

**SOAH DOCKET NO. 701-23-09425.IDEA
TEA DOCKET NO. 141-SE-0123**

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

v.

**TEXAS LEADERSHIP PUBLIC
SCHOOLS,
Respondent**

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**BEFORE A SPECIAL
EDUCATION**

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brings this action against Texas Leadership Public Schools (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 main issues in this case are whether Respondent provided Student with a Free Appropriate Public Education (FAPE) and whether the Full Individual Evaluation (FIE) complied with the IDEA. The Hearing Officer concludes that Respondent provided Student a FAPE at all relevant times and evaluated Student appropriately. Petitioner is not entitled to any relief.

Petitioner was represented throughout this litigation by their authorized non-attorney representative, Carolyn Morris with Parent-To-Parent Connection. Respondent was represented throughout this litigation by its legal counsel, Christopher Schulz with Schulman, Lopez, Hoffer & Adelstein, LLP.

II. DUE PROCESS HEARING

The due process hearing was conducted on March 21, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Carolyn Morris. Parent also attended the due process hearing. Respondent continued to be represented by Christopher Schulz. Mr. Schulz was assisted by his co-counsel, Maia Levenson. In addition, Dr. ***, the Assistant Superintendent for the District, attended the hearing as the party representative.

At the conclusion of the hearing, both parties were given the opportunity to submit written closing briefs. Respondent submitted a timely written closing brief on April 17, 2023. Petitioner did not submit a written closing brief. The Decision in this case is due by May 9, 2023.

III. ISSUES

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

1. Whether the District's FIE complied with the IDEA.
2. Whether the District provided Student a FAPE in Student's least restrictive environment with appropriate related services and behavioral intervention services.
3. Whether the District implemented Student's Individualized Education Program (IEP) with fidelity.

IV. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to place Student in a general education setting.

2. Order the District to provide an IEP with appropriate mental health, behavioral, and related services.
3. Order the District to develop an appropriate Behavioral Intervention Plan (BIP).
4. Order the District to provide an Independent Educational Evaluation (IEE) at District expense.

V. FINDINGS OF FACT

1. Student is *** years old and in the *** grade. Student began the 2022-23 school year at the *** campus in the District. The District expelled Student for excessive unexcused absences on November ***, 2022. Student currently does not attend school. Student is eligible for special education and related services as a student with emotional disturbance, other health impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD), and specific learning disability. Student enjoys attending school, particularly *** class, and likes the challenge of it.¹
2. Student initially qualified for special education and related services as a student with an emotional disturbance in January 2016 when Student was a student in the *** Independent School District (*** ISD). Student's time receiving special education services has been punctuated by frequent, prolonged *** and placements in *** settings. Student has thus attended a number of different schools.²
3. Student has experienced *** and has mental health issues resulting from the trauma Student has experienced. Student has difficulty with anger and can become physically aggressive and depressed. Student's mood changes "abruptly and frequently" and Student often elopes from school and from home.³
4. Student has had mental health *** in essentially every *** designed for such placements in the *** area and many additional placements outside of ***. Between 2016-2021, Student had no fewer than ***, often for weeks or

¹ Transcript page 67 (TR__), 69; Respondent's Exhibit 19, page 20 (R__, at __); R1, at 6; R3, at 4.

² TR 34, 79, 130, 139; R1, at 1-3, 6.

³ TR 34, 79, 130, 139; R1, at 1-3, 6.

months at a time. Student attended a private school designed for students with behavioral difficulties called *** in ***, Texas, during the 2019-20 and 2020-21 school years. Although Student's permanent residence is in *** ISD, Student has not attended school there in the past several years. Despite Student's frequent *** and Student's ongoing behavioral difficulties resulting from Student's mental health issues and ***, Student never had issues with school attendance until this school year.⁴

5. During the 2021-22 school year, Student resided at the ***, a *** in the boundaries of the *** Independent School District (*** ISD). The *** is designed for children with severe emotional deficits. Residents there receive intensive therapeutic and behavioral interventions from trained clinical staff. *** ISD operates a school on the campus of the ***. Student was placed in that school in a mainstream setting with a full day of general education classes.⁵

Student's 2021 Reevaluation and 2021-22 IEP

6. While Student was residing at the ***, *** ISD completed a reevaluation for Student in October 2021. Because Student had been attending private schools and schools in *** settings for a number of years, Student had last been evaluated in January 2016 by *** ISD. Student's FIE was thus out-of-date.⁶
7. The reevaluation included four emotional/behavioral tests, a cognitive/intellectual test, an emotional/development test, a thorough review of school and medical records, in-person observations of Student, teacher input, Parent input, and Student input.⁷
8. According to the reevaluation, Student has a significant mood disorder that leads to a number of different behavioral difficulties. Those difficulties include a depressed/unhappy mood, avoidance, lack of interest in activities, concentration difficulties, fatigue, low tolerance for stress and frustration, self-criticism, feeling restless, irritability, excessive worrying, recurrent temper outbursts, aggression, difficulty with social interactions, ***, and defiance. The evaluation indicated Student's

⁴ TR 34, 79, 130, 139; R1, at 1-3, 6.

⁵ TR 161, 173; R2, at 1.

⁶ R1, at 1.

⁷ R1, at 1, 23.

disabilities should not create difficulty attending school. Student has always attended school regularly, even when *** or in ***, and had not experienced attendance issues prior to the 2022-23 school year.⁸

9. Based on the reevaluation, *** ISD continued Student's eligibility as a student with an emotional disturbance and OHI for ADHD. *** ISD added a third eligibility category of specific learning disability in the areas of reading comprehension, math calculation, and math problem solving. The evaluation made a number of IEP recommendations, including providing Student smaller settings, extra time for tests and assignments, and frequent feedback. Student's next reevaluation is due in December 2024.⁹
10. On December ***, 2021, *** ISD held an annual ARD Committee meeting. Parent attended the ARD Committee meeting remotely by video conference with a family friend sitting with Parent offering support. The ARD Committee placed Student in a full general education curriculum on the *** ISD campus located at the ***. The IEP contained four goals: one for ***, one for ***, one for ***, and one for ***. The IEP also contained a number of accommodations to help Student access the curriculum. Parent agreed with the results of *** ISD's reevaluation and agreed to the new IEP.¹⁰

Student's education in the District

11. Student transferred into the District at the beginning of the 2022-23 school year. Student was excited to start in a new school on a more traditional campus than Student's prior one. Student was open with District personnel about some of the prior behavioral issues Student had exhibited both in and outside of a school setting.¹¹
12. The District held an ARD Committee meeting on August ***, 2022. Parent attended the meeting virtually along with the same family friend who had attended the ARD Committee meeting in *** ISD in December 2021. Parent requested a BIP for Student. The District agreed to conduct a Functional Behavioral Assessment (FBA) and develop a

⁸ R1, at 2-3, 8.

⁹ R1, at 13, 15, 17; R3, at 1.

¹⁰ R3, at 13, 17; R2, at 4-7.

¹¹ R6, at 1-2; TR 31, 76.

BIP based on that data by October ***, 2022, as long as Parent signed the consent within a week. The District could not conduct the FBA without Parent's signed consent.¹²

13. Respondent's Licensed Specialist in School Psychology (LSSP) reviewed *** ISD's reevaluation when Student enrolled. She believed it was thorough, current, and had no noticeable issues. The evaluation had been conducted less than a year ago. She thus recommended it be adopted by the ARD Committee. The ARD Committee adopted *** ISD's reevaluation with Parent in agreement.¹³
14. The ARD Committee also adopted the IEP from *** ISD with some minor changes. The District added two accommodations to *** ISD's list of accommodations: chunking of assignments and an entire extra day to complete assignments and tests. The latter new accommodation was added at Parent's request. The District also added an assistive technology device called ***, a personal *** device Student ***, at Parent's request. The District also added access to counselors, which Student did not have through *** ISD, and a crisis support plan in case Student had a mental health breakdown. The District kept the rest of Student's IEP from *** ISD mostly intact, including Student's IEP goals. Student had all Student's classes in a general education setting with accommodations and was enrolled in a full day as opposed to a partial day. Student had access to counselors any time Student needed to calm down. Before making significant changes to Student's IEP, the District was attempting to get to know Student, including determining the functions of Student's behavior. To best serve Student, the District needed to conduct an FBA.¹⁴
15. Petitioner had two experts testify during the due process hearing. One was Student's *** who began working with Student in September 2022 and was not a District employee. The *** did not review Student's education records, speak to school personnel, or observe Student at school. She emailed Parent some behavior intervention recommendations to send to the District for school personnel to consider— including seeking Student's feedback on effective behavior interventions, allowing Student access to *** in class, and changing Student's schedule to keep Student from peers with whom Student was having interpersonal conflict. She testified that those interventions may not be effective due to Student's unwillingness to accept feedback. Regardless of whether those interventions may have been effective, Parent did not share those suggestions with

¹² R6, at 1-2; TR 31, 76.

¹³ TR 52, 161.

¹⁴ R3, at 13; R6, at 2-3; TR 23, 41, 56, 70, 82, 110, 161.

the District. The expert testified that Student was in a state of mental health crisis during the fall of 2022 but did not testify that Student was incapable of attending school or needed to be confined to home.¹⁵

16. Petitioner's other expert, a child psychologist in private practice in *** who has been Student's therapist off and on since 2015, did not assert during the due process hearing or at any other time that Student could not attend school. Instead, she testified about a number of things Student would need to be successful in the school setting. Among them, she recommended access to a cool down space, access to counseling services, clear IEP goals, a ***, and a behavioral goal on reducing aggressive behavior. The District had each of those in place. Student had an *** device to ***. The District put in place a crisis support plan that included access to counselors. Student utilized counselors frequently in the few days on which Student attended school to calm down or discuss issues. The counselors were always available to Student when needed. Student frequently accessed a cool down space provided to Student by the District. Student's IEP goals were clear and measurable and included a goal related to physical aggression. Parent agreed to the IEP goals in December 2021 and August 2022.¹⁶
17. Student struggled behaviorally while attending school in the District. Student has always had issues with *** and those continued in the fall of 2022. On September ***, 2022, Student ***. Luckily, ***. Student had at least two or three other similar incidents in which Student ***. It was consistent with Student's history of *** impulsively from school and home without forming a plan. Additionally, Student had interpersonal conflicts with several students, which left student frustrated and often crying in the counselors' offices. ***¹⁷
18. On October ***, 2022, Student was not attending school. Student had an incident in which Student ***. Student also *** during the fall of 2022. Student *** as well. These incidents led to Student's ***

¹⁵ TR 135-45.

¹⁶ R6, at 5; TR 34, 76-77, 123-24, 135.

¹⁷ TR 40, 122, 136, 141, 174

***. Parent did not inform the District of these incidents.¹⁸

19. Beginning on September ***, 2022, Student's school attendance became sporadic. Student had unexcused absences for half a day on September *** and full days September ***, September ***, and September ***. Student also had a number of excused absences during the same time frame. From September ***-October ***, 2022, Student attended school for a total of *** school days. Even on those school days on which Student attended, Parent usually picked Student up early. Beginning on October ***, 2022, Student attended school only a few times the week of October ***, 2022, and then not again. None of the post-October *** absences were excused. Student's absences made it difficult for District personnel to get to know Student understand Student's needs. District personnel never developed a full sense of Student's educational needs as a direct result of the absences.¹⁹

20. In September 2022, the District did not know where Student was during Student's unexcused absences. Parent refused to provide information about where Student was when not attending school. Parent was embarrassed about Student's *** history and mental health issues and had a difficult time sharing them with the District. She was also under tremendous stress dealing with her ***'s mental health issues and her ***'s education issues. She had difficulty focusing on working with the District to gather information. Still, District personnel consistently and continually reached out to Parent to discuss the absences and attempt to understand Student's needs.²⁰

21. Following several unexcused absences, Student's *** sent a letter to the District on October ***, 2022. In full, the letter stated "[Student] ***." The *** provided no other information or explanations. Student had attended school at various times between September *** and October ***. Thus, the letter appeared inaccurate. The District also never received a follow up letter to explain Student's absences after October ***, 2022. Even after Student was allegedly *** cleared to attend school on October ***, 2022, Student still did not attend school. Neither Student's *** nor any other *** provided additional information. Parent refused to help Respondent contact the *** for additional information, refused to provide documentation to show where Student was when absent, and refused

¹⁸ R23, at 9-11; TR 141.

¹⁹ R19, at 15; P1, at 3-5; TR 101-02, 110.

²⁰ R20; TR 59-60, 112-13, 115, 156-57, 175.

- to explain where and when Student was ***. District personnel reached out to Parent to check on her and on Student several times, but Parent did not respond with relevant information.²¹
22. In addition to not providing any information on Student, Parent also never signed consent for the FBA she had requested and which the District wanted to conduct to learn key information about Student and Student's behavior. The District needed to complete an FBA to implement an appropriate BIP with effective behavior interventions, but the District is required to obtain signed consent before beginning an FBA. The District emailed the consent forms to Parent on the same day as the August ***, 2022 ARD Committee meeting. District personnel then followed up with Parent on September ***, 2022, to remind her to sign the consent forms. The District followed up a third time on September ***, 2022. Parent told the District she had too much going on with her *** to sign the forms. Parent eventually signed the consent forms on October ***, 2022. Student only attended school in the District for a few days after October ***, 2022, due to unexcused absences. Thus, the District was never able to conduct an FBA.²²
23. Respondent scheduled an ARD Committee meeting for November ***, 2022, to discuss Student's absences. The ARD Committee meeting would also serve as a Manifestation Determination Review (MDR) to consider removing Student due to Student's excessive unexcused absences. On November ***, 2022, Parent emailed the District to let them know Student was *** and, therefore, Parent would not be able to attend the ARD Committee meeting. The District rescheduled the meeting for November ***, 2022, to accommodate Parent.²³
24. The meeting took place on November ***, 2022, with Parent in attendance with her non-attorney representative, Carolyn Morris. During the meeting, when the District asked Parent for information on Student's disability that prevented Student from attending school, Parent informed the District she would "save" that information "for the due process hearing." She refused to explain when or where Student was ***. She refused to provide any information or consent for anyone to speak with the physician. Contrary to her assertion that she would save information for the due process hearing, Petitioner did not provide additional *** information, documents concerning Student's

²¹ P1, at 19; R11; TR 155, 157, 175, 177, 181.

²² R5, R9, R10, R12; TR 15-16, 22, 31, 53-54, 60, 62, 129, 151.

²³ R13, R14, R15, R16, R17.

***, or documents explaining Student's unexcused absences as evidence for this due process hearing.²⁴

25. Respondent sought out information regarding the connection between absences and Student's disability, but Parent provided no information except the inaccurate *** letter of October ***, 2022. With no information or data linking Student's excessive absences to Student's disabilities, Respondent determined Student's excessive absences were not caused by and/or directly and substantially related to Student's disabilities. Respondent also determined the absences were not a result of the District's failure to implement the IEP. Respondent expelled Student from the District.²⁵

VI. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). Respondent 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.

Respondent is responsible for providing Student with specially designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress

²⁴ R20; TR 115, 119, 145, 156, 184-85.

²⁵ R19, at 21; TR 146, 156.

appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.²⁶ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 49; *Andrew F.*, 137 S. Ct. at 999.

C. FAPE

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

1. Whether the program is individualized on the basis of the student's assessment and performance;
2. Whether the program is administered in the LRE;
3. Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
4. 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).²⁷

²⁶ 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).

²⁷ Even after the Supreme Court's 2017 decision in *Andrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

These four factors need not be accorded any particular weight nor 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. Leah 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, a school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the 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 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). For Student, whose behavior impedes Student's learning and that of others, the District must also consider positive behavioral interventions and supports and other behavioral strategies when developing Student's IEP and BIP. 34 C.F.R. § 300.324(a)(2)(i); *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir. 2012).

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In this case, the District developed an appropriate IEP with positive behavioral supports based on assessment and performance of Student. When Student transferred, the District implemented services comparable to those Student had received in Student's prior school district as it was obligated to do. 34 C.F.R. § 300.323(e). Those included placement in a mainstream classroom, accommodations so Student could access the curriculum, and identical IEP goals. It also added two new accommodations, a crisis support plan if Student was having a mental health breakdown, and the *** as additional assistive technology.

The District recognized Student needed a BIP and attempted to obtain consent to conduct an FBA. Parent did not sign the consent before Student stopped attending school. An FBA includes the identification of problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior, and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it. Failure to conduct one can lead to key information about a student's behaviors being addressed inadequately or not at all. *R.E. v. New York City Dept. of Educ.*, 694 F.3d 167, 190 (2nd Cir. 2012). Parent's failure to sign the consent to conduct the FBA despite frequent reminders to do so put the District at a disadvantage in appropriately addressing Student's behavioral issues.

Student only attended *** full days of school from September ***, 2022, until the District expelled Student on November ***, 2022. After October ***, 2022, Student only attended a few school days and Parent picked Student up early on the days on which Student did attend. The District did not have a chance to conduct an FBA or the ability to obtain any new information about Student. The District did not have the time or opportunity to do more than implement the IEP from *** ISD with a few small additions. 34 C.F.R. § 300.323(e).

Student's behavioral issues were not limited to school. Student's *** behavior at home, ***, mirrored the issues Student had in the few days on which Student attended school. A thorough FBA could have potentially identified the functions of that behavior and identified interventions to help in both environments. *R.E.*, 694 F.3d at 190. The District attempted to meet Student's unique needs based on its observations and attempted to conduct assessments to meet Student's needs even more effectively.

2. Least Restrictive Environment

The IDEA requires that a student with a disability shall be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment requirement." 34 C.F.R. § 300.114(a)(2)(i)(ii).

State regulations require a school district's continuum of instructional arrangements to be based on students' individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

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

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

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

The District placed Student in a general education placement for a full day schedule of services. Student attended school for such a short time that it is impossible to determine the appropriateness of the placement. Student may have required a more restrictive setting, but the District needed more time with Student to assess that. The mainstream placement a comparable placement to the one in which Student was educated in Student's previous school district. The District was required to implement the comparable mainstream placement in which Student had been educated in *** ISD. 34 C.F.R. § 300.323(e). Student was in the least restrictive environment available in the District.

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

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, 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). 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 District tried to offer services in a collaborative manner. The District held an ARD Committee meeting on August ***, 2022, with Parent in attendance and in agreement with the IEP developed there. It subsequently attempted to schedule two ARD Committee meetings in November 2022. Parent cancelled the first meeting. During the second meeting, Parent refused to provide any information about Student, instead stating she would save all her information for the due process hearing. When Parent submitted a brief ***'s letter stating Student could not attend school from September ***-October ***, 2022, Parent refused to provide any additional information or arrange for the District to speak to the ***. The letter was riddled with inaccuracies. It consisted of only two sentences. It was confusing and not helpful to the District. Parent refused to help the District verify the letter's recommendations. The District rescheduled a November ***, 2022 ARD Committee meeting after Parent informed District personnel that morning she would be unable to attend. It was important to the District for Parent to be able to participate in the meeting.

The District responded to Parent's suggestions during the first ARD Committee meeting. It offered an FBA based at Parent's suggestion, but Parent did not sign consent to conduct the FBA until October ***, 2022. The District also added an additional accommodation based on parental input and added the *** device. Parent was under tremendous stress due to Student's ongoing mental health issues and may not have had the energy to cooperate with the District or to ensure Student attended school daily. However, the District made every effort to collaborate with Parent and all key stakeholders. Petitioner did not present evidence of Parent's requests of the District being denied.

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). However, in this case, Student did not attend school long enough to observe any benefit to Student. As explained above, the IEP was individualized and designed to confer academic benefit on Student. Whether it would have effectively done so cannot be determined due to Student's lack of attendance.

5. FAPE Conclusion

When a parent pulls a student from school based on one letter from a *** and refuses to provide any additional information, a school district cannot be held liable for a failure to provide that student a FAPE. *Renee J. as next friend of C.J. v. Houston Indep. Sch. Dist.*, 913 F.3d 523, 532 (5th Cir. 2019). As in *Renee J.*, Parent in the instant case refused to provide information excusing Student from school, kept Student from school, and then claimed the District did not fulfill its obligations under the IDEA.

Parent made the decision to keep Student from school for the vast majority of Student's time in the District. Parent was understandably experiencing stress from Student's ongoing mental health issues in the fall of 2022. However, the District cannot be held responsible for any lack of educational services Student received because of that decision. *Id.* The mental health issues Student experienced in the fall of 2022 were similar to issues Student has experienced since Student was first identified as a student in need of special education and related services in 2016. Student has exhibited aggression and eloped from school and home for years. Between 2016-2021, Student had *** due to those issues. Student then spent the entire 2021-22 school year in a *** due to mental health issues. The one consistency is that Student's mental health issues have not affected Student's school attendance. When Student is ***, Student obviously cannot attend school in a traditional setting like the District. Otherwise, Student does not have disability-related issues with attending school. Student enjoys attending school even if Student does not always show it with Student's behavior.

The District offered Student the services and accommodations Petitioner's expert testified Student would need in the school setting. It tried to work collaboratively with Parent and to conduct an FBA to understand even better how to serve Student. It was not able to do those things. Therefore, Petitioner did not meet their burden to show the District failed to provide Student a FAPE.

D. Evaluation

Petitioner contests the FIE conducted by *** ISD in December 2021 and adopted by the District. An FIE must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, to determine whether the child qualifies for special education and the content of the child's IEP. 34 C.F.R. § 300.304(b)(1). It should use technically sound instruments

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of evaluation to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b)(3). It must also be sufficiently comprehensive to identify the student's special education and related service needs, whether they are commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6). Before conducting a reevaluation, a school district must obtain parental consent. 34 C.F.R. § 300.300(c).

*** ISD's reevaluation included a review of existing evaluation data as required. It also relied on a variety of testing methods, including multiple standard educational testing tools, parent input, teacher input, in-person observations, and an interview with Student. *** ISD assessed Student in all areas related to the suspected disabilities, including health, vision, hearing, social and emotional status, speech, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4). Parent agreed with the evaluation in December 2021 when *** ISD created it and agreed with the District's decision to adopt it in August 2022. In short, *** ISD conducted an appropriate reevaluation under the IDEA and the District's decision to adopt it was appropriate.

A new evaluation in this case is not due until December 2024. 34 C.F.R. § 300.303(b)(2). A new evaluation should not be done more than once each year unless the parent and the school district agree to one. 34 C.F.R. § 300.303(b)(1). Parent never requested a new evaluation. The District did not see a need for one. Parent agreed with the evaluation and the District's choice to accept that evaluation during the August ***, 2022 ARD Committee meeting. Thus, the parties never had an agreement to conduct a new evaluation within one year of the previous one.

Petitioner did not present evidence Student's disabilities or needs had changed in a way that might necessitate a new evaluation. Even if the parties had seen such a change that would necessitate a new FIE, Student rarely attended school. It is unclear how an evaluation with in-person

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observations could have been completed. Parent also was not cooperative with signing consents or getting information to the District. Parent would not even sign a consent for an FBA until six weeks after it was requested. It is unclear how Student would have been in a place to cooperate with a new FIE. The District complied with its evaluation obligations under the IDEA.

E. Implementation of the IEP

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

In this case, the District implemented the IEP appropriately. The District implemented comparable services when Student transferred into the District at the beginning of the 2022-23 school year. It then implemented all aspects of the IEP when Student attended school. Student attended school for *** full school days in September and October. Student had access to counseling services, extended time on tests and assignments, and access to a full day of classes in the general education setting. Petitioner did not present evidence that the District failed to implement any material portion of the IEP when Student attended school.

VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

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2. Respondent provided Student a FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188, 203-04; *Endrew F.*, 137 S. Ct. at 999.
3. Respondent conducted an appropriate reevaluation of Student that complied with the IDEA. 34 C.F.R. § 300.304(b).
4. Respondent implemented Student's IEP appropriately and with fidelity. *Bobby R.*, 200 F.3d at 349.

VIII. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

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

SIGNED May 9, 2023.



Ian Spechler
Special Education Hearing Officer
For the State of Texas

IX. 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).