

SOAH Docket No. 701-23-25205.IDEA  
TEA Docket No. 350-SE-0823

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**Before the  
State Office of Administrative  
Hearings**

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**STUDENT, BY NEXT FRIENDS PARENT AND PARENT,  
Petitioner**

**v.**

**LAMAR CONSOLIDATED INDEPENDENT SCHOOL  
DISTRICT,  
Respondent**

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**DECISION OF THE HEARING OFFICER**

**I. STATEMENT OF THE CASE**

\*\*\* (Student), by next friends \*\*\* and \*\*\* (Parents and, collectively, Petitioner), brings this action against the Lamar Consolidated 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 main issue in this case is whether Respondent denied Student a free, appropriate public education (FAPE).

The Hearing Officer concludes the District provided Student a FAPE during the relevant time period, and Student's individualized education program (IEP) was reasonably calculated to address Student's needs in light of Student's unique circumstances.

## **II. DUE PROCESS HEARING**

The due process hearing was conducted February 13-14, 2024. The hearing was recorded and transcribed by a certified court reporter. Mark Whitburn with Whitburn and Pevsner, P.L.L.C. represented Petitioner. Parents also attended the due process hearing.

Amy Tucker with Rogers Morris and Grover, L.L.P. represented Respondent. \*\*\*, Executive Director of Special Education for the District, attended the hearing as the party representative.

The parties prepared 20 joint exhibits which were all admitted. Petitioner offered five exhibits and all five were admitted without objection. Respondent offered four exhibits, and all four were admitted without objection. Petitioner called as witnesses \*\*\*, a District special education teacher, who testified about Student's education at \*\*\*; \*\*\*, \*\*\*, Assistant Principal, who testified about Student's education at \*\*\*; \*\*\*, a District special education teacher, who testified about

Student's education at \*\*\* in the fall of 2022; \*\*\*, a District school psychologist, who testified about the functional behavior assessment she completed; \*\*\*, Student's Parent, who testified about Student's education; \*\*\*, a therapist with \*\*\*, who testified about the clinical therapy services she provided Student; and \*\*\*, a Director with \*\*\*, who testified about Student's private placement. Respondent called as witnesses \*\*\*, a District school counselor, who testified about the counseling services provided to Student; \*\*\*, a District \*\*\* teacher, who testified about Student's education at \*\*\*; and \*\*\*, an expert in school psychology, evaluations, and educational programming, who testified about District evaluations of Student. Both parties filed written closing briefs in a timely manner on March 26, 2024. The Decision in this case is due April 12, 2024.

### **III. ISSUES**

Petitioner raised the following IDEA issues from the 2021-22 and 2022-23 school years for decision in this case:

1. Evaluation: Whether the District failed to evaluate Student in all areas of suspected disability and need;
2. FAPE: Whether the District denied Student a FAPE by failing to provide appropriate behavioral services; and
3. FAPE: Whether the District denied Student a FAPE by failing to provide appropriate social skills services.

#### **IV. REQUESTED RELIEF**

Petitioner requested the following items of relief:

1. Private placement for Student at District expense;
2. Private supplemental services at District expense; and
3. Any other appropriate relief.

#### **V. FINDINGS OF FACT**

1. Student is a \*\*\*-year-old \*\*\* grader who is a resident of the District. Student is eligible for special education services in the categories of specific learning disability, emotional disturbance, and other health impairment (OHI) for attention deficit hyperactivity disorder (ADHD).<sup>1</sup>
2. Student is currently placed, at Parents' expense, at \*\*\*, a residential program in \*\*. \*\* is a therapeutic boarding school that provides therapeutic and educational services to children with behavior challenges.<sup>2</sup>
3. The District completed an initial full individual evaluation (FIE) for Student on February \*\*\*, 2020. The FIE included formal cognitive ability testing; formal oral language testing; formal achievement testing; formal oral reading testing; and review of an OHI report completed by Student's physician.<sup>3</sup>
4. The FIE evaluators determined Student had an OHI for ADHD that impacts Student's educational performance. They determined Student did not, at that time, have an emotional or behavioral condition impacting Student's educational performance. Student was assessed to have general intellectual ability in the very low range. Student has significant educational and developmental deficits in the areas of

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<sup>1</sup> Joint Exhibit (JE) 9 at 17-19.

<sup>2</sup> Petitioner Exhibit (PE) 4; Transcript (TR) at 352.

<sup>3</sup> JE 10 at 1-2.

reading comprehension, reading fluency, math calculation, and math problem solving.<sup>4</sup>

5. The FIE evaluators concluded Student displayed a significant pattern of strengths and weaknesses indicating a specific learning disability in the areas of reading comprehension, reading fluency, math problem solving, and math calculation.<sup>5</sup>
6. Following completion of the initial FIE, the District convened an admission, review, and dismissal (ARD) committee meeting for Student on March \*\*\*, 2020. The ARD committee determined Student was eligible for special education services in the categories of specific learning disability for reading comprehension, reading fluency, math calculation and math problem solving, and OHI for ADHD.<sup>6</sup>
7. The ARD committee established Student's present levels of academic achievement and functional performance (present levels) as cognitive deficits in comprehension knowledge, short term memory, processing speed, fluid reasoning, and visual spatial relations. Student also had academic deficits in reading comprehension, reading fluency, math calculation, and math problem solving.<sup>7</sup>
8. The ARD committee provided Student with 45 minutes per day of resource special education instruction for math; 45 minutes per day of resource special education instruction for \*\*\*; 20 minutes per day of inclusion support in \*\*\*; and 20 minutes per day of inclusion support in \*\*\*. The ARD committee developed a \*\*\* comprehension IEP goal; a math problem solving IEP goal; a \*\*\* comprehension IEP goal; and a \*\*\* communication IEP goal.<sup>8</sup>

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<sup>4</sup> JE 10 at 3-4, 18.

<sup>5</sup> JE 10 at 18-19.

<sup>6</sup> JE 8 at 1.

<sup>7</sup> JE 8 at 3.

<sup>8</sup> JE 8 at 5, 16-17.

9. Student was home schooled for the 2020-21 school year, reenrolling in the District for the 2021-22 school year.<sup>9</sup>

### **2021-22 School Year**

10. Student was \*\*\*.<sup>10</sup>
11. On September \*\*\*, 2021, the District convened Student's ARD committee for Student's annual meeting. The ARD committee continued Student's eligibility in the areas of specific learning disability for reading comprehension, reading fluency, math calculation, and math problem solving, and OHI for ADHD.<sup>11</sup>
12. The ARD committee placed Student at \*\*\*, Student's home campus, with 100 minutes per day of special education resource services for \*\*\*; 50 minutes per day of special education resource math services; 20 minutes per day of inclusion support for \*\*\*; and 20 minutes per day of inclusion support for \*\*\*. The ARD committee developed one \*\*\* reading comprehension IEP goal; one math problem solving IEP goal; one \*\*\* reading comprehension IEP goal; and one \*\*\* reading comprehension IEP goal.<sup>12</sup>
13. At the meeting, Parents requested a functional behavior assessment to address new behavioral concerns. The District agreed to conduct the functional behavior assessment and obtained written parental consent to do so at the meeting.<sup>13</sup>
14. Following Student's \*\*\*, Student was withdrawn from school in the District by Parents to address Student's \*\*\*

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<sup>9</sup> JE 7 at 6; JE 12 at 5.

<sup>10</sup> JE 12 at 5; JE 16 at 9.

<sup>11</sup> JE 7 at 4.

<sup>12</sup> JE 7 at 8, 43-44.

<sup>13</sup> JE 7 at 17, 24.

\*\*\*. Student attended \*\*\* until re-enrolling in the District on March \*\*\*, 2022.<sup>14</sup>

15. On March \*\*\*, 2022, the District convened Student's ARD committee to discuss Student's return to school. The District proposed conducting the previously agreed to functional behavior assessment. However, Parents indicated the assessment was not necessary because Student's behavior had improved. It was the consensus of the ARD committee that Student's behavior had improved since returning to school and no changes were needed to the IEP or services.<sup>15</sup>
16. On April \*\*\*, 2022, the District convened Student's ARD committee to conduct a manifestation determination review. The ARD committee reviewed an incident from \*\*\*, 2022, during which Student \*\*\*.<sup>16</sup>
17. The ARD committee determined Student's conduct was not directly or substantially related to Student's disabilities of specific learning disability and OHI. According to the ARD committee, Student's conduct was not directly or substantially related to Student's ADHD, because Student \*\*\*. The ARD committee also determined the conduct was not the direct result of the District failing to implement the IEP.<sup>17</sup>
18. The ARD committee concluded the conduct was not a manifestation of Student's disability and recommended a 45-day placement in a disciplinary setting. The ARD committee also determined a functional behavior assessment should be completed.<sup>18</sup>
19. Parents appealed the decision to place Student for 45 days in a disciplinary setting. On appeal, the District determined it was in Student's best interest to

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<sup>14</sup> TR at 304-305.

<sup>15</sup> JE 6 at 12.

<sup>16</sup> JE 5 at 11.

<sup>17</sup> JE 5 at 12.

<sup>18</sup> JE 5 at 11, 13; TR at 143-147.

remain at \*\*\* for the rest of the school year, instead of being placed in the disciplinary setting.<sup>19</sup>

20. On May \*\*\*, 2022, the District convened Student's ARD committee to plan for completion of a functional behavior assessment. The District indicated it would complete the functional behavior assessment before the end of the 2021-22 school year.<sup>20</sup>
21. The District was unable to complete a functional behavior assessment during the 2021-22 school year. In the fall and winter, Student was not in school and Parents declined the assessment when Student returned. Following the new request for the assessment in May of 2022, Student was placed in \*\*\*, an inappropriate setting for determining the functions of Student's behavior at school.<sup>21</sup>
22. During the 2021-22 school year, the District disciplined Student for \*\*\*.<sup>22</sup>
23. Student passed all of Student's classes for the 2021-22 school year with \*\*\*.<sup>23</sup>

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<sup>19</sup> JE 4 at 13; TR at 143, 145, 147.

<sup>20</sup> JE 4 at 13.

<sup>21</sup> JE 20 at 3, 5; TR at 152, 429-430.

<sup>22</sup> JE 5 at 11; JE 17 at 1.

<sup>23</sup> JE 12 at 2.

**2022-23 School Year**

24. Student was \*\*\*.<sup>24</sup>
25. The District completed Student's functional behavior assessment on October \*\*\*, 2022. Student's problem behaviors were identified as noncompliance with teacher directives, elopement from class, and verbal aggression. Student was assessed to engage in Student's problem behaviors when Student was engaged in nonpreferred activities, in a nonpreferred class, or provoked by other students. It was hypothesized that Student engaged in the behaviors to gain attention, gain a desired activity, and avoid an activity.<sup>25</sup>
26. The District school psychologist prepared the functional behavior assessment based upon anecdotal information from District staff and one observation of Student. The functional behavior assessment was completed over a short period of time in October of 2022 and did not include frequency behavior data.<sup>26</sup>
27. On October \*\*\*, 2022, the District convened Student's ARD committee for Student's annual meeting. The ARD committee documented Student's present levels as cognitive weaknesses in comprehension knowledge, fluid reasoning, short- term working memory, processing speed, and visual spatial relations; academic deficits in reading comprehension, reading fluency, math calculation and math problem solving; cognitive strengths in long-term retrieval and visual processing; academic strengths in basic reading skills and written expression; and difficulty staying on task, requiring frequent redirection.<sup>27</sup>
28. The ARD committee adopted one \*\*\* reading comprehension IEP goal; one math problem solving IEP goal; one math calculation IEP goal; one \*\*\* problem solving IEP goal; one \*\*\* reading comprehension IEP

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<sup>24</sup> JE 19 at 17-18.

<sup>25</sup> JE 3 at 23-24.

<sup>26</sup> TR at 188-189, 286-288.

<sup>27</sup> JE 3 at 6-7.

goal; one \*\*\* reading comprehension IEP goal; one behavior goal addressing elopement; one behavior goal addressing noncompliance; and one behavior goal addressing verbal interactions.<sup>28</sup>

29. The ARD committee placed Student at \*\*\*, Student's home campus, with 50 minutes per day special education resource reading; 50 minutes per day special education resource math; general education \*\*\* with 20 minutes per day of inclusion support; general education \*\*\* with 20 minutes per day of inclusion support; general education \*\*\*; and general education for \*\*\* per day.<sup>29</sup>
30. The ARD committee reviewed the functional behavior assessment and determined Student needed a behavior intervention plan. The behavior intervention plan targeted noncompliance with teacher directives, elopement from class without permission, and verbal aggression. Strategies to address the behaviors included check for understanding of the assigned task; reminders of behavior expectations; rewards for prosocial behavior; provide a pass to leave class with a set number of uses; allow frequent class breaks; provide clear, positive directives; and label and describe appropriate behavior when observed.<sup>30</sup>
31. The ARD committee completed a review of existing evaluation data (REED) and determined a psychological evaluation was needed. As part of the REED, the ARD committee continued Student's OHI eligibility for ADHD and Student's specific learning disability eligibility in the areas of reading comprehension, reading fluency, math calculation, and math problem solving.<sup>31</sup>
32. In the fall of the 2022-23 school year, Student had \*\*\* disciplinary referrals. Student's conduct included \*\*\*.<sup>32</sup>

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<sup>28</sup> JE 3 at 58-61.

<sup>29</sup> JE 3 at 8.

<sup>30</sup> JE 3 at 21-22.

<sup>31</sup> JE 3 at 29-31.

<sup>32</sup> JE 9 at 11; JE 17.

33. Student was \*\*\*.<sup>33</sup>
34. In January of 2023, Student had \*\*\* disciplinary referrals. Conduct included \*\*\*.<sup>34</sup>
35. While Student was placed at \*\*\* for the 2021-22 school year and part of the 2022-23 school year, the District provided Student's counseling services. Student visited the counselor daily, leaving class when Student required the support. The counselor provided Student with emotional support and worked with Student on social skills. During this time, the District also provided staff support during transitions between classes and less structured times, such as \*\*\*.<sup>35</sup>
36. On January \*\*\*, 2023, the District convened Student's ARD committee to discuss a more structured program to address Student's behavior. The ARD committee placed Student in the \*\*\* (\*\*\*) program at \*\*\* with special education resource \*\*\* for 50 minutes per day; special education resource math for 50 minutes per day; general education \*\*\* with 20 minutes per day of inclusion support; general education \*\*\* with 20 minutes per day of inclusion support; general education \*\*\*; and \*\*\*.<sup>36</sup>
37. The \*\*\* program provides behavior support in all classes for students in the program. Students in the program incrementally earn the ability to attend more classes outside of the \*\*\* classroom as they demonstrate appropriate behavior. \*\*\* staff escort students in the program from class to class and periodically monitor their class behavior.<sup>37</sup>

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<sup>33</sup> JE 19 at 6, 10; Petitioner Exhibit (PE) 1 at 23.

<sup>34</sup> JE 9 at 11; JE 17.

<sup>35</sup> TR at 117-118, 216-218, 384, 393.

<sup>36</sup> JE 2 at 5, 7, 17.

<sup>37</sup> TR at 20, 410.

38. The District completed a reevaluation of Student on February \*\*\*, 2023. The reevaluation included a review of the 2020 FIE; review of the OHI letter from Student's physician; review of the October \*\*\*, 2022 functional behavior assessment; behavior rating scales; and youth emotional self-inventory. The evaluators concluded Student meets eligibility criteria for an emotional disturbance. Student has difficulty \*\*\*.<sup>38</sup>
39. The evaluators concluded Student continues to meet criteria for an OHI for ADHD and have a specific learning disability in reading comprehension, reading fluency, math calculation, and math problem solving.<sup>39</sup>
40. On April \*\*\*, 2023, the District convened Student's ARD committee to review the recently completed evaluation. The ARD committee determined Student meets eligibility criteria for an emotional disturbance. The ARD committee also determined the placement and services in the \*\*\* program at \*\*\* continued to be appropriate.<sup>40</sup>
41. Student was out of school from April \*\*\*, 2023 in part for a \*\*\*.<sup>41</sup>
42. On May \*\*\*, 2024, Student was \*\*\*.<sup>42</sup>
43. The District \*\*\* staff supported Student in Student's classes during the spring of 2023 and Student successfully participated in Student's classes. Student passed \*\*\*

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<sup>38</sup> JE 9 at 1-2, 15-16, 19.

<sup>39</sup> JE 9 at 17-18.

<sup>40</sup> JE 1 at 11.

<sup>41</sup> JE 18 at 1; JE 19 at 1; TR at 57, 68.

<sup>42</sup> JE 18 at 1; TR at 57, 68.

classes for the 2022-23 school year, receiving \*\*\*, and \*\*\*.<sup>43</sup>

44. While at \*\*\* and in the \*\*\* program, Student had \*\*\* disciplinary incidents. Student was \*\*\*.<sup>44</sup>
45. Student engages in aggressive behavior at home, and Parents struggle with Student's supervision in the home.<sup>45</sup>
46. In the summer of 2023, Parents decided to place Student at the \*\*\* enrolling Student in September of 2023. Parents first informed the District of the decision to privately place Student after they filed the complaint in this case.<sup>46</sup>

## **VI. DISCUSSION**

### **A. BURDEN OF PROOF**

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

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<sup>43</sup> TR at 81-82; JE 12 at 1.

<sup>44</sup> JE 18 at 1.

<sup>45</sup> Respondent Exhibit (RE) 3 at 4-5.

<sup>46</sup> PE 3; TR at 334.

reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

**B. DUTY TO PROVIDE A 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), .201; Tex. Educ. Code § 29.001.

The District is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student’s unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student’s IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 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 appropriate in light of the child’s circumstances.” *Andrew F.*, 580 U.S. at 403.

**C. APPROPRIATE EVALUATION**

Petitioner alleges the District failed to evaluate Student in all areas of suspected disability and need. In particular, Petitioner contends the District should have evaluated Student for an emotional disturbance much sooner than it did. The District’s obligation was to ensure the reevaluation of Student occurred when it

determined Student's educational needs warranted such a reevaluation. 20 U.S.C.

§ 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1). A school district must also conduct a reevaluation at least once every three years, unless the school district and the student's parent agree it is unnecessary. 34 C.F.R. § 300.303(b)(2).

Here, the relevant question is whether Student's "educational needs" necessitated an evaluation for an emotional disturbance prior to fall of 2022. Given Student's \*\*\* during the 2021-22 school year, the District was well aware Student was struggling emotionally. However, the record does not support a conclusion that a reevaluation, including an evaluation for emotional disturbance, prior to fall of 2022 was necessitated by Student's educational needs.

The District had completed an evaluation in 2020 that comprehensively assessed Student, resulting in eligibility for special education services under specific learning disability and OHI for ADHD. This initial FIE, which Parents did not challenge, concluded Student did not have an emotional disturbance that impacted Student's educational needs. A reevaluation was then due in 2023, unless Student demonstrated an educational need sooner. The District put in place Student's initial IEP in March of 2020. Shortly thereafter, the COVID-19 global pandemic shut down in-person education services in Texas and then, for the 2020-21 school year, Student was homeschooled. Student returned to the District for the 2021-22 school year. After only one month of school, Student was withdrawn from the District until March \*\*\*, 2022. Following Student's reenrollment, the District convened an ARD committee meeting on March \*\*\*, 2022, during which Parents, as well as District committee members indicated Student had improved behavior and the program in

place for Student was appropriate. Thus, as of the end of March of 2022, there was no indication Student's educational needs warranted a reevaluation.

During the last two months of the 2021-22 school year, Student experienced behavioral issues at school. Student was again \*\*\* at the beginning of the 2022-23 school year. When Student returned to school in October of 2022, the District convened Student's ARD committee, conducted a REED, and determined psychological assessments were necessary. Between Student's initial FIE in 2020 and the District's determination to conduct psychological testing in October of 2022, Student only attended school for approximately \*\*\* months. During this limited attendance time, Student's educational needs did not clearly indicate additional evaluations were necessary.

Moreover, under the IDEA, a student's category of eligibility is not determinative of the services Student receives. IDEA does not concern itself with labels, but with whether a student is receiving a FAPE. *Lauren C. bnf Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 377 (5th Cir. 2018). The IDEA does not even require that eligible students be classified by their particular disability. 20 U.S.C. § 1412(a)(3)(B). Here, with Student determined eligible for special education and receiving services since 2020, Petitioner failed to prove beginning an evaluation for emotional disturbance prior to October of 2022 was necessitated by Student's educational needs or would have impacted the provision of a FAPE to Student.

#### **D. Appropriate Program**

A hearing officer applies a four-factor test to determine whether a school district's program is appropriate and 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 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).

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**

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, .320,.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 District’s obligation when developing Student’s IEP is to consider Student’s strengths, Student’s parent’s concerns for enhancing Student’s education, results of the most recent evaluation data, and Student’s academic, developmental, and functional needs. 34

C.F.R. § 300.324(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 behavior intervention plan. 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).

The evidence showed that the District completed a comprehensive FIE in March of 2020, determining Student has a specific learning disability and an OHI for ADHD. As a result of the COVID-19 global pandemic and a year of homeschooling, Student attended school in-person in the District less than \*\*\* over the subsequent year and a half. When Student returned for instruction for the 2021-22 school year, the District developed an IEP that addressed Student’s reading and math learning disabilities through resource instruction in both areas, as well as targeted IEP goals. The District also provided Student with inclusion support in general education \*\*\* and \*\*\*, supplementing this support with IEP goals in these areas. Throughout the relevant time period for this case, the District maintained the services necessary to address Student’s learning disabilities and Petitioner does not challenge these portions of Student’s program.

Petitioner does, however, challenge the District's individualized services to address Student's behavior. As explained previously, during the 2021-22 school year, Student did not consistently attend school in the District until March of 2022. While attending, Student was provided counseling services, which Student regularly accessed and which provided Student with significant behavioral support. The District also supported Student during transitions and unstructured times. Student did continue to struggle with Student's behavior at this time. However, Student's struggles were not daily and were not consistent throughout this time period. In March of 2022, when Student returned to the District, Student was not having behavior issues. In contrast, in April and May of 2022, Student had issues with verbal and physical aggression. To address these struggles, the District convened Student's ARD committee, proposed completing a functional behavior assessment, and added more structure to Student's placement.

With regards to the functional behavior assessment, Petitioner challenges both the timeliness and comprehensiveness of this assessment. As for the timeliness, the record establishes any delays in completing the functional behavior assessment were the result of Student's inconsistent attendance and not attributed to failings by the District. The functional behavior assessment was agreed to after Student's first month of school in the 2021-22 school year. Then, Student promptly withdrew from school, not to return until March of 2022. In March, Parents indicated Student's behavior had improved significantly, prompting the ARD committee to determine the functional behavior assessment was not necessary at that time. In May of 2022, after Student again began to struggle with Student's behavior, the ARD committee determined the functional behavior assessment was needed. However, at that time, the District and Parents agreed the assessment should not be conducted presently,

because Student was in a form of in-school suspension for the remainder of the school year. When the 2022-23 school year began, Student was again not in attendance. When Student returned to school in October of 2023, the District promptly made arrangements to complete the functional behavior assessment. Under this timeline, the District completed the functional behavior assessment as soon as reasonably practicable.

As for the comprehensiveness of the functional behavior assessment, Petitioner has several criticisms of the procedures the District used when conducting the assessment. In particular, Petitioner criticizes the amount of time spent by the evaluator, the lack of frequency behavior data, the lack of input from teachers, and the number of observations conducted. Petitioner, however, presented no evidence challenging the results of the assessment. Moreover, the evidence in the record supports the conclusion that the functional behavior assessment identified Student's most inappropriate behaviors of noncompliance with teacher directives, elopement from class, and verbal aggression. The record also supports the conclusion that Student engages in the behaviors to gain attention, gain a desired activity, and avoid an activity.

Turning to Student's program in the 2022-23 school year, the discussion again begins with Student's attendance. In fall of 2022, Student only attended school in the District during the months of \*\*\*, returning to school in \*\*\* of 2023. Student struggled behaviorally in \*\*\*, prompting the District to convene Student's ARD committee and recommend the \*\*\* program. Student moved to the \*\*\* program in February of 2023 and remained in this placement for the rest of the school year. The \*\*\* program was appropriate for

Student's needs, providing behavioral support in class, during transitions, and when additional support was required. The evidence showed, while in the \*\*\* program, Student was successful in academic classes and had fewer behavioral issues. The record reflects only three disciplinary referrals during this time. Additionally, Student rarely missed academic instruction as the result of behavior issues and was not reported to be regularly disrupting class.

In sum, the District took into account Student's needs, Parents' input, the results of the assessments, and developed an individualized IEP and program reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *Andrew F.*, 580 U.S. at 403.

## **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 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 least restrictive environment, consideration must be given to:

1. Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
2. 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).

Here, throughout both the 2021-22 and 2022-23 school years, the District educated Student on a general education campus with supplemental supports and services. As was required to address Student's specific learning disabilities in the areas of reading comprehension, reading fluency, math calculation, and math problem solving, Student was placed in special education resource classes for reading and math. To support Student in the general education setting, the District provided inclusion support in general education classes, counseling services, support during transitions, and the services of the \*\*\* program. With these supplemental services, Student was successful in Student's academic courses. While Student's behavior was not perfect, Student did maintain a level of behavior consistent with continued placement on a general education campus. The evidence demonstrated the District's placement represents Student's least restrictive environment.

Petitioner's proposed placement at the \*\*\* is on the far end of the placement continuum, representing the most restrictive placement setting. The evidence presented does not support a conclusion that Student's educational needs require such a restrictive placement completely isolated from Student's nondisabled peers.

### **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).

In this case, the District convened multiple ARD committee meetings during the relevant time period to review and adjust Student's program. Parents were active participants in all of these meetings. The District initiated a functional behavior assessment at parental request and aborted Student's 45-day disciplinary placement when Parents contested the appropriateness of the placement. The record also demonstrated District staff were in regular communication with Parents and sought a collaborative relationship with Parents. 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.* Here, the evidence supports a conclusion the District worked in good faith to develop a program in collaboration with the key stakeholders, including Parents.

#### **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.*, 703 F.3d at 813-14. Petitioner contends Student failed to benefit from Student's program because Student continued to have behavioral struggles at school. However, the District's obligation is to ensure Student receives overall educational benefit from Student's program, and not to remediate Student's disability, as Petitioner requests. *Klein Indep. Sch. Dist. v. Hoover*, 690 F.3d 390, 398 (5th Cir. 2012) (rejecting the argument that a student's IEP was insufficient because it failed to enable him to write and spell better where he earned passing marks and advanced from grade to grade). Here, Student has ADHD and an emotional disturbance, resulting in significant behavior challenges. The District's obligation is to address Student's needs in the educational setting, and not entirely remediate Student's behavior challenges. The evidence presented demonstrated Student made academic and non-academic benefit from the District's program. Student passed all of Student's classes in 2021-22, and all but one class, in 2022-23. Moreover, Student passed these classes despite missing large chunks of both school years. In addition, Student maintained a level of appropriate school behavior consistent with continued placement on a general education campus. While receiving the support of the \*\*\* program, Student was able to receive instruction in Student's academic classes with few incidents and was not regularly disruptive to the academic instruction. Given Student's significant behavior challenges, this represents appropriate non-academic benefit for Student.

**E. FAPE CONCLUSION**

The District developed a program for Student that was reasonably calculated to provide Student's educational benefit based upon Student's unique needs. *Andrew F.*, 580 U.S. at 399, 403. Student's IEP and program were developed using District evaluations and placed Student in Student's least restrictive environment. Parents, as well as key stakeholders from the District, provided input to develop Student's program and Student showed academic and nonacademic benefit. A review of the overall educational program shows Student was provided a FAPE and made progress with the program as it was developed and implemented. *Michael F.*, 118 F.3d at 253; *Hovem*, 690 F. 3d at 391.

**F. PRIVATE PLACEMENT**

Petitioner must meet a two-part test in order to secure reimbursement from the District for Student's private placement. First, Petitioner must prove the District's proposed program was not appropriate under the IDEA. Second, Petitioner must prove private placement is appropriate. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993). Petitioner failed to meet the burden of proving the District's program was not appropriate under the IDEA. Therefore, Petitioner is not entitled to private placement at District expense.

**VII. CONCLUSIONS OF LAW**

1. The burden of proof is on Petitioner as the party challenging the appropriateness of the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District 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. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 403 (2017).

3. The District met its obligation to conduct necessary and timely evaluations of Student. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303.
4. Petitioner is not entitled to private placement at District expense. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cty. v. Carter*, 510 U.S. 7 (1993).

### **ORDER**

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

**Signed April 10, 2024.**



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Steve Elliot

Presiding Administrative Law Judge

### **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), 516; 19 Tex. Admin. Code § 89.1185(n).