

SOAH DOCKET NO. 701-21-3041.IDEA
TEA DOCKET NO. 231-SE-0721

STUDENT, B/N/F PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
CONROE INDEPENDENT SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent or, together with Student, Petitioner), brings this action against the Conroe 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 the District first denied and later failed to offer Student a free appropriate public education (FAPE) during the relevant time period. The hearing officer concludes that the District provided Student with a FAPE during the 2020-21 school year and offered Student a FAPE in the least restrictive environment (LRE) for the 2021-22 school year.

II. LEGAL REPRESENTATION

Petitioner was represented throughout this litigation by attorney Jason Gallini. Respondent was represented in this litigation by attorney Amy Tucker with Rogers, Morris & Grover, LLP.

III. DUE PROCESS HEARING

The due process hearing was conducted through the Zoom videoconferencing platform on October 13, 2021. The hearing was recorded and transcribed by a certified court reporter. Petitioner

continued to be represented by Jason Gallini. In addition, Student's mother attended the due process hearing.

Respondent was represented by its legal counsel, Amy Tucker. In addition, Dr. ***, Director of Special Education, participated as a party representative for the District. Both parties timely filed written closing briefs. The Decision in this case is due on December 15, 2021.

IV. ISSUES

A. Petitioner's Issues

Petitioner confirmed that the relevant time period in this matter is the 2019-20, 2020-21, and 2021-22 school years. Petitioner also identified the following issues for hearing:

FAPE:

1. Whether the District denied Student a FAPE during the 2019-20 and 2020-21 school years by failing to provide an appropriate individualized education program (IEP) that included necessary related and supplementary services and supports;
2. Whether the District failed to offer Student an appropriate IEP that included necessary related and supplementary supports and services in the LRE for the 2021-22 school year; and
3. Whether the District denied Student a FAPE by failing to develop and implement an appropriate behavior intervention plan (BIP) during the relevant timeframe.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Petitioner's Complaint and contends that it both provided Student with a FAPE and offered Student a FAPE in the LRE during the relevant time period. Respondent denies that Petitioner is entitled to any of the relief requested

and asserts the statute of limitations as an affirmative defense.

V. REQUESTED RELIEF

Petitioner requests the following items of relief:

- A. Placement in a blended *** classroom with targeted, trained staff support for the 2021-22 school year, as well as mutually agreed-upon specialized instruction time in the *** classroom to target skill acquisition and communication;
- B. Placement in a blended *** classroom for the 2021-22 school year with dedicated aide support and pull-out services in the *** setting, as needed, to prepare Student for participation in a *** classroom;
- C. Amendment of the IEP proposed for the 2021-22 school year to address Student's individual needs;
- D. Training for staff who work with Student on implementation of the IEP;
- E. A Board Certified Behavior Analyst (BCBA) to:
 - 1. Perform a functional behavior analysis (FBA) and assist in creating an appropriate BIP;
 - 2. Conduct assessments determined to be appropriate following completion of the FBA to assess Student's academic, communication, and functional skill levels;
 - 3. Calculate rates of distractibility, inattention, and staff engagement levels based on observation opportunities in order to make recommendations to the Admission, Review, and Dismissal (ARD) committee related to level of staff support necessary;
 - 4. Design a behavior reduction and skill acquisition program for Student based upon the identified deficit areas and make goal and service recommendations to the ARD committee;
 - 5. Train staff working with Student, including administrators, in the behavior and skill acquisition program to competency and in the consistent implementation of Student's BIP;

6. Develop a data collection system and train staff in the accurate notation of data, the definitions for target behaviors, and graphing the data collected in order to explain it to the ARD committee and/or make adjustments as needed;
 7. Assist staff in matching deficit areas from assessments to required grade level standards;
 8. Attend, as a participating member, any ARD committee meeting that involves behavioral needs and in updating skill acquisition goals through the 2021-22 school year with the ARD committee determining continued need after that time; and
 9. Train the parent in the strategies to use at home so that Student can generalize skills.
- F. Compensatory services for the denial of FAPE alleged during the relevant timeframe in the following areas:
1. Academics;
 2. Functional/Behavior Skills;
 3. Social/Emotional Development; and
 4. Communication.
- G. One-year subscription to *** for purposes of communication and pre-academics; and
- H. Such other and further relief as the hearing officer deems just and appropriate.

VI. FINDINGS OF FACT

1. Student is currently *** years old and was born with ***. Student's *** resolved, in part, by the time Student was about *** years old. Student is loving and energetic and likes to ***, and spend time with Student's family.¹

¹ Transcript (Tr.) at 26-27; Respondent's Exhibit (RE) 10 at 5, 20-21.

2. The District conducted a Full and Individual Evaluation (FIE) of Student in the spring of 2019 when Student was *** years old. The written report was completed on April ***, 2019, and an addendum was added on May ***, 2019, to take into account additional information provided by Parent. Based on the results of the FIE, the District evaluators determined that Student met the criteria for a student with a *** disability and a speech impairment. Student's ARD committee met on May ***, 2019, and determined Student to be eligible for special education and related services to address Student's needs arising out of an *** disability in the area of *** disability and a speech impairment.²
3. For the 2019-20 school year, the ARD committee recommended that Student receive services in a self-contained, special education *** classroom for three hours per day, five days per week. The ARD committee also recommended speech and language therapy, occupational therapy, physical therapy, and transportation. Student was successful in *** but could be easily distracted by Student's environment. Student required multiple verbal and visual cues to stay on task; reference to a visual schedule; and physical, visual, and verbal cuing by an adult.³
4. The District closed its campuses to in-person instruction on March 16, 2020, due to COVID-19. The ARD committee convened remotely on May ***, 2020, to consider Student's programming for the 2020-21 school year. The committee developed goals and accommodations for Student and recommended speech and language therapy, occupational therapy, physical therapy, and transportation, but it did not indicate that Student had a BIP or that one was necessary. Behavior needs can be addressed in a number of ways, including behavior goals in an IEP, conditions on academic goals, through accommodations, and/or with a BIP.⁴
5. Based on Student's success in the *** setting, the ARD committee recommended placement for the 2020-21 school year in a blended *** classroom. The blended *** classroom is a general education setting which may include students with disabilities along with non-disabled peers and can include up to twenty-two students. Students are required to transition several times per day from one activity to another and to be able to follow directions and keep up with the fast-paced nature of the instruction provided.⁵

² RE 8 at 1-2; RE 10 at 30-32.

³ RE 7 at 3; RE 8 at 17; Tr. at 89.

⁴ RE 7 at 1-2,4, 6-14, 22; Tr. at 183.

⁵ RE 7 at 19; Tr. at 89, 139.

6. The ARD committee developed seven IEP goals for the 2020-21 school year. Six of these goals included behavioral components or supports. Goal One required Student—with visual and verbal cuing, as well as ***, and the use of ***—to demonstrate appropriate group behaviors. Goal Two required Student to follow verbal two-step directions with no more than one verbal or visual prompt. Goal Three was predicated on the use of adult facilitation and peer and/or adult modeling in order to help Student improve Student’s conversation skills. Goal Five required minimal distractions while measuring Student’s ability to ***. Goal Six focused on Student’s motor skills while Goal Seven addressed Speech Therapy and Language. Both goals six and seven contemplated the need for verbal and visual prompting.⁶
7. After reviewing the IEP, Parent emailed the school with several concerns. A revision ARD meeting was held on May ***, 2020, to address those concerns. After review and revision of the IEP, the ARD committee meeting ended in agreement.⁷
8. When school resumed in the fall of 2020, many students elected to begin the year with remote instruction, and there were few students in Student’s blended *** classroom. Student showed early signs of success under these circumstances. However, as other students began to return to in-person instruction and the class size increased, Student began to display a significant increase in aggressive behaviors towards staff and peers. These behaviors included—among other things—***. As a result of these behaviors, Student was unable to independently participate in the general education *** classroom without an adult beside Student to re-direct, prompt, model, initiate, and complete tasks, as well as facilitate Student’s safety and the safety of others.⁸
9. On November ***, 2020, Student’s teacher suggested a BIP to Parent and indicated that it would be based on an FBA. Parent verbally consented to moving forward with an FBA on or about November ***, 2020. Parent and Student’s teacher continued to communicate with one another regarding Student’s behavior through December 2020. Parent contacted the District’s diagnostician sometime in December 2020 to request an FBA.⁹
10. In an effort to meet Student’s needs, the District provided *** training for staff members on interventions to help redirect Student when Student engaged in inappropriate behaviors and provided facilitators to model how to use those interventions and strategies in the

⁶ RE 6 at 5-12; Tr. at 160-64.

⁷ RE 6 at 1-3, 24.

⁸ RE 5 (Supp.) at 2; RE 9 at 3;Tr. at 90.

⁹ RE 4 at 27; RE 14 at 21-32; Tr. at 61, 64, 66.

general education blended classroom. The facilitators also helped restructure the blended classroom to better meet Student's needs. The classroom received support and training from approximately five different District professionals during the 2020-21 school year.¹⁰

11. Student's teachers communicated and collaborated with one another regarding Student's behavior and communicated with Parent regularly on this issue. The campus also held conferences with Parent to discuss her concerns, and her concerns were documented and discussed during ARD committee meetings. Often these discussions resulted in adjustments to Student's program.¹¹
12. The District convened an ARD committee meeting on January ***, 2021, to consider revisions to Student's IEP and conduct a review of existing evaluation data (REED). Student's updated present levels of academic achievement and functional performance (PLAAFP) reflected minimal progress by Student in regulating Student's behaviors and attending to activities in the general education classroom: Student showed minimal to no progress during the second ***-week grading period on Goals One (demonstrating appropriate group behaviors), Two (following directions), and Five (***). Based on teacher observations and data collection, Student's behaviors served the following functions: seeking attention, dealing with sensory processing difficulties, and coping with overstimulation. Student's behaviors were also attributed to lack of impulse control.¹²
13. The following strategies were implemented to address Student's behavior in light of the functions identified: ***.¹³
14. Staff also used positive reinforcements to encourage appropriate behavior, including ***.¹⁴
15. The January ***, 2021 ARD committee's review of existing evaluation data indicated that an FBA was necessary. The committee also recommended changes to Student's schedule of services for the remainder of the school year, including 115 minutes per day in the *** classroom to address academic skills. Parent was represented by an advocate at this meeting, and they expressed concern that the change in the schedule of services would affect the accuracy of the FBA. The District indicated that the FBA would be based on teacher reports, data, and student observations in a variety of settings. The ARD committee

¹⁰ Tr. at 175-76.

¹¹ RE 1 at 6-7; RE 2 at 4-6; RE 3 at 26-28; RE 4 at 26 ;Tr. at 94, 96, 124, 177.

¹² RE 5 (Supp.) at 2-4.

¹³ *Id.* at 3.

¹⁴ *Id.*

agreed that the FBA would be due by April ***, 2021, and the meeting ended in agreement.¹⁵

16. The District completed the FBA on April ***, 2021. In addition to Parent information, the FBA documented information from Student's teachers. Student's primary problematic behaviors included ***. The function of these behaviors was to escape classroom demands, gain attention, or get something Student wanted. Student's behavior was more problematic in the general education classroom than the special education setting. Student required significantly more prompting in the general education environment—requiring eight prompts in a twenty-minute period in the general education classroom but only three in a forty-minute period in the special education setting. A BIP was recommended.¹⁶
17. The District convened Student's annual ARD committee meeting on April ***, 2021, to review the FBA and proposed BIP. The BIP included the same behavior strategies, supports, and interventions implemented by Student's teachers and staff during the 2020-21 school year. The ARD committee also reviewed and accepted new academic, social/emotional, motor, and speech goals. Based on the data collected, the District recommended that—for Student's *** year—Student receive instruction in ***, and part of *** in the special education *** classroom (a self-contained setting). The District further recommended Student receive in-class support in the general education classroom for the remainder of *** and other subjects. The self-contained setting is less stimulating than the blended general education classroom, is slower-paced, has a lower student-to-teacher ratio, and offers Student the opportunity to practice desired behaviors and new skills and to generalize them across settings. Parent, however, preferred a general education classroom with in-class support for Student's core academics. The ARD committee also recommended extended school year (ESY) services and transportation as a related service. The ARD committee meeting ended in disagreement over Student's proposed placement.¹⁷
18. The ARD committee reconvened on May ***, 2021. The District continued to recommend the *** program. Parent, however, wanted Student to be retained and repeat the blended *** program. The ARD committee meeting once again ended in disagreement.¹⁸
19. By the end of the 2020-21 school year, Student mastered the following goals: Goal Three aimed at improving Student's conversational skills; Goal Four requiring Student to ***;

¹⁵ *Id.* at 6, 8, 10.

¹⁶ RE 9 at 1-6, 8-9.

¹⁷ RE 4 at 7-16, 23-24, 26-28, 31-33, 35-42; RE 5 (Supp.) at 3; Tr. at 97, 155-56.

¹⁸ RE 3 at 26-31.

and Goal Six which measured Student's ability to ***. Student also mastered Student's speech therapy goal for ***).¹⁹

20. Consistent with a new law permitting parents to retain their children, the District offered Parent the opportunity to retain Student in the *** program for the 2021-22 school year. Another ARD committee meeting was convened on August ***, 2021, to develop an IEP based on Student's retention. IEP goals were reviewed and accepted, and Parent requested a new FBA by a BCBA. The District agreed to Parent's request, and the committee set a due date of October ***, 2021, for the new FBA. Meanwhile, the District also recommended an *** classroom for *** instruction as well as in-class support in a general education setting for ***. The meeting, however, ended in disagreement as to the least restrictive environment for Student.²⁰
21. The ARD committee reconvened on September ***, 2021, but the meeting again ended in disagreement over the appropriate mix of general and special education for Student.²¹
22. The District provided Parent with Notice of Procedural Safeguards and Prior Written Notice at Student's annual ARD committee meeting on May ***, 2019, and at each annual meeting since then as well as the revision ARD committee meeting on January ***, 2021.²²

VII. DISCUSSION

Petitioner asserts that the District failed to timely develop and implement a BIP for Student and that its failure to do so resulted in a denial of FAPE. Petitioner further argues the District's recommendation that Student receive special education services and supports for a portion of Student's school day in the *** classroom during the 2021-22 school year violates the LRE requirement of the IDEA.

¹⁹ RE 11 at 1-14.

²⁰ RE 2 at 1, 4-5, 8-17, 20-21.

²¹ RE 1 at 1, 4-8, 24.

²² RE 3 at 32; RE 4 at 29; RE 5 (Supp.) at 11; RE 6 at 25; RE 7 at 25; RE 8 at 22.

The District contends, on the other hand, that—prior to completion of the FBA and the BIP in April 2021—Student’s behavior needs were being addressed through IEP goals, accommodations, and targeted classroom strategies and interventions. The District also maintains that the level of support provided in the *** classroom is necessary in order for Student to receive an educational benefit.

A. Burden of Proof

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in a due process hearing is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1991). Accordingly, Petitioner bears the burden of showing that the District failed to provide Student a FAPE during the 2019-20 and 2020-21 school years and offer Student a FAPE for the 2021-22 school year.

B. The Statute of Limitations in Texas

Under the IDEA, 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 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); 34 C.F.R. § 300.507(a)(1)-(2).

The two-year limitations period may be more or less than two years if the state has an explicit time limitation for requesting a due process hearing under the IDEA. 20 U.S.C. §1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2). Texas has adopted an alternative time limitation, and state regulations require a parent to request a hearing within one year of the date he or she knew or should have known of the

alleged action(s) forming the basis of the complaint. 19 Tex. Admin. Code § 89.1151(c). The limitations period begins to run when a party knows, or has reason to know, of an injury. *Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995).

There are two exceptions to this rule. The timeline does not apply if the parent was prevented from filing a due process complaint due to:

- (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or
- (2) the public education agency's withholding of information from the parent that was required by 34 C.F.R. § 300.1, *et seq.* to be provided to the parent.

19 Tex. Admin. Code § 89.1151(d).

Petitioner filed the Complaint in this case on July 30, 2021, and the District contends that any claims arising prior to July 30, 2020, are time-barred. Petitioner did not introduce any evidence to suggest that either one of the two exceptions to the statute of limitations applies. In addition, the evidence shows that the District provided Parent with Notice of Procedural Safeguards and Prior Written Notice at all times required by the IDEA during the relevant timeframe. The evidence thus supports the reasonable inference that Parent had either actual or constructive knowledge of her procedural rights, including the right to file a due process complaint. *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918, 944-46 (5th Cir. 2008). Therefore, the one-year statute of limitations bars any claims for relief by Petitioner accruing prior to July 30, 2020, including all claims related to the 2019-20 school year.

C. Duty to Provide FAPE

Once a student is determined to be eligible for special education, an IEP must be developed. The District's mandate to design and deliver an IEP falls under its broader statutory obligation to

furnish a FAPE that emphasizes special education and related services designed to meet Student's unique needs and prepare Student for further education, employment, and independent living. 20 U.S.C. § 1400(d); *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 208 (5th Cir. 2019). The District is responsible for providing, at public expense, the specially designed instruction and support services necessary to meet Student's unique needs and confer an educational benefit. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

D. FAPE

1. The Four-Factor Test

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

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

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).

Even after the Supreme Court's 2017 decision in *Endrew 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. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018) (citing *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000-01 (2017)). 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).

a. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, the school district must have in effect an IEP at the beginning of each school year that includes a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize the student's potential, the school district 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). The basic inquiry in this case is whether the 2020-21 and 2021-22 IEPs were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *Andrew F.*, 137 S. Ct. at 999.

When developing an IEP, a 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 Student's academic, developmental, and functional needs. 34 C.F.R. 300.324(a)(1). For a student whose behavior impedes Student's learning and that of others, the school district must also consider positive behavioral interventions and supports and other behavioral strategies to address that behavior. 34 C.F.R. § 300.324(a)(2)(i); *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir.2012).

i. 2020-21 IEP

The evidence in this case demonstrates that the IEP developed for the 2020-21 school year satisfied the legal requirements set forth above. The program included seven goals to address Student’s social/emotional, academic, motor, and speech therapy needs as well as numerous accommodations to address Student’s behavior needs. The IEP also provided Student with occupational therapy, physical therapy, and transportation and recommended a blended *** classroom in the general education setting with in-class support for ***.

The evidence further indicates that Student showed early signs of success in the fall of 2020. However, as other students returned to in-person instruction on campus and the class size grew, Student began to struggle. By the end of the second grading period, Student showed minimal—if any—progress in regulating Student’s behaviors and attending to activities in the general education classroom. In response, the District convened an ARD committee meeting on January ***, 2021, and recommended both an FBA and that Student receive a portion of Student’s instruction in the same type of setting in which Student had been successful the previous year—an *** classroom with a lower student-teacher ratio, slower paced instruction, and an opportunity for Student to practice and generalize new skills.

Petitioner contends, however, that Parent verbally indicated her desire to move forward with an FBA as early as November 2020 and that the District’s delay in obtaining her consent until the January ***, 2021 ARD committee meeting deprived Student of a FAPE. Case law does not support Petitioner’s position. In *J.B. b/n/f Lauren B. v. Frisco Independent School District*, the Eastern District of Texas recognized that failure to conduct an FBA does not necessarily result in a denial of a FAPE, particularly when the student’s IEP contains behavioral support. 528 F. Supp. 3d 614, 626 (E.D. Tex. 2021) (citing *Rosaria M. v. Madison City Bd. of Educ.*, 325 F.R.D. 429, 439-40 (N.D. Ala. 2018); *R.E. v. New York City Dep’t of Educ.*, 694 F.3d 167, 190 (2d Cir. 2012)). In this case, Student’s 2020-21 IEP included the same type of extensive behavioral support deemed

sufficient to overcome a challenge to the school district's provision of a FAPE in *J.B.* More specifically, Student's IEP included behavior goals, conditions on other goals related to behavior supports, accommodations to meet Student's behavior needs, and the implementation and documentation of purposeful classroom behavior strategies, supports, and interventions.

Based on the evidence presented, the hearing officer concludes that the District's delay in obtaining consent for the FBA did not result in the denial of a FAPE to Student because the program in place while the District completed the FBA and developed a BIP addressed Student's behavior needs. The hearing officer further concludes that the 2020-21 IEP was individualized on the basis of assessment and performance.

ii. 2021-22 IEP

The evidence supports a similar conclusion with respect to the IEP proposed for the 2021-22 school year. The proposed IEP recommended ESY services and included goals, objectives, related services, supports, and accommodations to address Student's needs. The District also initially recommended that Student receive instruction in ***, and part of *** in a special education *** classroom with in-class support in the general education classroom for the remainder of *** and other subjects. Parent objected to this placement and requested that Student be retained in ***. Based on recent legislation permitting parents to retain their child in the wake of school closures and disruptions caused by the pandemic, the District granted Parent's request.

In light of Student's retention, the ARD committee met to revise Student's IEP and recommend a program appropriate for the *** setting. In addition to the accommodations, related services, and supports identified in the previous version of the 2021-22 IEP, the committee collaborated and reached agreement on eight goals to address Student's needs in ***, social/emotional, behavior, speech therapy and language. The ARD committee also agreed to have a BCBA conduct a new FBA at Parent's request.

The parties, however, once again failed to reach an agreement on placement when the District—consistent with its proposed *** program that contemplated instruction for part of the day in a *** setting—recommended the *** classroom for *** instruction. The District’s recommendation was based on assessment data and data on Student’s performance.

The hearing officer concludes that the 2021-22 IEP—including the District’s recommendation as to the appropriate mix of instructional settings necessary to meet Student’s needs—satisfies the first *Michael F.* factor.

b. 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 LRE requirement. 34 C.F.R. § 300.114(a)(2)(i)-(ii).

While Petitioner has not challenged Student’s placement during the 2020-21 school year, Petitioner contends that the District’s proposed placement of Student in an *** classroom for part of the day during the 2021-22 school year fails to comport with the LRE requirement. To resolve this issue, we must consider whether Student can be satisfactorily educated in the general education setting with the use of supplemental aids and services. And if not, we must determine whether the placement proposed by the District mainstreams Student to the maximum extent appropriate. *Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

i. Whether Student can be Satisfactorily Educated in the General Education Setting with the Use of Supplemental Aids and Services.

The determination of whether a student with a disability can be educated in a general education setting 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.* The following factors are relevant to this determination:

- the school district’s efforts to modify the general education curriculum and provide accommodations to meet the student’s individual needs and whether the school district’s efforts to do so are more than “mere token gestures”;
- 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. at 1050.

With respect to the nature and severity of Student’s disability, the evidence establishes that Student is eligible for special education with an *** disability in the area of *** disability and a speech impairment in language development. In its efforts to meet Student’s needs arising out of these disabilities in the general education *** classroom, the District provided Student with intensive support and numerous accommodations. These efforts were more than “mere token gestures.” Student’s classroom included both a certified general education and a special education teacher, and an adult was always in close proximity to Student. Among other things, Student’s teachers placed visual cues throughout the classroom and used individual cuing cards to prompt appropriate behavior. They *** and encourage on-task behavior. They reviewed expectations and directions with visual supports. They provided *** to address Student’s oral sensory needs. And finally, they implemented positive reinforcements to encourage appropriate behavior. Campus staff also received support and training from approximately five different District professionals during the 2020-21 school year.

Notwithstanding these intensive supports, Student continued to struggle in the general education setting, demonstrating minimal progress in regulating Student's behaviors and attending to activities and making little to no progress on three of Student's seven IEP goals. Moreover, Student's presence in the general education classroom was having a negative impact on the environment as a result of Student's behavior, which was disruptive to the class, aggressive towards staff and other students, and negatively affected Student's ability to interact with Student's peers.

The weight of credible evidence thus supports the conclusion that Student cannot be appropriately educated in a general education setting full-time.

Petitioner nonetheless contends that the LRE for Student is in the general education classroom with a 1:1 paraprofessional. The evidence does not support Petitioner's position. The record reflects that Student benefits from a smaller classroom with a lower student-to-teacher ratio, slower-paced instruction, and opportunities for repetition of newly-learned skills and that the larger, often over-stimulating environment of a general education classroom currently presents obstacles to Student's ability to regulate Student's behaviors and make progress towards Student's IEP goals.

ii. Whether the Placement Proposed in the 2021-22 IEP Mainstreams Student to the Maximum Extent Appropriate.

Having determined that education in the regular classroom cannot be achieved satisfactorily, we ask next whether Student has been mainstreamed to the maximum extent appropriate. *Id.* at 1050. The District has recommended that Student receive instruction in a mix of both general and special education settings. More specifically, it proposes that Student receive instruction in *** in the *** classroom with in-class support provided in the general education classroom for ***. This combination of settings allows Student to receive focused instruction in

those areas where Student struggles while also ensuring participation in the general education environment with non-disabled peers.

In sum, the evidence establishes that the District's proposed placement for the 2021-22 school year mainstreams Student to the maximum extent appropriate and therefore provides the least restrictive setting for Student.

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

The IDEA contemplates a collaborative process between the school district and the parents. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), *aff'd*, 909 F.3d 754 (5th Cir. 2018). As key stakeholders, parents, school administrators, and teachers familiar with the student's needs should all be involved in the "highly coordinated and collaborat[ive] effort" of developing a student's IEP. *Michael F.*, 118 F.3d at 253. The IDEA, however, does not require a school district, in collaborating with a parent, to accede to all of the parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). Absent a 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 establishes that services were provided in a coordinated, collaborative manner by key stakeholders during the 2020-21 school year and throughout the development of the 2021-22 IEP. Student's teacher communicated with Parent on a regular basis during the 2020-21 school year, providing detailed emails and descriptive daily behavior documentation. Parent was an active member of the ARD committee and provided input into the development of Student's IEPs. Parent expressed various concerns in ARD committee meetings during the relevant timeframe. Those concerns were addressed and often resulted in adjustments to Student's IEP. Teachers collaborated with one another and District staff on Student's behavior and appropriate

strategies, interventions, and supports. District staff also worked with teachers on the physical layout of the blended *** classroom to better meet Student's needs.

In short, a preponderance of the evidence demonstrates that services were provided in a coordinated, collaborative manner by key stakeholders during the relevant timeframe. Petitioner failed to show that the District excluded Parent in bad faith or refused to listen to her.

d. Academic and Non-Academic Benefits

Whether a student received academic and non-academic benefit from a special education program is one of the most critical factors in any analysis regarding the provision of FAPE. *R.P.*, 703 F.3d at 812-13. The evidence in this case establishes that Student mastered or made progress towards IEP goals related to conversational skills; *** during the relevant timeframe. The record thus reflects that Student received academic and non-academic benefits from Student's 2020-21 IEP.

By the end of the school year, however, Student's behavior was still interfering with Student's ability to make progress towards other goals, including ***, demonstrating appropriate group behaviors, and following directions. Based on Student's lack of progress towards these goals and data that reflected the need for a smaller, slower-paced, more individualized special education classroom, the District recommended that Student receive services in both a general and special education setting. The hearing officer concludes that the District's placement recommendation and proposed 2021-22 IEP was reasonably calculated to provide Student with meaningful academic and non-academic benefit.

Based on the four *Michael F.* factors, the evidence establishes that the District provided a FAPE to Student under the 2020-21 IEP and offered Student a FAPE in the LRE under the 2021-22 IEP.

VIII. CONCLUSIONS OF LAW

1. 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); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127 (5th Cir. 1993).
2. Any claims for relief by Petitioner accruing prior to July 30, 2020, including all claims related to the 2019-20 school year, are barred by the one-year statute of limitations. 20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a)(1)-(2); 19 Tex. Admin. Code § 89.1151(c).
3. Petitioner did not meet Petitioner's burden of proving that Respondent denied Student a FAPE during the 2020-21 school year by failing to provide Student an IEP that was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188, 203-04; *Andrew F.*, 137 S. Ct. at 999.
4. Petitioner did not meet Petitioner's burden of proving that Respondent denied Student a FAPE by failing to develop and implement an appropriate BIP during the 2020-21 school year. *Schaffer*, 546 U.S. at 62; 34 C.F.R. § 300.324(a)(2)(i).
5. Petitioner did not meet Petitioner's burden of proving that Respondent failed to offer Student an appropriate IEP that included necessary related and supplementary supports and services in the LRE for the 2021-22 school year. *Rowley*, 458 U.S. at 188, 203-04; *Andrew F.*, 137 S. Ct. at 999; *Daniel R.R.*, 874 F. 2d at 1048.
6. Petitioner did not meet Petitioner's burden of proving entitlement to the relief requested. *Schaffer*, 546 U.S. at 62; *O.W.*, 961 F.3d at 800.

IX. ORDER

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

SIGNED December 15, 2021.

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DECISION OF THE HEARING OFFICER

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Stacy May
Special Education Hearing Officer
For the State of Texas