnel worked in a collaborative manner to address any issue brought up by the parent. The first contact teacher was removed, progress reports were sent every three weeks, and teachers responded to either the contact teacher or Student's parent directly regarding implementation of Student's IEP. Petitioner argues that they were unaware of which staff were responsible for implementing and revising Student's IEP, but the evidence is to the contrary.

Petitioner argues that the District failed to provide progress reports. The evidence shows that Student's contact teacher mailed a progress report to Student's parent every three weeks, as requested by Student's parent. Student's contact teacher was in constant communication with Student's parent via email and there was never a complaint of not receiving a progress report. In addition, Petitioner claims the District did not provide the information used to determine Student no longer required inclusion services for math, ***, writing and organizational skills. At the

October 2018 ARD Committee meeting, Student's parent and advocate were in attendance when the proposal for new goals and services were proposed for Student and there was no disagreement with the plan, in fact, Student's parent advocated that the new IEP focus on Student advocating for ***self. Student's contact teacher provided Student's parent a copy of the ARD meeting documents and prior written notice containing the District's proposal of the new goals and services for Student.

Petitioner argues that Student was regressing in *** and the District failed to inform Student's parent. No evidence was presented that Student needed any additional supports for ***. Student finished the 2019-20 school year with a grade of *** in ***, Student didn't attend tutoring, passed the STAAR exam testing in the *** grade, and mastered Student's IEP goal of increasing Student's confidence in *** which was measured by Student's own self-assessment. Petitioner did not provide any evidence that Student regressed in ***.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 812-13 (5th Cir. 2012). Benefit should not be measured in relation to one's peers, but rather should be reviewed with respect to the individual student. *Bobby R.*, 200 F.3d at 349.

The evidence showed that academically, Student demonstrated educational progress by maintaining A's and B's in all Student's classes, including *** and passing all standardized tests. Student's grades and standardized test have remained the same throughout Student's academic career, even after inclusion supports were removed. Non-academically, Student has taken advantage of several ***. These activities have given Student not only an outlet to focus on things outside the classroom, but an opportunity to make friends ***. *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 successful academically as shown by Student's grades and passing the

STARR exams. Student was also successful non-academically as shown by Student's involvement in multiple ***. Thus, Student's IEP was implemented with fidelity.

5. Conclusion

Student received an education based on assessment and input from key stakeholders in Student's LRE and derived both academic and non-academic benefit from it. Therefore, the District provided Student a FAPE. *See Michael F.*, 118 F.3d at 253. Student's IEP was implemented appropriately. *See O.W.*, 961 F. 3d at 781.

F. Whether Respondent failed to evaluate Student in a timely manner.

Petitioner contends the District did not evaluate Student in a timely manner, claiming that an evaluation request was made in September 2019 and December 2019 and wasn't completed until February 2020.⁸⁷ The District timely conducted and completed its evaluation of Student beginning when Student's parent gave consent to conduct the FIE on December ***, 2019. The District must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. 34 C.F.R. § 300.300(c)(i). The September ***, 2019 ARD committee did not reach a consensus regarding the scope of Student's reevaluation until December ***, 2019 with a due date of March ***, 2020. The District completed the evaluation on February ***, 2020. Petitioner did not meet its burden to show that Student's evaluation was not timely.

G. Whether comments made by the evaluator of the psychological evaluation denied Student a FAPE.

Petitioner asserts that Student was denied a FAPE because of comments made by staff and the evaluator who conducted the psychological evaluation of Student. The evidence showed that the recommendation of the LSSP was that Student did not need special education services. In explaining the reasons for the recommendation to Student's parent, the LSSP commented that "Student's self-esteem and confidence will rise if Student can *** without the supports of special

⁸⁷ Petitioner's Closing Argument, at 7.

education since Student ***". No evidence or testimony was presented that this comment denied Student a FAPE.

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; *Endrew F.*, 137 S. Ct. 988.
2. 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).
3. The District's 2020 FIE complied with the IDEA. 20 U.S.C. § 1414(b)(3)(B).
4. The District provided timely progress reports to Student's parent.

IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are hereby **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 October 30, 2020.



Yvonne Patton
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a)(b).