

SOAH Docket No. 701-23-18081.IDEA
TEA Docket No. 260-SE-0423

**Before the
State Office of Administrative Hearings**

**STUDENT, by next friend PARENT,
Petitioner
v.
IDEA Public Schools,
Respondent**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent and, collectively, Petitioner), brings this action against the Idea Public Schools (Respondent or IPS) 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 related to reevaluation and the provision of a free appropriate public education (FAPE) to Student.

The Hearing Officer concludes that IPS provided Student a FAPE during the relevant timeframe; any claim related to the review of existing evaluation data

(REED) conducted on April ***, 2020, is barred by the statute of limitations; and Petitioner failed to show that a reevaluation was required during the relevant timeframe.

II. DUE PROCESS HEARING

The due process hearing was conducted on February 21-22, 2024, through the Zoom videoconferencing platform. It was a closed hearing, and the proceedings were recorded and transcribed by a certified court reporter. Petitioner was represented by attorney Jordan McKnight, and Parent was present. Respondent was represented by its attorneys, Christopher Schulz and Elizabeth Angelone with Schulman, Lopez, Hoffer & Adelstein, LLP. Assistant Principal of Instruction, ***, attended the hearing as a party representative. The Decision in this case is due April 22, 2024.

The parties submitted 27 joint exhibits which were admitted without objection. Petitioner and Respondent each submitted one additional exhibit. Respondent's Exhibit 1 was admitted. Petitioner's exhibit was not.

Petitioner called Parent, the Assistant Principal of Instruction, and the Transportation Manager for Respondent's *** Campus as witnesses. Respondent called a speech language pathologist (SLP) and an occupational therapist from IPS and one of Student's special education teachers.

III. PETITIONER'S ISSUES AND REQUESTED RELIEF

A. Issues

Petitioner confirmed that the relevant timeframe in this matter falls within the two-year statute of limitations. Petitioner filed the Complaint on April 28, 2023, and Student left IPS at the end of the 2021-2022 school year. Accordingly, the relevant timeframe extends from April 28, 2021, to the beginning of June 2022. Petitioner raised the following IDEA issues for decision in this case:

1. Whether IPS failed to timely and appropriately reevaluate Student in all areas of suspected disability;
2. Whether IPS denied Student a FAPE by failing to develop an appropriate individualized education program (IEP) reasonably calculated to enable Student to make progress appropriate in light of Student's unique circumstances;
3. Whether IPS denied Student a FAPE by failing to conduct a functional behavior assessment (FBA) and develop a behavior intervention plan (BIP) to address targeted behaviors, including elopement;
4. Whether IPS denied Student a FAPE by failing to provide appropriate related services, including speech and occupational therapy and counseling and psychological services;
5. Whether IPS denied Student a FAPE by failing to provide a safe and non-hostile learning environment; and
6. Whether IPS failed to properly implement Student's IEP by failing to provide appropriate supervision and *** services.

B. Requested Relief

Petitioner requested the following items of relief:

1. an independent educational evaluation (IEE) at IPS expense for a full psychological evaluation that includes cognitive, achievement, and psychological testing, an FBA, and assessments for speech, occupational, ***, and *** therapy;
2. a determination that IPS denied Student a FAPE and harmed Student;
3. compensatory education and related services to address Student's area of disabilities and/or needs, including speech, occupational, ***, and *** therapy and counseling and psychological services;
4. compensatory *** therapy at IPS expense;
5. an order requiring IPS to hold an ARD Committee meeting to review the IEE and develop an appropriate IEP and an appropriate BIP;
6. reimbursement for out-of-pocket expenses and the cost of any private services obtained for Student; and
7. Any and all other remedies that Petitioner may be entitled to under the law.

IV. FINDINGS OF FACT

1. Student is *** years old and lives in ***, Texas, with Parent. Student enjoys ***.¹
2. Parent enrolled Student in IPS at the beginning of the 2017-2018 school year when Student was *** years old. Student attended IPS from *** through *** grade. IPS completed a full and individual initial evaluation (FIIE) and written report on September ***, 2017. As a part of the FIIE, evaluators conducted the Behavioral Assessment System for Children (BASC-3), Gilliam's Autism Rating Scale, Third Edition (GARS-3), the Autism

¹ Joint Exhibit (JE) 3 at 5; JE 5 at 4; Transcript (Tr.) at 26-28.

Diagnostic Observation Schedule, Second Edition (ADOS-2), the Kaufman Assessment Battery for Children, Second Edition (KABC-2), the Developmental Profile 3 (DP-3), the Adaptive Behavior Assessment System, Third Edition (ABAS-III), an occupational therapy evaluation, and a screening for assistive technology. The FIIE did not include academic achievement testing due to Student's limited speech and language capabilities. Based on the results of the FIIE, the evaluators determined that Student had significant cognitive deficits and was eligible for special education and related services under the categories of autism and speech impairment.²

3. At the time of the FIIE, Student followed one-step directions inconsistently. Student had maximum difficulty following more than one-step directions and transitioning from one activity to another. Student also had difficulty with sensory modulation skills. Student could not sit in a chair for more than 15 seconds, and Student could not participate in a group activity for more than five seconds. Student was not able to ***. Student was nonverbal and used verbal approximations, gestures, and vocalizations to communicate.³
4. On April ***, 2020, IPS completed a review of existing evaluation data (April 2020 REED) and scheduled an Admission, Review, and Dismissal (ARD) Committee meeting to take place the same day. Parent was invited to attend both the REED and the meeting but was unable to do so. After conducting the REED, the ARD Committee determined that no additional assessments were needed and continued Student's eligibility for special education and related services. The ARD Committee developed an IEP for Student (the April 2020 IEP), and IPS sent Parent prior written notice, notice of procedural safeguards, and a copy of the IEP it proposed to implement.⁴

2020-2021 School Year: * Grade**

5. Student attended school virtually during the 2020-2021 school year due to COVID. An amendment was executed in October 2020 to add a contingency

² JE 3 at 11-13, 33-34; Tr. at 28, 390-91.

³ JE 3 at 3, 15, 16, 25, 28; JE 21 at 11; Tr. at 95-97, 294.

⁴ JE 4 at 3; JE 5 at 1; JE 6 at 2, 26-27, 31-32; Tr. at 32, 77-78, 174-76.

plan to Student's IEP. The contingency plan identified adjustments to Student's supports and services during remote learning and indicated that, upon return to normal operations, Student's IEP would be implemented as it was prior to campus closures.⁵

6. During remote learning, Student turned off Student's camera during lessons, would attempt to get out of Student's seat while working, and did not log on to other lessons. Student's progress was difficult to monitor during this time.⁶
7. Student's ARD Committee met on April ***, 2021, for an annual review of Student's IEP. Parent attended, and the meeting ended in agreement.⁷
8. Student's IEP included statements of Student's present levels of academic achievement and functional performance ("present level statements") and also expressed concern regarding the level of difficulty Student exhibited with focusing and responding to instruction in a virtual setting. Student struggled with ***, and modulating Student's emotional intensity independently. Student also had difficulty transitioning from preferred to non-preferred tasks.⁸
9. Student did not master the goals from Student's April 2020 IEP in the virtual setting during the 2020-2021 school year, and Student's reading, math, behavior, and speech goals were continued.⁹
10. Student's reading goals addressed foundational language skills—specifically, identifying and ***. Student's math goals required Student to ***, and to use ***

⁵ JE 7; JE 9 at 2.

⁶ JE 7 at 3; JE 9 at 2, 3; JE 13 at 5; Tr. at 337.

⁷ JE 9; JE 9 at 28.

⁸ JE 9 at 2-4.

⁹ JE 9 at 6-12.

***. Student accessed grade-level curriculum at a prerequisite skill level.¹⁰

11. The speech goal required Student to increase Student's language skills in order to facilitate Student's ability to communicate more effectively in Student's educational setting. This goal was supported by the following benchmarks:
***. Success for each benchmark was measured at 60%.¹¹
12. Student's behavior goal focused on Student's ability to use coping strategies with minimal prompts to avoid unexpected behaviors.¹²
13. Student's occupational therapy goal targeted Student's fine motor and motor planning skills as well as Student's ability to transition from nonstructured to structured tasks. Mastery of each benchmark was set at 80% accuracy with moderate prompting.¹³
14. The IEP indicated that Student's behavior interfered with Student's learning and that accommodations, positive behavior supports, and other strategies would be implemented to address behavior concerns. The committee considered a BIP but determined one was not necessary to meet Student's needs.¹⁴
15. The positive behavior supports and strategies identified in the IEP included alternative communication opportunities (such as stress cards and self-help supports), increased opportunity for movement, and a structured sequence of social skills training. Meanwhile, the following accommodations were identified to help manage Student's behavior: setting clearly defined limits,

¹⁰ JE 9 at 6-9; Tr. at 371.

¹¹ JE 9 at 11; Tr. at 254-56.

¹² JE 9 at 10.

¹³ JE 9 at 12, 17; Tr. at 81.

¹⁴ JE 9 at 17.

frequent reminders of the rules, positive reinforcement, frequent breaks, and supervision during transitions.¹⁵

16. As with Student's previous IEP, Student's April 2021 IEP incorporated an autism supplement. The staff-to-student ratio for learning new skills, guided practice, maintenance and generalization of skills, transition between activities, and unstructured time remained at 1:2 and 1:1. The committee, however, increased the ratio for transitions from 3:8 to 1:2.¹⁶

2021-2022 School Year: * Grade**

17. Student returned to in-person instruction in the fall of 2021. Student received most of Student's instruction in a self-contained classroom but participated in *** in the general education setting. Student attended ***.¹⁷
18. Student received seven 30-minute speech therapy sessions every quarter and four 30-minute direct occupational therapy sessions every nine weeks. Student also received *** services for ***. Student displayed appropriate behavior during Student's speech and occupational therapy sessions and was not aggressive. The SLP noted only one time when Student was upset and went back to class because Student did not want to participate.¹⁸
19. The assistant principal who provided special education support in Student's classroom called Parent in late September 2021 because Student had ***. Although the behavior was not impeding Student's learning, redirecting the behavior was important to avoid its progression. The assistant principal discussed the behavior with Parent and shared strategies with Parent for addressing the behavior if it happened at home.¹⁹

¹⁵ JE 9 at 4; JE 14 at 21; Tr. at 189-96, 360.

¹⁶ JE 9 at 32; Tr. at 362-63.

¹⁷ JE 9 at 23; JE 19; JE 20; JE 21; Tr. at 109, 198.

¹⁸ JE 9 at 4, 24; JE 16; Tr. at 256, 264, 267-68, 322.

¹⁹ Tr. at 192-94, 197.

20. On October ***, 2021, an incident occurred involving the ***. ***.²⁰
21. Although the assistant principal spoke to Parent privately about the incident after it occurred and provided Parent with information in an attempt to help Parent navigate the ***, neither Parent nor IPS staff brought it up for discussion during subsequent ARD Committee meetings.²¹
22. Student began attending a new***. Because IPS staff members were not familiar with the ***, they worked with Parent to develop a ***. This information was not included in Student's IEP because Student did not receive special education *** services and did not have ***. Student was considered "****" and followed general education ***.²²
23. IPS issued progress reports on October ***, 2021; January ***, 2022; and March ***, 2022. Student made steady progress towards Student's IEP goals throughout the 2021-2022 school year.²³

²⁰ JE 19; JE 20 at 2; JE 21; JE 23 at 18; Tr. at 109, 198.

²¹ Tr. at 185-86, 198-200.

²² Tr. at 186-88, 237-40.

²³ JE 14 at 16, 18, 20; JE 16; JE 17.

24. By March ***, 2022, Student was making progress towards Student's annual goals in reading and math. Student was able to ***. Student could ***. Parent agreed that Student made remarkable progress in reading and significant progress in math during Student's *** grade year.²⁴
25. Student made progress behaviorally while attending IPS. Although there were a small number of behavior incidents that occurred in the fall, Student's teacher was able to redirect Student and get Student back on task. Student successfully used *** and understood Student was working for a reward. Items included in the ***, helped Student calm down when Student was frustrated. Student mastered Student's April 2021 goal of ***.²⁵
26. Student also made progress toward Student's speech goals. Student was able to ***.²⁶
27. Student demonstrated significant progress in occupational therapy and was on target to meet Student's goal and related benchmarks in this area. When given moderate cues, Student was able to appropriately ***.²⁷
28. Student achieved *** score on the State of Texas Assessment of Academic Readiness ***

²⁴ JE 14 at 16-19; Tr. at 160-61, 373-79.

²⁵ JE 14 at 19-20; Tr. at 204, 359-60, 365-67, 397-98.

²⁶ JE 14 at 19-22; JE 16; Tr. at 257-63, 265-66, 268, 292-95.

²⁷ JE 11 at 6; JE 15; Tr. at 99-100, 314, 319-21.

***. Student received *** score on the ***.²⁸

29. Student's positive behavior supports and strategies were implemented with fidelity, and Student responded well to them. Staff ***. Because Student had expressive and receptive language deficits, staff used ***. Student also had a folder that teachers used to track Student's progress throughout the day.²⁹
30. Student's ARD Committee met for Student's annual review on April ***, 2022. The committee reviewed Student's progress and identified areas for growth. Student continued to access grade-level standards through prerequisite skills.³⁰
31. In reading, Student struggled to ***. Student also had difficulty with more abstract comprehension skills like ***. As for math, Student was unable to ***.³¹
32. The occupational therapist noted that Student's transitioning skills had improved significantly. Student transitioned from Student's classroom to Student's therapy session without difficulty and transitioned from one task to another with minimal to moderate verbal redirection. Student's fine motor, motor planning, and

²⁸ JE 18; Tr. at 207-08, 379-81.

²⁹ Respondent's Exhibit (RE) 1; Tr. at 188-95, 219, 229, 254, 258, 259, 360-62, 365-70.

³⁰ JE 10 at 6-8, 23, 33; Tr. at 381-84.

³¹ JE 10 at 6-8.

handwriting skills had also improved but continued to be areas of growth for Student.³²

33. As for behavior, Student showed improvement managing Student's level of distress but sometimes had difficulty doing so when Student ***.³³
34. The SLP noted that Student communicated using *** and that Student was engaged during all sessions without any behavioral concerns. The SLP recommended modifying Student's goals to address Student's functional communication needs, such as requesting items or an activity.³⁴
35. Student's April 2022 IEP included two reading goals, two math goals, a behavior goal, a functional goal, a speech goal, and an occupational therapy goal. The reading goals targeted Student's needs by focusing on developing Student's ability to ***. Student's math goals focused on developing Student's ability to ***.³⁵
36. The behavior goal required Student to refrain from *** while Student's functional goal focused on continued development of ***. Meanwhile, Student's speech goal and supporting benchmarks sought to develop Student's ability to ***.³⁶
37. The occupational therapy goal focused on Student's visual motor integration, handwriting, and motor planning skills. The following benchmarks supported

³² JE 10 at 6; Tr. at 313-16.

³³ JE 10 at 8.

³⁴ JE 10 at 7; Tr. at 255, 270-73, 290, 295-96.

³⁵ JE 10 at 12-13; Tr. at 382-84.

³⁶ JE 10 at 15-16, 18; Tr. at 255.

this goal: ***.³⁷

38. The April 2022 IEP included the same frequency and duration of speech and occupational therapy services as Student's previous IEP. Student continued to receive instruction in a self-contained classroom with the exception of ***, which were provided in the general education setting.³⁸
39. The IEP continued the accommodations, positive behavior supports, and behavior strategies from Student's previous IEP. The committee once again considered a BIP but determined one was not necessary to meet Student's needs.³⁹
40. The April 2022 IEP incorporated an autism supplement. The staff-to-student ratio for learning new skills, guided practice, maintenance and generalization of skills, transition between activities, and unstructured time remained at 1:2 and 1:1. Student continued to receive *** services for ***.⁴⁰
41. Parent did not request counseling services, express concern regarding Student's behavior, or request any formal assessments. The meeting ended in agreement.⁴¹
42. One of Student's teachers contacted Parent on May ***, 2022, expressing concern regarding behaviors she had not seen from Student in the past. ***. The teacher offered to contact the campus behavior specialist and provide behavior

³⁷ JE 10 at 11.

³⁸ JE 10 at 2.

³⁹ JE 10 at 9, 19-20.

⁴⁰ JE 10 at 38-39.

⁴¹ JE 10 at 34; Tr. at 83.

documentation in response to Parent's questions about the circumstances surrounding the behavior.⁴²

43. Student left IPS at the end of the 2021-2022 school year and transferred to *** Independent School District (***ISD). ***ISD held a transfer ARD Committee meeting in September 2022 and an annual ARD Committee meeting on April ***, 2023. Parent did not attend the transfer ARD, but Parent attended the annual ARD by video. Student's three-year reevaluation was due in April 2023. The committee conducted a REED and determined that no additional assessments were necessary. Parent did not request counseling services or any assessments, and the meeting ended in agreement.⁴³
44. Parent never requested an evaluation or additional assessments from IPS, and neither Parent nor IPS staff recalled any instances of elopement while Student was enrolled at IPS.⁴⁴

V. DISCUSSION

A. Statute of Limitations

A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415(b)(6), (f)(3)(C); 34 C.F.R. § 300.507(a)(1), (2). Petitioner did not plead an exception to the statute of limitations and confirmed that the relevant timeframe

⁴² JE 24; Tr. at 194-95, 366-67.

⁴³ JE 11; JE 12 at 20; Tr. at 76, 83-85, 92, 124, 164-65.

⁴⁴ Tr. at 75-76, 80, 81, 83, 103-04, 165, 196, 215, 264, 362-63, 385-86.

in this matter began two years prior to the date the Complaint was filed. Thus, the relevant timeframe in this matter begins on April 28, 2021.

B. Burden of Proof

The burden of proof in a due process hearing is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). 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). The burden in this case is therefore on Petitioner to show that IPS failed to properly reevaluate Student in all areas of suspected disability, failed to provide Student a FAPE during the 2021-2022 school year, and failed to offer Student a FAPE for the 2022-2023 school year.

C. 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). Public charter schools, like school districts, have a duty to provide a FAPE to children with disabilities ages 3 through 21. 34 C.F.R. §§ 300.101(a), 300.201, 300.209(a); Tex. Educ. Code § 29.001. The services and supports provided must be at public expense and comport with the student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). In this case, IPS was responsible for offering and providing Student with IEPs that were reasonably calculated to enable Student to make progress appropriate in light of Student's unique

circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

D. Appropriate Program

The Fifth Circuit has articulated a four-factor test to determine whether a school district's program meets IDEA requirements. These factors include:

1. Whether the program is individualized on the basis of the student's assessment and performance;
2. Whether the program is administered in the least restrictive environment;
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. 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. *Michael Z.*, 580 F.3d at 294.

1. Individualized on the Basis of Assessment and Performance

A school district must have an IEP in effect 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). In developing the IEP, the school district must consider the student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). While the IEP need not be the best possible one or designed to maximize a student's potential, it must nevertheless provide the 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).

a) Reevaluation

Petitioner argues that Student's April 2021 and 2022 IEPs were not individualized because the ARD Committee conducted a REED in April 2020 and determined that no additional data was needed.⁴⁵ To the extent Petitioner seeks to challenge the April 2020 REED, Student needed to do so within two years of the date it occurred or plead an exception to the statute of limitations.⁴⁶ Student did neither.

The question then becomes whether IPS was obligated to reevaluate Student before Student's next three-year evaluation was due. In addition to the three-year

⁴⁵ Petitioner (Pet.) Closing Brief at 10-14.

⁴⁶ Petitioner' Closing Brief also references the appropriateness of Student's April 2020 IEP. *See* Pet. Closing Brief at 6. Any claims related to that IEP are also time-barred. The April 2021 IEP was developed on April ***, 2021, and took effect prior to the beginning of the limitations period on April 28, 2021.

requirement, a school district must reevaluate a student if it determines that the student's educational or related services needs warrant a reevaluation or if a parent or teacher requests one. 34 C.F.R. § 300. 303(a), (b)(2). Petitioner failed to offer any evidence that Student's educational and related services needs changed substantially between April 2020 and April 2022 or that a reevaluation was requested.⁴⁷

Accordingly, Petitioner failed to show by a preponderance of the evidence that a reevaluation by IPS was necessary in order to develop an appropriate IEP.

b) Goals, Related Services, and Accommodations

Student's April 2021 and 2022 IEPs included reading, academic, behavioral, functional, occupational therapy, and speech therapy goals tailored to address the areas for growth identified in Student's present level statements. Student's academic goals focused on prerequisite skills related to decoding words, comprehension skills, number identification, and sorting objects. These goals increased in complexity from April 2021 to April 2022 and built upon Student's progress from one year to the next.

Student's speech and occupational therapy goals were also specific to Student's needs and abilities and supported Student's performance across the curriculum. Student's April 2021 speech goal focused on ***. Based on Student's progress, the SLP recommended modifying Student's goal in April 2022 to address functional communication needs, including ***

⁴⁷Petitioner pointed out during the hearing that Student's September 2017 FIIE did not include formal achievement testing and that no such testing had ever been done. Tr. at 389-90. The FIIE, however, stated that formal academic achievement testing was not conducted due to Student's limited language and speech abilities. Student is nonverbal and, during the 2021-2022 school year, Student communicated by ***. Service providers testified that they did not need formal evaluation data in order to develop appropriate goals for Student. Student's goals were based on performance.

***. Meanwhile, Student’s occupational therapy goal in the April 2021 IEP was designed to meet Student’s visual motor integration, handwriting, and motor planning needs and supported Student’s ability to transition from a nonstructured to a structured task. The April 2022 goal continued to focus on Student’s visual motor integration, handwriting, and motor planning skills but no longer included a specific benchmark for transitions because Student made significant progress in this area.

Student’s April 2021 behavior goal focused on developing coping strategies in the form of a movement or quiet space break to avoid unwanted behavior. And although Student showed improvement in managing Student’s distress levels, Student had difficulty doing so when Student ***. The April 2022 IEP included a goal to address this behavior.

Student received direct speech and occupational therapy services on a weekly and quarterly basis and *** services for ***. In addition to *** services, Student’s autism supplement included a 1:1 and 1:2 staff-to-student ratio throughout the school day and an escort during arrival and departure from school.

Student also received accommodations through adaptations to instruction and behavior management strategies. Instructional accommodations included—among other things—***. Meanwhile, the behavior management accommodations included clearly defined limits, frequent reminders of rules, positive reinforcement, frequent breaks, and supervision during transitions.

Petitioner argues that Student’s IEPs were inappropriate because they included the same “generic” accommodations from year to year. The evidence

indicates, however, that the accommodations were included in Student's IEPs because Student benefitted from them. For example, staff ***. Because Student had expressive and receptive language deficits, staff used visuals and one word prompts to promote understanding and encourage expected behaviors. These strategies were implemented with fidelity, and Student responded well to them as evidenced by the progress Student made towards Student's IEP goals, increasing work tolerance, and transitioning between activities and tasks (without eloping).

Finally, Petitioner contends Student's IEP was not individualized because Student's IEP states that Student would receive ***.⁴⁸ The focus of the service identified in Student's IEP, however, was ***, not Student's specific means of ***. Student's need for this kind of assistance is undisputed, and the *** only serves to provide further support for the conclusion that Student's IEPs were individualized to meet Student's needs.

c) Behavior

In developing an IEP for a student whose behavior impedes Student's learning or that of others, the ARD Committee must consider positive behavioral interventions and supports and other behavioral strategies to address that behavior. 34 C.F.R.

§ 300.324(a)(2)(i). Petitioner argues that IPS failed to appropriately address

⁴⁸ Pet. Closing Brief at 18.

Student's behavior because it did not conduct an FBA and develop a BIP.⁴⁹ The failure to conduct an FBA and develop a BIP, however, does not result in a denial of a FAPE when the student's IEP contains the behavioral supports necessary to meet Student's needs. *See, e.g., J.B. by next friend Lauren B. v. Frisco Indep. Sch. Dist.*, 528 F. Supp. 3d 614, 626 (E.D. Tex. 2021); *B.S. by next friend Justin S. v. Waxahachie Indep. Sch. Dist.*, No. 22-10443, 2023 WL 2609320, *6-7 (5th Cir. March 23, 2023) (citing *Ruffin v. Houston Indep. Sch. Dist.*, 459 F. App'x 358, 361 (5th Cir. 2012)).

The April 2021 and 2022 IEPs provided a comprehensive and cohesive approach to meet Student's behavior needs. The April 2021 IEP included a behavior goal specifically tailored to provide Student with coping strategies to help Student modulate the intensity of Student's emotions. Student met this goal. Meanwhile, the April 2022 IEP behavior goal focused on teaching Student the skills necessary to ***. The April 2022 IEP also included a functional goal that targeted ***. Both IEPs included extensive accommodations and behavioral supports that worked well for Student. Moreover, Student's related services goals and benchmarks in each IEP provided additional support for Student's behavior needs. For example, one of Student's occupational therapy goals focused on transitions and Student's speech therapy goal focused on increasing work tolerance. Student made progress towards each of these goals during the 2021-2022 school year. Finally, both IEPs ensured a staff-to-student ratio that prevented any opportunity for elopement.

Student's behavior overall indicated that the accommodations, supports, and strategies included in Student's IEP were sufficient to meet Student's needs. Student exhibited a

⁴⁹ Pet. Closing Brief at 3-7.

short pattern of inappropriate behavior in September 2021 which was addressed by IPS with Parent. Any indication of similar behavior did not occur again until May 2022. Student generally participated and demonstrated good behavior during speech and occupational therapy sessions and, although there were a small number of incidents throughout the year in the classroom, Student's teacher was always able to redirect Student and get Student back on task. Student never eloped and was never removed from school.

Based on the evidence presented and relevant caselaw, Petitioner did not meet Student's burden of proving that IPS denied Student a FAPE by failing to conduct an FBA and develop a BIP to address targeted behaviors such as elopement.

d) Speech Therapy, Occupational Therapy, and Counseling Services

Petitioner alleged in Petitioner's Complaint that the IEP was inappropriate because it failed to provide related services, including speech and occupational therapy and counseling. Petitioner then argued in Petitioner's Closing Brief that "Parent would have liked for Student to receive counseling as a related service."⁵⁰ First, Petitioner offered no evidence to show Student needed counseling services in order to receive a FAPE. Second, Petitioner failed to offer any evidence showing that Student needed speech and occupational therapy services in addition to those identified in Student's IEPs or that Student did not receive the services Student should have during the 2021-2022 school year. Petitioner failed to meet Petitioner's burden on this issue.

⁵⁰ Pet. Closing Brief at 18.

2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with nondisabled 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); *Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036, 1048 (5th Cir. 1989). State regulations require a school district’s continuum of instructional arrangements to be based on the students’ individual needs and their IEPs and include a continuum of educational settings. 19 Tex. Admin. Code § 89.1005(c).

Student in this case is eligible for special education with autism and speech impairment. As a result of Student’s disabilities, Student has cognitive deficits as well as deficits in both expressive and receptive language, and Student was working towards academic goals on a prerequisite-skill level. Student required a low staff-to-student ratio to meet Student’s *** needs; to acquire, generalize, and maintain skills; and to avoid elopement. Meanwhile, Student participated in *** in the general education setting. The evidence thus supports the conclusion that Student was mainstreamed to the maximum extent possible, and Student’s placement was the least restrictive environment to meet Student’s needs. Petitioner does not disagree.⁵¹

⁵¹ Pet. Closing Brief at 17.

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 evidence shows that IPS provided notice of ARD Committee meetings and ensured Parent had the opportunity to participate in them. Although Parent was not always able to attend, Parent participated in the April 2021 and 2022 meetings and did not express any concerns regarding Student's academic and non-academic services or progress. Nor did Parent request additional information, assessments, or further evaluation. In other words, there is no indication that Parent ever made a request or offered input that IPS refused to consider or that IPS excluded Parent in bad faith.

The evidence shows instead that IPS collaborated with Parent. In September 2021, the assistant principal contacted Parent regarding a change in Student's behavior, and she provided Parent with strategies to address the behavior if it

occurred at home. After the October 2021 *** incident, staff worked with Parent to identify *** and provided Parent with resources to help navigate the ***. When another behavior incident occurred several months later in May 2022, IPS staff again reached out to Parent and offered to share behavior data with Parent and enlist the assistance of the campus behavior specialist. Accordingly, the Hearing Officer finds that IPS satisfied its obligation to provide services to Student in a coordinated, collaborative manner.

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).

The evidence shows that Student made steady progress towards Student's academic, behavioral, and related services goals throughout the 2021-2022 school year. In reading, Student was able to ***. Although Student did not meet the goal's minimum level of ***, Student progressed from being able to complete this goal with ***% accuracy in October 2021 to ***% accuracy in March 2022. Student received a "****" score on the *** of the STAAR***. Meanwhile, in math, Student increased the accuracy of Student's ability to ***. Student's goal was ***%. Student received *** score on the STAAR***. Parent acknowledged that Student made remarkable progress in math and reading during the 2021-2022 school year.

Student met Student's April 2021 behavior goal by using coping strategies to avoid unexpected behavior in more than three out of five trials, and Student made progress toward Student's speech goal and related benchmarks. Student's speech goal focused on increasing Student's language skills in order to communicate more effectively in the educational setting, and Student raised Student's overall accuracy on this goal from *** between October 2021 and March 2022. Finally, Student made progress on Student's April 2021 occupational therapy goal and related benchmarks which targeted fine motor, transitioning, and motor planning skills, by increasing Student's accuracy on the benchmarked skills from***over the course of the school year.

Notwithstanding the preponderance of evidence demonstrating Student's progress, Petitioner argues that Student did not receive an academic or non-academic benefit from Student's program because Student did not master Student's IEP goals. The purpose of an IEP, however, is to provide an educational benefit, not remediate a disability. *E.R.*, 909 F.3d at 769 (5th Cir. 2018). Perfection is not the standard. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 397-98 (5th Cir. 2012). Because Student did not show signs of regression and the progress Student demonstrated was more than trivial advancement, the Hearing Officer concludes that Student received academic and non-academic benefits from the program provided by IPS.

5. FAPE Conclusion

The April 2021 and 2022 IEPs included academic, related services, functional, and behavioral goals based on assessment and performance. They also provided appropriate accommodations, behavioral supports, and related services tailored to meet Student's needs in Student's least restrictive environment. IPS communicated with

Parent and provided Parent with opportunities to participate in the educational decision-making process, and Student received academic and non-academic benefit from the program provided by IPS during the relevant timeframe. The April 2021 and 2022 IEPs were reasonably calculated to enable Student to make progress appropriate in light of Student's unique circumstances.

E. IEP Implementation

Petitioner argues that the October 2021 *** incident was the result of a 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).

Petitioner contends that IPS failed to "have any sort of plan to provide for Student's need for supervision" and that this failure placed Student in danger.⁵² The evidence indicates otherwise. Student's April 2021 IEP provided a staff-to-student ratio of ***. The record reflects that Student was ***

⁵² Pet. Closing Brief at 2.

on the day of the incident. This is consistent with the supervision requirements of Student's IEP. To the extent Petitioner contends IPS should not have allowed Student to ***, the Hearing Officer finds that Student's claim is not related to IEP implementation and lies in an area of the law outside her jurisdiction.⁵³

Petitioner also attempts to support Petitioner's position by relying on the testimony of the campus *** manager and arguing that—although ***.⁵⁴ This argument is not persuasive and is controverted by facts of this case. As an initial matter, Petitioner mischaracterizes relevant testimony. The *** manager testified that she is responsible for supervising IPS ***. She does not supervise *** and is not familiar with what policies and procedures might be in place for those students. This does not mean such policies and procedures do not exist. Second, even if it was true that IPS did not have policies or procedures in place for students who *** and need assistance, that issue falls outside the Hearing Officer's authority. The Hearing Officer has no jurisdiction over generally- applied campus policies and procedures. Rather, she is concerned with whether this particular student received a FAPE, and the evidence shows that Student was receiving the *** assistance required by Student's IEP during *** on October ***, 2021.

⁵³ See Tr. at 57, 109-12 (Ppetitioner stated that Petitioner believed *** was a violation of Student's IEP and resulted in an unsafe environment); Pet. Closing Brief at 17-18; 34 C.F.R. § 300.507(a).

⁵⁴ Pet. Closing Brief. at 18.

Petitioner did not meet Petitioner's burden of showing a significant or substantial failure to implement Student's IEP, and as discussed more fully above, Student received academic and non-academic benefits from Student's program.

F. Learning Environment

In order to prevail on a claim for a hostile, unsafe learning environment under the IDEA, Petitioner must show that IPS engaged in harassing conduct that was so severe, persistent, and/or pervasive it created a hostile environment and interfered with Student's ability to receive a FAPE. *T.K. and S.K. ex rel. K.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 28, 317 (S.D.N.Y. 2011). Although Petitioner did not address this issue in Petitioner's Closing Brief, Parent testified at the hearing that Parent believed IPS created a hostile environment by allowing Student to *** on October ***, 2021, and by over-reporting Student's behavior to Parent. Neither basis articulated by Petitioner has merit. A claim against the school for alleged mistakes or errors in judgment that Petitioner contends put Student in harm's way arises out of tort law—not special education. Moreover, there is no evidence in the record to show that behavior reports provided by IPS to Parent amounted to harassing conduct, or that those reports somehow interfered with Student's ability to receive a FAPE.⁵⁵ Indeed, the third *Michael F.* factor contemplates the type of communication complained of here. Accordingly, Petitioner failed to meet Petitioner's burden of showing that IPS created a hostile, unsafe learning environment.

⁵⁵ In fact, the record reflects that there is only one text from a teacher to Parent during the relevant timeframe related to Student's behavior. Tr. at 118; JE 24.

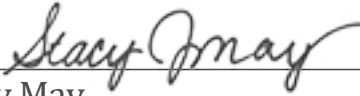
VI. CONCLUSIONS OF LAW

1. The burden of proof in this case was on Petitioner. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Petitioner did not meet Petitioner's burden of showing that IPS failed to timely and appropriately reevaluate Student in all areas of suspected disability. *Id.*; 34 C.F.R. § 300.303(a).
3. Petitioner did not meet Petitioner's burden of showing that IPS denied Student a FAPE by failing to conduct an FBA and develop a BIP during the relevant timeframe. *Schaffer*, 546 U.S. at 62; 34 C.F.R. § 300.324(a)(2)(i).
4. Petitioner did not meet Petitioner's burden of showing that IPS denied Student a FAPE by failing to provide appropriate related services, including speech and occupational therapy and counseling and psychological services. *Schaffer*, 546 U.S. at 62; *Rowley*, 458 U.S. at 188; *Michael F.*, 118 F. 3d at 248, 253.
5. Petitioner did not meet Petitioner's burden of showing that IPS denied Student a FAPE by failing to appropriately implement Student's IEP during the relevant timeframe. *Schaffer*, 546 U.S. at 62; *O.W.*, 961 F.3d at 796; *Bobby R.*, 200 F. 3d at 349.
6. Petitioner did not meet Petitioner's burden of showing that IPS denied Student a FAPE by failing to provide a safe, non-hostile learning environment. *Schaffer*, 546 U.S. at 62.
7. IPS provided Student a FAPE during the relevant time period, and the April 2021 and 2022 IEPs were reasonably calculated to address Student's needs in light of Student's unique circumstances. *Andrew F.*, 580 U.S. at 399, 403; *Rowley*, 458 U.S. at 188, 203-04.

VII. ORDER

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

Signed April 22, 2024



Stacy May
Administrative Law Judge

VIII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this case 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).