

SOAH Docket No. 701-23-02377.IDEA
TEA Docket No. 030-SE-1022

**Before the
State Office of Administrative
Hearings**

**STUDENT, by next friend PARENT,
Petitioner**

v.

**LaJoya Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

*** (Student), by next friend *** (Parent, and collectively, Petitioner), brings this action against the La Joya Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations.

The main issues in this case are whether Respondent denied Student a free,

appropriate public education (FAPE) during the 2021-22 school year and whether the District denied Student a FAPE by failing to provide a safe, non-hostile learning environment. The hearing officer concludes the District procedurally and substantively complied with the IDEA and Petitioner is not entitled to the relief requested.

I. DUE PROCESS HEARING

The due process hearing convened on August 30 - September 1, 2023, via the Zoom videoconferencing platform. The hearing was recorded and transcribed by a certified court reporter. Petitioner requested an open hearing and observers were present.

Petitioner was represented throughout this litigation by Jordan McKnight of the Law Office of Jordan McKnight. Student's Parent, ***, attended, as did Petitioner's advocates, Debra Liva and Bonnie Garza. Respondent was represented throughout this litigation by Leslie Alvarez and Nick Maddox of O'Hanlon, Demerath & Castillo. ***, Director of Special Education, attended as the party representative for Respondent.

The parties offered separately disclosed exhibits. Petitioner offered testimony of Parent; Bonnie Garza; and ***, campus principal. Respondent offered testimony of ***, educational diagnostician; and Principal ***.

The parties filed timely written closing briefs. The hearing officer's decision

is due on November 2, 2023.

II. ISSUES PRESENTED

A. Petitioner's Claims

The relevant time period includes the two-year period before the case was filed.

Petitioner raised the below legal issues for decision:

1. Whether Respondent denied Student a FAPE during the 2021-22 school year.
2. Whether Respondent failed to provide instruction by a highly qualified special education teacher and failed to inform Parent of this or provide compensatory services.
3. Whether Respondent denied Parent meaningful participation by failing to provide timely and appropriate progress reports as required by the IDEA.
4. Whether Respondent failed to ensure Student's teacher was properly trained on implementing the individualized education program (IEP) and assessing Student's progress.
5. Whether Respondent failed to comply with the IDEA by unilaterally changing Student's services and placement to a more restrictive setting without convening an admission, review, and dismissal (ARD) committee meeting.
6. Whether Respondent failed to implement Student's IEP.
7. Whether Respondent violated Parent's right to meaningful participation in the IEP development process.

8. Whether Respondent violated the IDEA by failing to protect Student's confidential record and information.
9. Whether Respondent denied Student access to a ***.
10. Whether Respondent denied Student a FAPE under the IDEA by failing to provide a safe, non-hostile learning environment.

B. Requested Relief

Petitioner seeks the following items of relief:

1. An order requiring Respondent to provide an independent educational evaluation (IEE) in all areas: cognitive, achievement, psychological, occupational therapy (OT), speech, and a functional behavior assessment (FBA) to be completed by a board-certified behavior analyst.
2. An order requiring Respondent to provide private compensatory education and related services to address Student's areas of disabilities and/or needs, including but not limited to private applied behavior analysis therapy and any other activity (such as counseling, mentoring, camps, etc.) that will assist Student in the acquisition of academic, speech, and social/behavioral skills for the next two years.
3. Reimbursement of parental out-of-pocket expenses for evaluations and/or services during the 2021-22 school year.
4. A finding that Respondent denied Parent a meaningful opportunity to participate in developing educational programming for Student.
5. Any and all other remedies that Petitioner may be entitled to under the law.

C. Respondent's Legal Position

Respondent generally and specifically denied the allegations and maintains it provided Student a FAPE consistent with its obligations under the IDEA at all relevant times. Respondent raised the affirmative defense of the statute of limitations and a plea to the jurisdiction as to claims or requested relief under statutes other than the IDEA.

III. FINDINGS OF FACT

Background Information

1. Student is *** years old and in *** grade. Student lives with Student's parents ***.¹
2. Student has a history of ***, and developmental delay. Student received speech services through *** and was formally assessed by *** Independent School District at ***. Student met criteria as a student with a speech impairment and received speech services for 10 30-minute sessions every 6 weeks. However, these services stopped due to the COVID-19 global pandemic. When in-person instruction resumed in April 2020, Student began attending *** in the District.²
3. The District convened a transfer ARD committee meeting on April ***, 2020, and began providing Student commensurate services to those set forth in Student's IEP from the previous school district.³

¹ Transcript (Tr.) at 77-78.

² Petitioner's Exhibit (PE) 7 at 1-3; Tr. at 78-80.

³ PE 1.

2020-2021 School Year

4. Due to parental concerns with speech and social development, the District conducted a full, individual evaluation (FIE) in January 2021. Informal and formal measures were used to assess Student and the evaluation was conducted by a multidisciplinary team, including an educational diagnostician, licensed specialist in school psychology, speech therapist, and Parent. The January 2021 FIE assessed Student in the areas of speech and language, physical, sociological, emotional/behavioral, cognitive/intellectual, adaptive behavior, educational/developmental performance, assistive technology, and present levels of academic achievement and functional performance (PLAAFPs).⁴
5. Student was previously identified as a student with a speech impairment in receptive and expressive language. Student communicated by *** though not consistently. Student could not ***. Student had difficulty adjusting to new environments, got frustrated, and had minimal eye contact. Student “usually ***. Parent described Student as “happy and active, but emotional.” Student avoided interacting with peers. Student engaged in inattentive, impulsive, uncooperative, and anxious behaviors at home, but these behaviors were not “serious.”⁵
6. Compared to other students, Student’s scores in reading, writing, and math were “significantly low.” Student’s ability to focus, attend to task, and work independently were rated as poor. Student was not meeting grade level expectations.⁶

⁴ PE 7 at 1-3.

⁵ PE 7 at 1-2, 4-5.

7. In the area of assistive technology, the January 2021 FIE indicated that Student was “***.” At the time, Student used the ***to facilitate communication.⁷
8. The FIE included an OT evaluation. Student required additional OT support and IEP goals to address fine motor, visual perceptual, visual motor, and sensory processing skills. The occupational therapist recommended direct OT sessions 2 times every six weeks for 30 minutes per session. The FIE also recommended ***.⁸
9. On the Developmental Profile-3 (DP-3), a formal assessment of cognitive/intellectual ability, Student obtained scores in the significantly low range. On the non-verbal portion of the Kaufman Assessment Battery for Children, Second Edition (KABC-2), Student obtained a Nonverbal Index score of ***, which is considered to be in the lower extreme range. Student’s level of cognitive functioning was consistent with Student’s adaptive behavior.⁹
10. The FIE found that Student met criteria as a Student with autism and would benefit from a program and services that included targeted behavioral interventions and supports and made numerous recommendations for behavioral supports. The FIE also found that Student had severe deficits in receptive and expressive language and articulation, and that Student was still eligible for special education and related services as a student with a Speech Impairment.¹⁰
11. At an April ***, 2021 ARD committee meeting, the committee adopted numerous recommendations made in the FIE, including autism eligibility and OT services at the recommended amount. The committee, including Parent, considered services for the remainder of the 2020-2021 school year and for the 2021-2022 school year. Student’s instructional placement for the remainder of the 2020-2021 school year was ***. The instructional placement for the 2021-2022 school year was ***.

⁷ PE 7 at 2, 7.

⁸ PE 7 at 3, 16.

⁹ PE 7 at 5-6.

The IEP included autism, ***, and assistive technology supplements.¹¹

12. The April 2021 IEP added goals in OT, math, language/communication, ***. The two speech goals in Student's October ***, 2020 IEP were modified.¹²
13. At Parent's request, additional evaluations in the areas of ***, due to parental concerns with ***, and speech and language were completed in April 2021. The *** evaluation recommended that Student receive *** and the speech evaluation confirmed eligibility.¹³

2021-2022 School Year

14. *** during the 2021-2022 school year. ***.¹⁴
15. The school year began with one certified special education teacher in the *** classroom supported by 3 paraprofessionals. The *** classroom had a substitute teacher for 24 school days (from September ***, 2021 – October ***, 2021).¹⁵
16. Student's ARD committee convened on October ***, 2021 to update the IEP. Eligibility as a student with an Other Health Impairment was added due to a diagnosis of ***.¹⁶

¹¹ Respondent's Exhibit (RE) 3 at 1-5, 7-8.

¹² RE 3 at 12-17.

¹³ PE 6.

¹⁴ Tr. at 84.

¹⁵ RE 13 at 1; Tr. at 169.

¹⁶ RE 4 at 1, 13.

17. The ARD committee recommended a change in Student's instructional arrangement from special education setting for more than 60% of the day to special education setting for less than 50% of the day. ARD committee meeting minutes document that the placement change was due to progress.¹⁷
18. The October ***, 2021 ARD committee meeting added two new English goals, updated the previous math goal, added a physical education goal, updated the previous OT goal, and updated previous speech goals.¹⁸
19. The committee agreed to add numerous accommodations to Student's IEP to support Student in the new placement.¹⁹
20. Student's ARD committee convened on January ***, 2022 at Parent's request. The committee agreed to change Student's instructional arrangement from special education setting for less than 50% of the day to special education setting for less than 21% of the day. The committee agreed the placement change was appropriate.²⁰
21. On May ***, 2022, a *** in the *** classroom. Student was not in the classroom at the time. The campus principal reported ***. The District Internal Affairs Department conducted an investigation and found that no abuse or neglect occurred ***.²¹
22. The classroom video cameras were not turned on in the *** classroom until May 2022.²²

¹⁷ RE 4 at 3-7, 13.

¹⁸ RE 4 at 14-20.

¹⁹ RE 4 at 6-7.

²⁰ RE 5 at 1, 9.

²¹ PE 14; Tr. at 166-68, 285-89.

²² Tr. at 288-89.

23. Parent ***. Student withdrew from the District on the final day of the 2021-2022 school year and now attends school in *** ISD.²³
24. The District offered compensatory services to students in the classroom. Student was not made available for these services because Student transferred to another school district.²⁴

IV. DISCUSSION

Petitioner alleges the District failed to develop and implement an appropriate IEP and provide a safe, non-hostile learning environment. Petitioner seeks an IEE at public expense; revisions to Student's IEP; compensatory education; and reimbursement for parentally obtained services and evaluations.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the IEP and/or placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).²⁵ The burden of proof in this case is on Petitioner to show that the District failed to provide Student with a FAPE and to offer a program that was reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 62; *Endrew F.*, 580 U.S. at 399.

²³ RE 13 at 1; Tr. at 78-79, 101.

²⁴ RE 13 at 1.

²⁵ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009).

B. Free, Appropriate Public Education

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

A school district is responsible for providing a student with specially designed personalized instruction with sufficient support services to meet the student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The central inquiry is whether a school district provided an educational program that "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

A hearing officer applies a four-factor test to determine whether a school district's program meets IDEA requirements. Those factors are:

- Whether the program is individualized on the basis of the student's assessment and performance;
- Whether the program is administered in the least restrictive environment;

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

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997); *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018) (affirming the relevance of the *Michael F.* analysis following the Supreme Court decision in *Andrew F.*).

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 a school district's educational program. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

a. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a 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). The District's obligation when developing

Student's IEP is to consider his strengths, 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. § 300.324(a)(1).

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 Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The inquiry in this case is whether the IEPs proposed and implemented by the District were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *Andrew F.*, 580 U.S. at 399.

1. Assistive Technology

Petitioner alleges the District denied Student access to a *** and failed to appropriately consider the need for assistive technology. A student's IEP must consider whether the student needs assistive technology and services. 34 C.F.R. § 300.324(a)(2)(v).

The evidence showed that the January 2021 FIE considered Student's assistive technology needs. Though the description of Student as "****" does not summarize Student's assistive technology needs in much detail, the FIE went on to articulate Student's use of *** to facilitate communication. Student had access to a personal *** during virtual instruction. When in-person instruction resumed, Student began using the

***. At the October 2021 meeting, the ARD Committee added a ***. For the entirety of the 2021-2022 school year, Student worked with the *** as Student's communication device. The District's consideration and utilization of these devices was based on Student's assessment and performance and met Student's needs in this area.

2. Behavior

Appropriate behavioral supports and interventions are important components of a FAPE. A need for special education and related services is not limited to academics but also includes behavioral progress and learning appropriate social skills. *Venus Indep. Sch. Dist. v. Daniel S. ex rel. Ron S.*, No. CIV. A. 301CV1746P, 2002 WL 550455, at *11 (N. D. Tex. Apr. 11, 2002). For a student whose behavior impedes their learning or that of other students, the IEP must consider positive behavioral interventions and supports and other behavioral strategies. 34 C.F.R. § 300.324(a)(2)(i).

The IDEA does not define an FBA or prescribe what steps are required to complete one. Instead, FBA requirements are left to state law or local policy. The mere fact that an FBA could maximize a student's educational benefit does not mean that an FBA is required for a student to receive FAPE. *A.C. ex rel. M.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist.*, 553 F.3d 165 (2d Cir. 2009) (the failure to perform an FBA did not render the IEP inadequate under the IDEA where the school district showed the IEP adequately addressed the student's behavior); *J.C.*

v. New York City Dep't of Educ., 643 Fed. Appx. 31 (2d Cir. 2016) (a school district's decision to forgo an FBA when the student began to act out at school did not rise to the level of a denial of a FAPE because the IEP adequately identified the behavioral issues and implemented strategies to address them).

The evidence showed that Student had behavioral needs and these behavioral needs were considered and addressed in Student's IEPs. Student's behavioral needs were in part managed by consideration of the appropriate staff to student ratio Student required, and the level of supports and services that Student required to make progress on Student's IEP goals. The record does not support the conclusion that Student's behavioral needs could not be supported through the use of classroom and other targeted supports, or that Student required an FBA and behavior intervention plan to benefit from instruction.

3. Autism Supplement

For students with autism in Texas, the ARD committee must also consider whether the student's IEP should include the following: extended educational programming; daily schedules reflecting minimal unstructured time and active engagement in learning activities; in-home and community-based training; positive behavior support strategies based on relevant information; futures planning for post-secondary environments; parent/family training and support; suitable staff-to-student ratios; communication interventions; social skills supports; professional educator/staff support; and teaching strategies based on peer-reviewed, research-

based practices for students with autism. 19 Tex. Admin. Code § 89.1055(e). This regulation is commonly referred to as “the Autism Supplement.”

The evidence showed that Student’s IEPs during the relevant time period included an Autism Supplement that considered and addressed the required regulatory components. Petitioner did not meet Petitioner’s burden of proof on this claim.

Overall, the evidence showed that Student’s educational programs during the relevant time period were individualized on the basis of assessment and performance.

b. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with non-disabled peers to the maximum extent appropriate. Special classes, separate schooling, and other removal from the regular education environment may occur 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. 34 C.F.R. § 300.114(a)(2). This is known as the “least restrictive environment” requirement. To determine whether a school district is educating a student with a disability in the least restrictive environment, 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 Educ., 874 F. 2d 1036, 1048 (5th Cir. 1989).

The evidence showed that the District modified Student’s placement on two occasions in response to progress Student was showing. When Student withdrew from the District, Student was receiving an appropriate combination of instruction in the special education classroom and the general education classroom with supports.

Overall, the evidence showed that Student’s educational placement was the least restrictive environment appropriate to Student’s needs and Student was provided an inclusive education to the maximum extent appropriate throughout the relevant timeframe.

c. 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. by E.R. v. Spring Branch Indep. Sch. Dist.*, 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 that the District appropriately responded to parental concerns, scheduled ARD committee meetings at Parent's request, conducted evaluations at Parent's request, incorporated parental concerns and recommendations into Student's IEP, and provided appropriate notice of decisions in the form of prior written notice after each meeting.

In conclusion, this factor favors the District. Petitioner failed to establish that the District excluded Parent in bad faith or refused to listen to Parent.

d. 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, 813-14 (5th Cir. 2012).

Despite inadequate progress reports, Student made academic progress consistent with Student's unique needs during the relevant time period as evidenced by Student's mastery of IEP goals and objectives, and the ARD Committee's repeated agreement to move Student to less restrictive settings based on Student's progress.

Student also made non-academic progress. Student was included to maximum extent appropriate, participating in general education classroom activities and electives with Student's peers. Student's IEPs also included a *** goal aimed at increasing Student's level of independence at school.

e. Conclusion as to the Four Factors

The weight of the credible evidence showed that Student's educational program was individualized on the basis of assessment and performance, offered an educational placement in the least restrictive environment, that the District made appropriate efforts to ensure Student's program was coordinated in a collaborative manner by key stakeholders, and that Student made appropriate academic and non-academic progress. A preponderance of the evidence demonstrated that Student's IEPs were reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188-89, 203-04; *Andrew F.*, 580 U.S. at 399.

C. IEP Implementation

Petitioner alleges Respondent failed to implement Student's IEP. In determining whether a school district failed to adequately implement a student's IEP, a hearing officer must consider whether there was a significant or substantial failure to implement the IEP under the third *Michael F.* factor and whether the student received academic and nonacademic benefits from the IEP under the fourth factor. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th

Cir. 2020). To prevail on Student's claim under the IDEA, Petitioner must show more than a *de minimis* failure to implement all elements of Student's IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

The evidence did not support this claim, as shown by *Michael F.* factors three and four above being resolved in favor of the District, and instead showed that Student's IEP was implemented with fidelity while Student was a student in the District.

D. Safe, Non-Hostile Learning Environment

Petitioner alleges Respondent failed to provide a safe, non-hostile learning environment that denied Student a FAPE under the IDEA. The weight of the credible evidence did not support this claim.

Disability harassment under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act is defined as intimidation or abusive behavior towards a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in their educational program.²⁶ The harassing conduct must be sufficiently severe, persistent, or pervasive for it to create a hostile environment that violates the student's rights under the Section 504 and Title II regulations. This standard is not contemplated in the IDEA, rather the analysis turns

²⁶ Norma V. Cantu & Judith E. Heumann, *Prohibited Disability Harassment*, U.S. Dep't of Educ. (July 25, 2000), <https://www2.ed.gov/print/about/offices/list/ocr/docs/disabharassltr.html>.

on whether the hostile environment affected the student's ability to receive a FAPE.²⁷

According to Petitioner, the failure to provide Student a safe, non-hostile learning environment ... "is most easily demonstrated by the fact that the evidence strongly indicates that Students (*sic*) were being unlawfully restrained in the classroom on a constant basis."²⁸ While the campus principal agreed that the *** was inappropriate and should have been reported earlier, Petitioner's argument focuses too broadly on the overall classroom setting. What Petitioner describes as an "extremely simple inference"²⁹ that, had the cameras in the *** classroom been operating before May 2022, more abuse would have been documented, is speculation that was not supported or otherwise substantiated by the record.

The January 2021 FIE included parental reports of difficulty adjusting to new environments, low frustration tolerance, and difficulty with mornings. Parent's testimony supports these reports. However, based on brief video footage of Student resisting entering the *** classroom, Petitioner asks the hearing officer to make another unsupported inference that these instances, to the extent they occurred, were because Student feared the *** classroom, as opposed to Student's documented issues with school refusal.

²⁷ *Id.*

²⁸ Petitioner's Closing Brief at 2.

²⁹ *Id.* at 3.

Moreover, of the more than 100 hours of classroom video footage introduced, Student is featured minimally. While the videos reviewed at hearing indeed depict treatment of other students in the *** classroom that was unacceptable and harmful to the students involved, Student was not involved in these incidents. Petitioner’s tenuous argument that Student was “clearly” subjected to an unsafe learning environment is not supported by the record or the weight of the credible evidence.

Finally, while Parent’s concern for other students in the *** classroom was warranted, it is not Petitioner’s role to assert the rights of other students in the classroom in a due process hearing concerning Student. Though certain footage displays improper use of restraint and inappropriate treatment of students, the incidents reviewed at hearing did not concern Student directly.

A hearing officer cannot predicate a finding of a denial of FAPE on the safety of the student unless the risk to the safety of the student resulted in a denial of FAPE. *J.N. v. Pittsburgh City Sch. Dist.*, 536 F.Supp.2d 564, 577 (W.D. Pa. 2008). For the reasons discussed, Petitioner did not meet Petitioner’s burden of proof on this claim.

E. Procedural Violations of the IDEA

Petitioner raised several procedural claims, and more broadly alleges that Respondent violated Parent’s right to meaningful participation in the IEP development process. Liability for a procedural violation only arises if the procedural

deficiency impeded the student's right to a FAPE, significantly impeded parental opportunity to participate in the decision-making process regarding the provision of a FAPE or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see also Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

1. Progress Reports

Petitioner alleges the District denied Parent meaningful participation by failing to provide timely and appropriate progress reports. The IDEA requires periodic reports to parents on the progress a student is making on his or her goals, such as through quarterly or other periodic reports or concurrent with report cards. 34 C.F.R. § 300.320(a)(3)(i)-(ii).

The evidence, including the testimony of the special education director, proved that certain progress reports provided to Parent did not adequately communicate Student's progress. However, the record does not evidence other inconsistencies in the District's communication about Student's progress or lack thereof, and progress was reviewed during ARD committee meetings with Parent present. The record thus does not support the conclusion that the District significantly impeded parental opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

2. IEP Modification

Petitioner alleges the District unilaterally changed Student's services and

placement to a more restrictive setting without convening an ARD committee meeting. A school district must take steps to ensure that one or both of the parents of a child with a disability are present at each team meeting or are afforded the opportunity to participate. 34 C.F.R. § 300.322(a).

The evidence showed that Student's placement was changed twice during ARD committee meetings with Parent present, and not at any other times. The record did not support a claim related to modifying Student's IEP.

To the extent this claim can be construed as one alleging that the District predetermined Student's educational placement, the record did not support this. "Predetermination occurs when the school district makes educational decisions too early in the planning process, in a way that deprives parents of a meaningful opportunity to fully participate as equal members of the IEP team." *E. R.*, 909 F.3d at 769 (5th Cir. 2018) (*quoting R.L. ex rel. O.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014)). "To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child." *Id.*

Once again, the evidence showed that Student's placement was changed twice during ARD committee meetings with Parent present, and not at any other times. The record did not support a predetermination claim.

3. Confidential Information

Petitioner next alleges the District failed to protect Student's confidential record and information. Petitioner, however, appears to have abandoned this claim as no evidence was offered in support of this claim and this issue was not address in Petitioner's closing brief. Petitioner did not meet Petitioner's burden to show that any procedural violations related to confidentiality occurred.

4. Highly Qualified Instruction and Staff Training

Petitioner next alleges that Respondent failed to provide instruction by a highly qualified special education teacher and failed to inform Parent of this or provide compensatory services.

The IDEA requires that special education and related services be provided by "qualified personnel" who are appropriately and adequately prepared and trained, and who possess the content knowledge and skills to serve children with disabilities. 34 C.F.R. § 300.156(a).

An individual who is hired to substitute for a teacher is not considered the teacher of record and is not required to meet the requirements of "highly qualified." Here, the substitute teacher was substituting for a highly qualified teacher of record. State regulations require notification to parents of the students if the substitute teacher (who is not "highly qualified") has been assigned to a classroom for four or more consecutive weeks. A school district must provide written notice of the assignment of an inappropriately certified or uncertified teacher to a parent or guardian of each student in that classroom if the assignment is for more than 30

consecutive instructional days. Tex. Educ. Code § 21.057.

The placement change recommended at the October 2021 ARD committee meeting began on October ***, 2021, at which time Student began receiving more instruction in a different classroom. Student received *** school days of instruction from the substitute teacher. Therefore, no notification was required to Parent from the District. The District nonetheless proposed compensatory services to all students in the class. Student, however, was unable to benefit from these services because Student was withdrawn from the District.

5. Meeting Participants

Finally, Petitioner argues in closing that Parent was denied meaningful participation in the IEP development process when the District failed to invite knowledgeable personnel to ARD committee meetings, specifically a licensed specialist in school psychology, when evaluations were reviewed. A school district must ensure that a student's ARD committee includes an individual who can interpret the instructional implications of evaluation results. 34 C.F.R. § 300.321(a)(5).

The IDEA does not require particular assessment personnel to attend but more broadly requires the presence of an individual who can interpret the instructional implications of evaluation results. In this case, District assessment personnel participated in ARD committee meetings where evaluations were discussed and the District's failure to specifically invite a licensed specialist in school psychology ARD committee meetings did not deprive Student a FAPE.

Petitioner further argues that Respondent's failure to invite a special education teacher familiar with Student and related service personnel to ARD committee meetings deprived Parent of meaningful participation in the IEP development process. A school district must ensure that a student's ARD committee includes not less than one special education teacher of the child. 34 C.F.R. § 300.321(a)(3). The IEP team must include, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. 34 C.F.R. § 300.321(a)(6). The evidence showed that the District ensured that persons required by statute or regulation were present at Student's ARD committee meetings.

V. CONCLUSIONS OF LAW


1. As the challenging party, Petitioner has the burden of proof to establish a violation of the IDEA. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Student's educational programs during the relevant time period were reasonably calculated to confer educational benefit in light of Student's circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).
3. Petitioner did not meet Petitioner's burden of proving that Respondent failed to implement Student's IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).
4. Petitioner did not meet Petitioner's burden of proving that Respondent's failed to provide Student a safe, non-hostile learning environment. *Schaffer*, 546 U.S. at 62.

5. Respondent complied with the IDEA's procedural requirements. 19 Tex. Admin. Code §89.1011(c)(1); 34 C.F.R. §§ 300.300(a)(1)(i), 300.613(a), 300.513(a)(2).
6. Petitioner did not meet Petitioner's burden of proving that Respondent denied Student a FAPE. *Schaffer*, 546 U.S. at 62.

VI. ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is **ORDERED** that Petitioner's requested relief is **DENIED**.

SIGNED November 2, 2023.



Kathryn Lewis
Special Education Hearing Officer
For the State of Texas

VII. NOTICE TO PARTIES

The Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516(a); 19 Tex. Admin. Code § 89.1185(n).