SOAH Docket No. 701-23-02378.IDEA
TEA Docket No. 032-SE-1022

Before the State Office of Administrative Hearings

STUDENT, by next friend PARENT,
Petitioner
v.
La Joya Independent School District,
Respondent

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent and, collectively, Petitioner) brings this action against La Joya Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The issues in this case are whether the District failed to provide Student a free, appropriate public education (FAPE) under the IDEA; whether the District appropriately implemented Student's individualized education program (IEP);

whether the District failed to provide Student with a non-hostile learning environment; and whether the District procedurally violated the IDEA in various ways.

The Hearing Officer concludes that the District denied Student a FAPE during the relevant timeframe by failing to develop and implement an IEP for Student that included appropriate and measurable goals and that addressed all areas of need. The Hearing Officer further concludes that the District failed to appropriately monitor Student's progress and denied Parent an opportunity for meaningful participation in the decision-making process by failing to provide progress reports for both the 2020–2021 and 2021–2022 school years. The Hearing Officer finds, however, that Petitioner did not meet Student's burden of establishing a hostile learning environment with respect to this Student.

II. DUE PROCESS HEARING

The due process hearing was conducted on September 19-20, 2023, through the Zoom videoconferencing platform. A certified *** interpreter was present, and the proceedings were recorded and transcribed by a certified court reporter. Petitioner was represented by attorney Jordan McKnight. Petitioner's advocates, Bonnie Garza and Debra Liva also attended the hearing. Respondent was represented by its legal counsel, Nick Maddox and Leslie Alvarez with O'Hanlon, Demerath & Castillo. In addition, ***, Director of Special Education for the District, attended the hearing as a party representative. Petitioner requested an open hearing.

The parties submitted separately filed exhibits, and Petitioner called Parent,

Student's advocate, and the campus principal as witnesses. Respondent called a speech-language pathologist (SLP) and an educational diagnostician—both employed by the District.

III. ISSUES AND REQUESTED RELIEF

A. PETITIONER'S ISSUES

1. Whether the District provided Student a FAPE during the 2020–2021 and 2021–2022 school years;

2. Whether the District developed individualized and appropriate goals with enough specificity so the District could measure Student's progress;

3. Whether the District provided Student an education in the least restrictive environment;

4. Whether the District provided Parent with an opportunity for meaningful participation in planning Student's education program by providing timely and appropriate progress reports and convening an Admission, Review, and Dismissal (ARD) Committee meeting before making any changes in placement or programming;

5. Whether the District provided Student with qualified teachers;

6. Whether the District implemented Student's IEP with fidelity;

7. Whether the District protected Student's confidential information; and

8. Whether the District provided Student an education in a non-hostile environment in such a way that Student could receive a FAPE.

B. PETITIONER'S REQUESTED RELIEF

1. Order the District to provide an independent educational evaluation (IEE) in all areas of suspected disability, including cognitive, achievement, psychological, physical therapy, occupational therapy, speech therapy,

***, and a functional behavior assessment (FBA) to be completed by a board certified behavior analyst (BCBA).

2. Order the District to provide annual training to all District special education staff who work with Student on appropriate goal writing, data collection, maintenance of appropriate records, completion of progress reports with quantitative accuracy, and training from a BCBA on behavioral interventions and supports.

3. Order the District to provide compensatory education and related services to address Student's areas of disabilities and/or needs, including private applied behavioral analysis (ABA) therapy and any other activity (such as counseling, mentoring, or camps) that will assist Student in the acquisition of academic, speech, and social/behavioral skills for the next two years.

4. Order the District to allow Student's private BCBA to observe Student in Student's school setting in order to facilitate maintenance and generalization of social and behavioral skills.

5. Order the District to reimburse Parent for out-of-pocket expenses in obtaining evaluations and/or services during the 2020–2021 and 2021–2022 school years.

6. Order the District to provide any other remedies to which the Petitioner may be entitled under the law.

IV. FINDINGS OF FACT

1. Student is *** years old and lives with Student's parents ***. Student was ***. As a result of ***

   ***. Student began receiving private physical and occupational therapy when Student was ***.[1]

2020–2021 School Year

2. A full and individual initial evaluation (FIE) was conducted by the District in October 2020. The evaluation was based on formal measures, informal observations, and physician information. Student demonstrated a speech

impairment in receptive and expressive language and presented with a moderate receptive/expressive language delay. Student exhibited significant educational and developmental deficits in the areas of oral expression and listening comprehension, and Student's cognitive ability fell in the below average range. Student's adaptive behaviors with respect to communication, daily living, social, and physical skills were low when compared to others Student's age.[2]

3. The evaluation indicated that Student met the requirements for special education as a student with other health impairment (OHI) due to ***; ***; and a speech impairment. The FIE determined that Student would benefit from physical therapy and further recommended assistive technology and a formal *** evaluation.[3]

4. The physical therapy evaluation, dated November ***, 2020, indicated that Student presented with deficits in ***. The evaluation concluded that Student would benefit from physical therapy to improve overall function and safety for educational purposes and recommended two 30-minute physical therapy sessions per semester. The evaluation suggested the following goal: "Given specific therapeutic activities, child will be able to improve ***."[4]

[1] Petitioner's Exhibit (PE) 5 at 3, 6; PE 9 at 1; Respondent's Exhibit (RE) 7 at 151, 153; Transcript (Tr.) at 29, 52.

[2] PE 1 at 19-20, 24, 26, 28; PE 5 at 5, 11; RE 7 at 158, 168.

[3] PE 1; PE 5 at 5, 11; RE 7 at 158, 168.

[4] PE 6 at 1-2.

5. An occupational therapy evaluation was completed on November ***, 2020. The evaluation assessed Student's fine and gross motor skills, Student's visual perception and motor skills, and Student's self-help and sensory processing skills. Student performed within functional limits, and school-based occupational therapy services were not recommended.[5]

6. Student's ARD Committee met on November ***, 2020, to review the FIE and develop an IEP. Consistent with the results of the FIE, the committee determined that Student was eligible for special education under the categories of OHI, ***, and speech impairment. The committee also determined that Student was eligible for physical therapy, would receive *** services, and would ***.[6] Student enrolled in the District and began attending *** on January ***, 2021.[7]

7. The November ***, 2020 ARD documents do not include a statement of Student's IEP goals, a description of how Student's progress toward meeting Student's annual goals would be measured, or when progress reports would be provided to Parent.[8]

8. While the November *** ARD documents do not include any IEP goals, progress reports from the 2020–2021 school year indicate that Student's IEP included *** goals in math, reading, ***. These goals aimed for 70% accuracy over 36 instructional weeks, and progress towards mastery was to be measured using daily work, tests, and observations. The math goal required Student to "***." The reading goal required Student to "***." The *** goal required Student to

[5] RE 9.

[6] ***.

[7] PE 1 at 1-18; RE 7 at 218; RE 14 at 218.

[8] PE 1.

"***." The *** goal required Student to "***." The *** goal required Student to "***." The progress report did not include any information related to goals for speech or physical therapy.[9]

9. Student's progress report indicates that Student made "slow progress" with respect to each of Student's IEP goals "due to Covid" during reporting periods four, five, and six—a period which spanned from February ***, 2021, to June ***, 2021.[10]

10. Parent did not receive any progress reports from the District during the 2020–2021 school year.[11]

11. Pursuant to the IEP, Student received all instruction in the *** classroom with the exception of *** which took place in a general education setting and lasted 45 minutes. The IEP also required five 30-minute speech therapy sessions per six-week reporting period, two 30-minute direct physical therapy sessions per semester, and four 30-minute *** sessions per semester. The ARD Committee determined that Student was being educated with non-disabled students to the maximum extent appropriate to meet Student's needs.[12]

12. Student received the following accommodations: ***.[13]

[9] PE 27; Tr. at 167.

[10] PE 27; RE 14 at 218.

[11] Tr. at 46-47.

[12] PE 1 at 4, 7.

[13] PE 1 at 4, 16.

2021–2022 School Year

13. Student started the 2021–2022 school year as a ***-year-old in *** on Student's home campus, ***. The *** closed for a period of time, and Student transferred to the *** classroom at *** on September ***, 2021. The District offered Parent the opportunity to return to the *** campus when it reopened in mid-December 2021, but Parent wanted to keep Student at ***. The District granted her request and offered transportation as a related service.[14]

14. During the first two progress reporting periods of the 2021–2022 school year, staff indicated that, "due to Covid," Student was making "slow progress" towards Student's reading, math, *** goals. The progress statement for each goal for the second reporting period further indicated that Student was expected to master the goal "by Student's next annual review." The report does not state Student's progress towards mastery as a percentage and does not reflect whether the goals were ever mastered.[15]

15. School campuses were no longer closed due to Covid during the 2021–2022 school year.[16]

16. Student's ARD Committee met on November ***, 2021, for an annual review. The committee reviewed Student's present levels of academic achievement and functional performance which indicated that Student had ***; Student interacted appropriately with adults and with Student's peers; behavioral strategies, including positive interventions and supports, were included in Student's accommodations and/or Student's IEP goals; and that Student's functional skills were not within normal limits. Student's areas of need with respect to these skills included communication, ***. Academically, Student demonstrated a significant cognitive disability and accessed grade-level standards through prerequisite skills in all academic areas. Student required specialized supports, such as assistance with communication, ***, constant redirection,

[14] PE 37 at 2; PE 4 at 11; RE 16 at 237; RE 19; Tr. at 52-53.

[15] PE 27.

[16] Tr. at 133-35.

and transferring from setting-to-setting throughout the school day. Student was able to ***. Student could ***, but Student experienced difficulty with ***. Student's deficits in *** limited Student's ability to make progress in the grade-level curriculum.[17]

17. Pursuant to the IEP, Student continued to receive all instruction in the *** classroom with the exception of *** which took place in a general education setting and lasted 45 minutes. Student's instructional time increased from 230 to 420 minutes per day. The IEP also required five 30- minute speech therapy sessions per six-week reporting period, two 30-minute direct physical therapy sessions per semester, and four 30-minute *** sessions per semester. The ARD Committee determined that Student was being educated with non-disabled students to the maximum extent appropriate to meet Student's needs.[18]

18. Student's IEP included the following accommodations: ***.[19]

19. The November ***, 2021 ARD documents do not include a statement of Student's IEP goals, a description of how Student's progress toward meeting Student's annual goals would be measured, or when progress reports would be provided to Parent.[20]

[17] RE 2 at 022.

[18] RE 2 at 022-23, 029.

[19] RE 2 at 025.

[20] *See generally* RE 2.

20. Student's progress report for November ***, 2021, through November ***, 2022, did not address Student's previous goals but indicates that new goals were developed for ***. There were no goals for ***, speech therapy, or physical therapy included in the progress report.[21]

    a. The *** goal required Student, using the accommodations identified in Student's IEP, to "***" and provided that "[s]uccess [would] be measured using daily work/tests/and observations at a rate of 70%."[22]

    b. The *** goal provided that, within 36 weeks and using the accommodations identified in Student's IEP, Student would "***" and that success would be "measured using daily work/tests/observations at a rate of 70%." The goal included a benchmark that measured Student's ability "***."[23]

    c. The *** goal stated that Student "***" and that success would "be measured using daily work/tests/observations at a rate of 70%." The benchmark associated with this goal measured Student's ability to "***." Once again, success would be measured using daily work/tests/observations at a rate of 70%.[24]

21. As of May ***, 2022, the progress statement for each of Student's goals reported that Student was making slow progress toward the goal because Student was "exploring and getting accustomed to Student's new environment." No other

[21] PE 28; Tr. at 167.

[22] PE 28 at 1.

[23] PE 28 at 2.

[24] PE 28 at 3.

progress statements for the goals were included in the progress report for previous or subsequent reporting periods.[25]

22. Parent did not receive any progress reports during the 2021–2022 school year.[26]

23. The teacher of record assigned to the *** classroom at *** left on September ***, 2021, to take another position in the District. One or more substitute teachers filled the vacancy until another special education teacher was assigned to the classroom on October ***, 2021.[27]

24. The *** classroom at *** is a self-contained special education classroom and has video surveillance cameras in the room. Parent never asked the District to turn on the classroom cameras but also was not aware that Parent needed to do so.[28]

25. On December ***, 2021, Student ***." Due to Student's disabilities, Student was unable to ***. In the days that followed, Parent ***. ***. Parent then ***. Both *** recommended that Student continue private physical therapy.[29]

26. Parent reported the incident to TEA but did not report it to Child Protective Services (CPS).[30]

27. Parent met with the campus principal on December ***, 2021, to express Parent's concerns regarding the ***

[25] PE 28 at 1-3.

[26] Tr. at 46-47.

[27] RE 18 at 247; PE 25 at 1; Tr. at 90, 115.

[28] Tr. at 54-55.

[29] RE 18 at 246, 251, 258; Tr. at 34-35, 57-59.

[30] Tr. at 60-61.

***. During the meeting Parent asked to view the video from the classroom camera in order to determine whether Student's *** occurred in the classroom. The principal, believing the cameras were recording, requested the video from the District's administrative offices. The principal discovered sometime in January, however, that the cameras had not been turned on. This information was not shared with Parent until March. The cameras in the classroom began recording in May 2022, four months after Student left campus.[31]

28. Parent withdrew Student from *** on January ***, 2022, and enrolled Student in *** on April ***, 2022. Student did not attend school during the intervening weeks.[32]

29. The District conducted an internal investigation into Student's *** as well as Parent's reports of ***. The District's investigation failed to uncover any evidence that a violation of district policy had occurred.[33]

30. An ARD Committee meeting was convened on April ***, 2022. Parent attended and participated in the meeting. The committee reviewed Student's present levels, which had not changed since November 2021, and recommended extended school year (ESY) services.[34]

31. During this meeting, the District also offered to provide fifteen 30-minute speech therapy sessions to Student as compensatory services for the days a certified teacher was not assigned to the *** classroom in fall 2021. The District calculated this period of time to be 15 school days for Student. This number was based on the previous teacher's departure date (September ***, 2021), Student's enrollment on September ***, and the assignment of another certified teacher to the classroom on October ***, 2021. Although Student was not able to participate in the ESY program that summer, Student received the 15

[31] PE 26; PE 34; PE 35; Tr. at 36-38, 90-91, 93.

[32] RE 14 at 218; Tr. at 64-66.

[33] RE 18; Tr. at 111-12.

[34] PE 3 at 2, 7; RE 2 at 022.

speech therapy sessions during the first semester of the 2022–2023 school year.[35]

2022–2023 School Year

32. Student's ARD Committee met again on September ***, 2022—this time to address compensatory services in areas other than speech for the same 15-day timeframe discussed above. Parent attended this meeting with Student's advocate, Ms. Garza. The District proposed the following services after school or during the school day: fifteen 30-minute *** (reading) sessions; fifteen 30-minute math sessions; and fifteen 15-minute writing sessions. Parent requested that the services be provided during the school day, and the District agreed to provide them weekly based on Student's participation.[36]

33. The District also presented an *** evaluation, dated May ***, 2022, to Parent and Parent's advocate at the meeting. Student was evaluated on 29 fundamental motor skills and patterns of movement.[37]

    a. ***.[38]

    b. ***.[39]

[35] PE 3 at 12; PE 4 at 8; RE 5 at 118;Tr. at 66-67, 161.

[36] PE 4 at 5, 8.

[37] RE 10

[38] RE 10 at 144

[39] *Id.*

c. ***.[40]

d. ***.[41]

e. Student was also evaluated on Student's fine motor skills. ***.[42]

34. The *** evaluation recommended that Student receive four 30- minute *** sessions per month on a direct basis in order to provide additional *** and help improve Student's motor skills.[43]

35. On September ***, 2022, Parent—through the family's advocate—disagreed with the number of school days calculated by the District for purposes of compensatory services. Parent also disagreed with the *** evaluation after sharing it with Student's therapists who indicated that Student could not do any of the things the evaluation claimed Student could.[44]

36. An annual ARD committee meeting was held on November ***, 2022. Parent attended the meeting with the family's advocate. The ARD Committee reviewed Student's present levels of performance.[45]

a. In the physical domain, teachers reported that Student was making progress with *** during physical therapy. Student was ***

[40] RE 10 at 144

[41] *Id*.

[42] *Id*.

[43] RE 10 at 145.

[44] PE 4 at 9.

[45] RE 5 at 105-07, 115, 117.

***. ***.[46]

b. Behaviorally, Student got along well with others but struggled to share, occasionally avoided work, and would rush through assignments. Student could complete tasks with redirection and guidance and responded well to positive reinforcement. Student was rewarded when Student followed directions and completed Student's work.[47]

c. Functionally and academically, Student ***. ***. Student was still working on *** expressing Student's needs.[48]

d. Student could not ***.[49]

37. The ARD Committee also conducted a review of existing evaluation data (REED) and agreed to reevaluate Student in all areas of suspected disability, including OHI, ***, speech and language, physical therapy, occupational therapy, a school psychologist consult, and a sociological review. The committee agreed to have the reevaluation completed in April 2023. Parent requested an IEE in ***. The District also indicated during the meeting that the 15 sessions of compensatory speech services had been provided and that the remaining compensatory services in

[46] RE 5 at 105.

[47] *Id.*

[48] RE 5 at 106.

[49] *Id.*

reading, math, and writing offered the previous spring would be completed by January 2023.[50]

38. The occupational therapy reevaluation was completed on March ***, 2023. The evaluation included the following measures, assessments, and information: Educational Assessment of School Youth for Occupational Therapists (EASY-OT), Beery Visual Motor Integration (VMI), a sensory processing measure, a record review, classroom observations, work samples, and classroom staff feedback.[51]

39. The evaluation did not reveal any concerns related to Student's fine motor skills. As for visual perception and motor skills, Student fell in the average range. Staff feedback on Student's abilities in the classroom as compared to Student's peers was consistent with these results. With respect to Student's self-help skills, the evaluation found Student to be functional in the school environment. However, Student was still struggling with ***. Finally, Student did not demonstrate aversions or sensory-seeking behavior in the classroom. Based on the results of the evaluation, school-based occupational therapy services were not recommended.[52]

40. Student's reevaluation, dated April ***, 2023, reflected that Student still does not ***.[53]

41. Parent withdrew Student from the District on May ***, 2023, and did not receive the results of Student's re-evaluation until the parties disclosed exhibits for the hearing in this case.[54]

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[50] RE 5 at 117-18; RE 11 at 190-93.

[51] RE 13.

[52] RE 13 at 201-02.

[53] RE 14 at 219, 221, 223; Tr. at 144.

[54] RE 14 at 218; Tr. at 144.

V. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.[55] *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case is therefore on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to enable Student to make progress appropriate in light of Student's unique circumstances. *Id.*; *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

B. 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 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 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);

[55] There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding.

Richardson Indep. Sch. Dist. v. Michael Z., 580 F. 3d 286, 292 n.4 (5th Cir. 2009).

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.*, 580 U.S. at 403.

C. APPROPRIATE PROGRAM

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

- Whether the program is individualized on the basis of the student's assessment and performance;
- Whether the program is administered in the least restrictive environment;
- Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
- Whether positive academic and non-academic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry 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, 765-66 (5th Cir. 2018) (citing *Endrew F.*, 580 U.S. 386).

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 Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

1. 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, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the 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 Student's IEPs for the 2020–2021 and 2021–2022 school years were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *Endrew F.*, 580 U.S. at 403.

The District's obligation when developing Student's IEP is to consider Student's 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).

a) The November 2020 IEP

Student's October 2020 FIE indicated that Student demonstrated a

speech impairment in receptive and expressive language and exhibited significant educational and developmental deficits in the areas of oral expression and listening comprehension. The evaluation further determined that Student's cognitive ability fell in the below average range and that Student met eligibility criteria for *** and OHI due to ***. The FIE recommended physical therapy, assistive technology, and a formal *** evaluation. School-based occupational therapy services were not recommended based on Student's performance across the various domains evaluated in that area.

The IEP developed by Student's ARD Committee included five 30-minute speech therapy sessions per six-week reporting period, two 30-minute direct physical therapy sessions per semester, and four 30-minute *** sessions per semester. According to progress reports, the IEP also included *** goals in math, reading, *** as well as accommodations to support skill acquisition. Student's November 2020 IEP, however, did not include goals for speech and physical therapy. Nor is there any indication that Student had access to the assistive technology or *** recommended in the FIE. Indeed, the only *** evaluation in the record is dated May ***, 2022.

And while a progress report for the relevant time period shows that Student's program included academic and *** goals, the goals were impermissibly vague. Among other things, they failed to articulate the skills necessary to demonstrate progress or how to calculate progress and measure mastery. For example, the reading goal stated that Student would engage in pre-reading and reading activities but did not provide a baseline of Student's abilities in this area or identify the specific skills sought to be acquired, such as ***. The *** goal, which required Student to "***" was

similarly flawed. Meanwhile, the *** goal required Student to demonstrate "***." Here again, there was no baseline data provided as to where Student was in this process, no indication of the next steps necessary to show progress towards mastery of this goal, and no way to measure the goal without additional information.

In short, Student's November 2020 IEP failed to include appropriate goals and services in all areas of need.

b) The November 2021 IEP

Student's November 2021 IEP was also deficient. The ARD Committee reviewed Student's present levels of performance at Student's annual ARD Committee meeting on November ***, 2021. The present level statements indicated, among other things, that Student had ***. Student's areas of need with respect to these skills included communication, ***. Academically, Student could ***. Student required specialized supports, such as assistance with ***.

Student's IEP included numerous accommodations and once again required five 30-minute speech therapy sessions per six-week reporting period, two 30-minute direct physical therapy sessions per semester, and four 30-minute *** sessions per semester. The progress report for this time period identified new goals in ***, but it did not include any goals for ***, speech, or physical therapy. Moreover, the *** goal, which required Student to ***, failed to articulate the skills necessary to demonstrate progress or how to calculate progress and measure mastery. The goals developed for *** suffered similar defects and did not appear to include or be

derived from any baseline data. In sum, while Student's November 2021 IEP was individualized in some respects, it failed to address significant areas of need for Student.

A preponderance of the evidence thus supports the conclusion that the District failed to provide Student with a program during the relevant time frame that was properly individualized on the basis of assessment and performance.

2. Least Restrictive Environment

The IDEA requires a student with a disability to 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 to be based on a student's individual needs and to include a continuum of educational settings, including mainstream, homebound, hospital classes, resource services, self-contained classrooms, nonpublic day schools, or residential treatment facilities. 19 Tex. Admin. Code § 89.1005(c).

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).

Student in this case received all instruction in the *** classroom with the exception of *** which took place in the general education setting and lasted 45 minutes. During both the 2020–2021 and 2021–2022 school years, the ARD Committee determined that Student was being educated with non-disabled students to the maximum extent appropriate to meet Student's needs. Petitioner concedes in Student's closing brief that *** was the appropriate placement for Student. Pet. Brief at 14. Accordingly, this factor weighs in favor of the District.

3. Services Provided in a Coordinated, Collaborative Manner

The IDEA contemplates a collaborative process between parents and the school district and "imposes extensive procedural requirements designed to guarantee parents an opportunity for meaningful input into all decisions affecting their child's education '" *E.R. v. Spring Branch Indep. Sch. Dist.*, Civil Action No. 4:16-CV-0058, 2017 WL 3017282, at *27 (S.D. Tex. June 15, 2017), *aff'd*, 909 F.3d 754 (5th Cir. 2018); *Candi M. v. Riesel Indep. Sch. Dist.*, 379 F. Supp. 3d 570, 588 (N.D. Tex. 2019)(citing *Buser by Buser v. Corpus Christi Indep. Sch. Dist.*, 51 F.3d 490, 493 (5th Cir. 1995) and *Honig v. Doe*, 484 U.S. 305, 311-12 (1987)). School districts must allow parents to play a key role in the development of the IEP. *Klein Indep. Sch.*

Dist. v. Hovem, 690 F.3d 390, 395 (5th Cir. 2012).

The evidence shows that the District provided Parent proper notice of ARD Committee meetings, held ARD Committee meetings in Parent's native language, and translated notices and IEP documents. The District granted Parent's request to keep Student at *** and agreed to provide transportation as a related service after Student's home campus reopened in the fall of 2021. The District also investigated Parent's reports of *** in December 2021.

The District's efforts to collaborate with Parent, however, are outweighed by its shortcomings in this regard as well as its apparent failure to coordinate among staff. The District failed to provide Parent with any periodic progress reports for two school years. Moreover, the deficiencies in those progress reports (discussed below) and the absence of IEP goals for Student in identified areas of need suggest there was little collaboration among District staff to ensure Student received the services laid out in Student's IEP.

Finally, the District failed to timely respond to Parent's request to view video footage from the classroom surveillance camera. Under the Texas classroom camera law, school districts are obligated to adopt written policies and procedures related to the placement, operation, and maintenance of classroom video cameras. Tex. Educ. Code § 29.022; 19 Tex. Admin. Code §103.1301(g). The policies must include, among other things, information on the operation of the classroom video cameras, the procedures for requesting video surveillance, and the procedures for responding to such requests. 19 Tex. Admin. Code § 103.1301(g)(7).

According to the District's policies located on its website, the District was obligated to provide a response to a request for the video ten District business days after a request was made for video from Student's classroom.[56] Although Parent made a verbal (rather than a written) request for the video, the District does not appear to have either provided her with information or directed her to its website so that she could make a proper request. Moreover, the principal accepted her verbal request and forwarded it to District administration in December 2021. Upon receipt of the request, District administration had ten District business days to respond to

[56] The Hearing Officer takes judicial notice of the District's Special Education Video/Audio Monitoring policies, dated June 17, 2019, found on its website: https://www.lajoyaisd.com/documents/departments/curriculum-and-instruction/special-education/documents/367637

the request and presumably inform Parent that the cameras had not yet been activated for that school year because nobody had made a request to do so. Parent was still waiting for a response at the end of March 2022. While this Hearing Officer lacks jurisdiction to resolve disputes arising under Texas Education Code § 29.022, the District's failure to provide a timely response indicates a lack of collaboration with Parent.

In sum, a preponderance of the evidence relevant to this factor weighs in favor of Petitioner.

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, 813-14 (5th Cir. 2012). Student's IEP must provide a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement.

The Hearing Officer can only conclude from the record in this case that the District failed to provide a program that resulted in academic and non-academic benefit to Student. The progress statement for each reporting period relevant to Student's November 2020 IEP with respect to Student's academic and self-help goals indicated only that Student was making "slow progress due to Covid." This cut-and- paste response, devoid of any meaningful data as to the number of successful trials or percentage of successful attempts, from one reporting period to another for an entire year falls far short of the District's obligation to this student and

Student's parent.

Unfortunately, the District adopted the same practice the following year. From a practical perspective, the District's approach makes it impossible to identify and remedy what is not working and, conversely, to build upon what is. From a legal perspective, its practice leads to the conclusion that the program did not provide Student with academic or non-academic benefits. This factor weighs against the District.

5. FAPE Conclusion: January ***, 2021–January ***, 2022

When looking at the totality of the *Michael F*. factors, the evidence shows that the IEPs developed and in place from January ***, 2021 to January ***, 2022, were not individualized on the basis of assessment and performance; were not provided in a sufficiently coordinated and collaborative manner among key stakeholders; and did not provide academic and non-academic benefits. Accordingly, the Hearing Officer concludes that Student's program for this time period was not reasonably calculated to enable Student to make progress appropriate in light of Student's unique circumstances.

6. FAPE: January ***, 2022–April ***, 2022

Petitioner claims that the District's handling of Parent's request for video footage led to an "ultimatum" which resulted in a denial of FAPE from January ***, 2022 (when Parent withdrew Student from ***) until April ***, 2022, (the date Student enrolled in ***).[57] Pet. Brief at 5-6. More specifically, Petitioner contends that the District gave Petitioner a choice between sending Student back to *** or unenrollment. Petitioner's claim relies

[57] RE 14 at 218.

primarily on a text message between Parent and Student's classroom teacher dated December ***, 2021—the day after Student ***. In the text exchange, Parent asked the teacher if anything had been resolved and indicated that "[t]hey didn't tell me anything, only that I shouldn't send Student to class until they checked the cameras."[58] The teacher confirmed that she did not have any information other than what Parent provided.[59] The Hearing Officer finds Petitioner's characterization of these two text messages as evidence of an "ultimatum" by the District unpersuasive.

Nor is Petitioner's theory supported by a preponderance of other evidence in the record. Parent testified that the principal told Parent Parent only had two options—*** or unenrollment, but Parent also testified that Parent withdrew Student on January ***; that no one from the District asked Parent to withdraw Student; and that no one from the District prevented Parent from re-enrolling Student.[60] Consistent with this testimony, the principal testified that she never gave Parent an ultimatum.[61] In addition, *** was not Student's home campus. Student transferred to *** on September ***, 2021, and was given the opportunity to return to Student's home campus in December 2021. Parent, however, chose to keep Student enrolled at ***. Based on these facts, it is reasonable to conclude Parent was aware that options other than keeping Student home from school or sending Student to *** were available.

[58] Tr. at 35-36.

[59] PE Exh. 29.

[60] Tr. at 64.

[61] Tr. 116-17.

Finally, Petitioner insists that Parent did not submit anything in writing to withdraw Student from the school. Pet. Brief at 5. This argument is unavailing. First, Petitioner points to no authority to indicate written notice is required, and the campus principal credibly testified that parents are not required to provide written notice of withdrawal. Parent provided verbal notice, and that was sufficient. Second, the type of notice provided is irrelevant. The simple fact remains: Parent did not bring Student back to *** after January ***, 2022, and did not enroll Student in another school until April ***, 2022.[62]

The Hearing Officer concludes, based on the evidence presented, that the District did not deny Student a FAPE between January ***, 2022, and April ***, 2022, during Student's period of unenrollment.

D. FAILURE TO IMPLEMENT STUDENT'S IEP

When determining whether a school district failed to adequately implement a student's IEP, a hearing officer must determine (1) under the third *Michael F.* factor, whether there was a significant or substantial failure to implement the IEP, and (2) under the fourth *Michael F.* factor, whether there have been demonstrable academic and non-academic benefits from the IEP. *Spring Branch Indep. Sch. Dist. v. O.W. by next friend Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1389 (2021). Petitioner must show more than a de minimis failure to implement all elements of Student's IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000).

[62] It is worth noting that Student was in *** at the time Parent withdrew Student from the school. Students are not required to ***.

As discussed above, Student's November 2020 IEP did not include goals for speech or physical therapy, and Student's November 2021 IEP did not include goals for those services or for *** skills. Moreover, the progress reports for both the 2020–2021 and 2021–2022 school years failed to provide any meaningful data suggesting that Student was receiving instruction on, much less making progress towards, Student's IEP goals. The record reflects that, at most, Student made trivial advancements over the relevant time period. Indeed, as of April 2023, Student still did not ***. The weight of credible evidence, therefore, supports the conclusion that the District failed to properly implement Student's IEPs for the 2020–2021 and 2021–2022 school years.

E. PROCEDURAL VIOLATIONS

Petitioner alleges that the District violated student and parent procedural rights in several ways. Liability for procedural violations arises if the procedural deficiency: (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or (iii) caused a deprivation of educational benefits. *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003). *See also* 34 C.F.R. § 300.513(a)(2)(i)–(iii).

1. Qualified, Properly-Trained Staff

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). Petitioner alleges that Respondent violated this requirement when it failed to provide a qualified special education teacher for approximately 24 school days during the fall 2021 semester. Pet. Brief. at 4. Respondent argues, on the other hand, that Student was only in the classroom for 15 of those school days and that it offered and provided compensatory services to address the lack of instruction by a certified teacher.

The evidence supports Respondent's position. The teacher of record assigned to the *** classroom at *** left the school on September ***, 2021, and one or more substitute teachers filled the vacancy until another certified special education teacher was assigned to the classroom on October ***, 2021. Student transferred from Student's home campus and began attending the *** program at *** on September ***, 2021. The evidence also indicates that Student received fifteen 30-minute speech therapy sessions in the fall of 2022 and the remaining compensatory services were completed by January 2023. Assuming, without deciding, that the failure to provide a certified special education teacher for 15 school days amounted to a procedural violation of the IDEA, the District provided the services agreed upon by the ARD Committee to remedy the violation.

In a similar vein, Petitioner argues that the District failed to ensure that staff working with Student were appropriately trained. Pet. Brief at 9. Petitioner bases this argument on the premise that improper restraints occurred several months after Student left the campus and the conclusion that similar restraints must have been practiced on Student. *Id*. As discussed below, there is no evidence in the record to

support such a conclusion with respect to this student.

2. Confidential Information

Petitioner also alleged in the Complaint that the District failed to protect Student's confidential information. Petitioner, however, appears to have abandoned this claim. No evidence was offered on this issue at the hearing, and it was not addressed in Petitioner's closing brief.

3. Failure to Develop Measurable Goals

As discussed more fully above, the District failed to develop measurable goals during the 2020–2021 school year in reading, ***. Student's goals were similarly flawed in 2021–2022. Indeed, many of the goals developed for Student over this two-year period were inscrutable which is likely why the District appears to have abdicated its obligation to monitor Student's progress towards mastering them. It is impossible to tell from looking at them what skill is to be evaluated in what manner in how many trials and how often. The District's failure to develop measurable goals, combined with its failure to provide progress reports to Parent on these goals, deprived Student of an educational opportunity and Parent of an opportunity for meaningful participation.

4. ARD Committee Meeting Participants

Petitioner argues that Parent was denied meaningful participation in the IEP development process because the District failed to invite knowledgeable personnel to ARD Committee meetings, specifically an SLP and a physical therapist. While the failure to include these providers may have compounded the problem that Parent

was not receiving progress reports, they are not required members of the ARD committee. Instead, the Act permits them to attend at the discretion of the parent or the school district. 34 C.F.R. § 300.321(a)(5); 19 Tex. Admin. Code § 89.1050(c). There is no evidence in the record that Parent made a request for an SLP or a physical therapist to attend any of the ARD Committee meetings prior to the November 2022 meeting.

5. Progress Reporting

Aside from the fact that the District failed to provide progress reports to Parent as discussed above, the progress reports themselves were deficient. First, the District included the same statement across goals and reporting periods, and these statements were devoid of any data. Based on the evidence presented, it is reasonable to conclude that the District was not collecting data and monitoring Student's progress towards meeting Student's goals. In fact, the SLP testified that, if she did not have progress monitoring data, she would determine progress by comparing the present level statements from one IEP to the next. This practice does not comply with the IDEA. Rather, the IDEA requires "periodic reports on the progress the child is making toward meeting Student's annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards)." 34 C.F.R. § 300.320(a)(3)(ii). Second, when statements regarding a student's progress on Student's goals are provided "pro forma," as they were in this case, the ARD Committee "cannot determine the progress the child has been making during the school year towards achieving annual goals and whether adjustments might be necessary." *Escambia Cty. Bd. of Educ. v. Benton*, 406 F. Supp. 2d 1248, 1274 (S.D. Ala. 2005).

The Hearing Officer concludes that the District's failure to provide appropriate progress reports impeded Student's right to a FAPE and that its failure to timely provide Parent with appropriate reports significantly impeded Parent's opportunity for meaningful participation in the educational decision-making process.

F. SAFE, NON-HOSTILE LEARNING ENVIRONMENT

Petitioner argues that Student *** and asks the Hearing Officer to assume the *** was caused by a staff member based on events occurring in the *** classroom in May 2022, six months after Student *** and four months after Parent withdrew Student from the school.[63] The inferential leap Petitioner asks this Hearing Officer to make is simply a bridge too far. There is no evidence to show where or how Student ***. Moreover, Student left campus in January 2022, and the incidents involving improper restraints occurred in May 2022. In sum, there was insufficient evidence in the record to support Petitioner's claim that the District failed to provide a safe, non-hostile learning environment for Student in the *** classroom while Student was enrolled in ***.

G. REMEDY

Petitioner met Student's burden of establishing that the District failed to provide Student a FAPE from January ***, 2021, through January ***, 2022. An impartial hearing officer has the authority to grant all relief deemed necessary to ensure the student receives the requisite educational benefit denied by the school district's

[63] Pet. Brief at 2.

failure to comply with the IDEA. *Letter to Kohn*, 17 IDELR 522 (OSERS 1991). Part of Petitioner's burden in a due process hearing, however, is to provide evidence of the remedy necessary to compensate Petitioner. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Petitioner's failure to do so here makes an award difficult at best.

1. Compensatory Education

Petitioner requested compensatory education and related services to address Student's needs but offered no expert testimony or other evidence explaining the nature and scope of the compensatory education Student requires to remedy the denial of FAPE in this case. Compensatory education imposes liability on the school district to pay for services it was required, but failed, to provide all along. *See Meiner v. Missouri*, 800 F.2d 749, 753 (8th Cir. 1986). It constitutes an award of services to be provided prospectively in order to compensate the student for a deficient educational program provided in the past. *G. ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295 (4th Cir. 2003). A qualitative, rather than quantitative, standard is appropriate in fashioning compensatory and equitable relief. *O.W.*, 961 F.3d at 800; *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005) (rejecting hour-for-hour compensatory calculation in favor of a flexible assessment of compensatory relief to address student's needs).

In this case, Petitioner offered no evidence as to the type and amount of compensatory education necessary to place Student in the position Student would have been in but for the District's failures. And there is no evidence in the record from which such a determination can be extrapolated. Even if the Hearing Officer

was inclined to make an hour-for-hour quantitative award, such an award would be

calculated based on services that are likely no longer appropriate for Student (or consistent with current evaluations) and in an amount that removes Student from Student's least restrictive environment to receive one-on-one services.

2. IEE

Petitioner also asked for an IEE in all areas of suspected disability. The District, however, completed a full re-evaluation of Student in April 2023. There is no evidence in the record indicating that Petitioner disagreed with this evaluation or that another one is either appropriate or necessary at this time. Moreover, if Petitioner believed an IEE was necessary to evaluate appropriate remedies for the denial of a FAPE, it was Petitioner's burden to conduct and present this evaluation. Petitioner's request for an IEE is denied.

3. Reimbursement

Petitioner requested reimbursement for expenses but failed to offer any invoices or receipts for out-of-pocket expenses incurred for evaluations or services during the 2020–2021 or 2021–2022 school years. This renders reimbursement impossible.

4. BCBA

Two requests for relief sought the services of a BCBA. Petitioner failed to offer any evidence indicating that the services of a BCBA were necessary in order for Student to receive a FAPE. These requests are denied.

5. Staff Training

Finally, Petitioner seeks an order requiring the District to provide certain training to special education staff who work with Student. The Hearing Officer finds this relief is appropriate and targeted to address the shortcomings of Student's program while enrolled in the District and therefore grants Petitioner's request as follows: Upon Student's reenrollment in the District during the 2023–2024 school year (including any ESY services or sessions offered during summer 2024) or during the fall semester of the 2024–2025 school year, all District staff responsible, either directly or indirectly, for providing special education and/or related services to Student must complete training in the following areas within 20 school days of Student's reenrollment: goal writing, data collection, maintenance of appropriate records, and completion of progress reports with quantitative accuracy. The training must be provided by an entity pre-approved by the Texas Education Agency (TEA) to provide and/or sponsor Continuing Professional Education (CPE) activities for educators or a CPE provider otherwise approved by the TEA. *See* https://tea.texas.gov/texas-educators/preparation-and-continuing-education/continuing-professional-education.

VI. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer*, 546 U.S. at 62.

2. Petitioner met Student's burden of proving that Student's IEP was not properly individualized on the basis of assessment and performance and therefore was not reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188, 203-04; *Endrew F.*, 580 U.S. at 403.

3. Student was educated with non-disabled peers to the maximum extent appropriate and in the least restrictive environment to meet Student's needs. *Daniel R.R.,* 874 F. 2d at 1048; 34 C.F.R. § 300.114(a)(2).

4. Petitioner met Student's burden of proving that the District failed to provide Parent with a meaningful opportunity to participate in the educational decision- making process. *Schaffer*, 546 U.S. at 62; *Michael F.,* 118 F. 3d at 253.

5. Petitioner met Student's burden of proving that the District failed to offer Student a program that provided academic and non-academic benefits during the 2020– 2021 and 2021–2022 school years. *Schaffer*, 546 U.S. at 62; *Michael F.*, 118 F.
3d at 253.

6. Petitioner met Student's burden of proving that the District failed to properly implement Student's IEP. *Schaffer*, 546 U.S. at 62; *Bobby R.*, 200 F. 3d at 349.

7. Petitioner met Student's burden of proving that the District failed to provide Parent with periodic progress reports during the 2020–2021 and 2021–2022 school years. *Schaffer*, 546 U.S. at 62; 34 C.F.R. 300.320(a)(3).

8. Petitioner met Student's burden of proving that the District failed to develop measurable goals to meet Student's needs. *Schaffer*, 546 U.S. at 62; 34 C.F.R.
§ 300.320(a)(2).

9. Petitioner did not meet Student's burden of showing that the District failed to provide a safe, non-hostile learning environment for Student while Student was enrolled at *** School. *Schaffer*, 546 U.S. at 62.

10. Petitioner did not meet Student's burden of showing that the District failed to include required participants in ARD Committee meetings. *Schaffer*, 546 U.S. at 62; 34 C.F.R. § 300.321(a); 19 Tex. Admin. Code § 89.1050(c).

11. Petitioner did not meet Student's burden of showing that the District failed to protect Student's confidential information. *Schaffer*, 546 U.S. at 62; 34 C.F.R. §§ 300.123, 300.201.

12. Petitioner did not meet Student's burden of showing the nature and scope of the compensatory education necessary to remedy the District's denial of a FAPE. *Schaffer*, 546 U.S. at 62; *O.W.*, 961 F.3d at 800; *Reid*, 401 F.3d at 523-24.

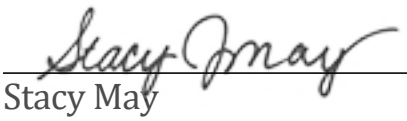
VII. ORDERS

Given the broad discretion of the Hearing Officer in fashioning relief, the Hearing Officer makes the following Orders:

> Upon Student's reenrollment in the District during the 2023–2024 school year (including any extended school year services or sessions offered during summer 2024) or during the fall semester of the 2024–2025 school year, all District staff responsible, either directly or indirectly, for providing special education and/or related services to Student must complete training in the following areas within 20 school days of Student's reenrollment: goal writing, data collection, maintenance of appropriate records, and completion of progress reports with quantitative accuracy. The training must be provided by an entity pre-approved by TEA to provide and/or sponsor CPE activities for educators or a CPE provider otherwise approved by the TEA.

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

Signed November 17, 2023.



Stacy May
Administrative Law Judge and
Special Education Hearing Officer
For the State of Texas

VIII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable

order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).