

SOAH Docket No. 701-23-23266.IDEA
TEA Docket No. 333-SE-0723

Before the State Office of Administrative Hearings

STUDENT, by next friends * and ***,
Petitioner**

v.

**Collinsville Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friends *** and *** (***) and, collectively, Petitioner), brings this action against the Collinsville 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 Student was denied a free and appropriate public education (FAPE). The Hearing Officer concludes the

District provided Student a FAPE by developing and implementing a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs.

II. DUE PROCESS HEARING

The due process hearing was conducted via Zoom videoconference December 5 and 6, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by Jordan McKnight from the Law Offices of Jordan McKnight. *** also attended the due process hearing.

Respondent was represented by Rebecca Bradley and Angelica Sander with Abernathy, Roeder, Boyd & Hullett. In addition, ***, the District Superintendent, and ***, the Director of Special Education for the Grayson County Special Education Cooperative, attended the hearing as party representatives.

The parties offered 38 joint exhibits, which were all admitted. Petitioner offered 28 exhibits, which were all admitted without objection from Respondent. Petitioner offered the testimony of Student's ***, who testified about Student's needs and *** interactions with District personnel; Superintendent ***, who testified about Student's services in the District and communications between *** and District personnel; and ***, a District special education teacher, who testified about the instruction delivered to Student.

Respondent offered 28 exhibits, which were all admitted over any objection by Petitioner. Respondent offered the testimony of ***, a diagnostician with the Grayson County special education cooperative, who testified about Student's evaluation; ***, a District special education and dyslexia teacher, who testified about Student's dyslexia instruction and Student's reading ability; Ms. ***, , who testified about the special education services delivered to Student; and ***, the Executive Director of Special Populations for the *** Independent School District, who testified about her review of Student's education records.¹

Both parties timely filed written closing briefs January 22, 2024. The Decision in this case is due February 5, 2024.

III. ISSUES

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

1. FAPE: Whether Respondent denied Student a FAPE during the relevant time period;
2. FAPE: Whether Respondent denied Student a FAPE by failing to develop an appropriate individualized education program (IEP);
3. FAPE: Whether Respondent denied Student a FAPE by failing to implement Student's IEP;

¹ Respondent listed Ms. *** as an expert on the witness disclosures and she was allowed to observe the entire hearing to facilitate her expert testimony. However, Respondent failed to proffer Ms. *** as an expert.

4. FAPE: Whether Respondent denied Student a FAPE by failing to ensure a safe and nonhostile educational environment; and
5. Parental Participation: Whether Respondent denied Student's *** the right to participate meaningfully in the decision making process.

Petitioner requested the following items of relief:

1. An independent education evaluation (IEE) in all areas of suspected disability and need;
2. Compensatory education and related services;
3. An order requiring Respondent to conduct staff training on reporting, preventing, and investigating bullying;
4. An order requiring Respondent to develop a bullying safety plan for Student;
5. An order requiring Respondent to conduct staff training on Student's bullying safety plan and IEP;
6. Reimbursement for education and diagnostic expenses incurred by ***; and
7. Any other appropriate relief.

IV. FINDINGS OF FACT

Student's Educational Background

1. Student is a *** year old, *** grader who attends ***. Student is eligible for special education services under the category of specific learning disability for written expression, basic reading, reading

- fluency, reading comprehension, math calculation, and math problem solving. Student also is identified as a student with dyslexia.²
2. Student and Student's *** live in the District with ***. *** are Student's legal guardians and are the educational decision- makers for Student.³
 3. The District completed an initial full individual evaluation (FIE) of Student on November ***, 2018. The FIE evaluators assessed Student using formal achievement testing; formal oral language evaluation; formal cognitive ability testing; vision and hearing screening; classroom observations; teacher information; and parent input.⁴
 4. The FIE evaluators determined Student had deficits in math calculation and math problem solving and was slightly below average in reading comprehension. Student was assessed to have average cognitive abilities in some areas with a weakness in fluid reasoning. A full scale IQ for Student was not calculated as part of the evaluation. The evaluators determined Student exhibited a pattern of strengths and weaknesses, displaying fluid reasoning well below average together with Student's other cognitive abilities assessed as average. The FIE evaluators concluded Student met eligibility criteria for a specific learning disability.⁵
 5. On December ***, 2020, the District completed a dyslexia evaluation. Student was assessed to have difficulty with phonological processing and to have an impairment in phonological memory. Student displays difficulty with reading comprehension, spelling, handwriting, and written expression. The evaluators concluded Student displays characteristics of dyslexia.⁶
 6. On December ***, 2020, the District conducted a review of existing evaluation data (REED). Student was reported to behave well at school and

² Joint Exhibit (JE) 14.

³ Transcript (TR) at 37.

⁴ JE 16 at 121.

⁵ JE 16 at 128 and 130; JE 17 at 135.

⁶ JE 18 at 144.

to display no emotional or behavioral concerns requiring assessment. The REED included teacher observations; review of the 2018 formal intellectual assessment; review of the 2018 formal adaptive behavior testing; cross-battery analysis of intellectual functioning; review of the dyslexia evaluation; and review of the formal academic achievement testing. Student had deficits in math calculation, math problem solving, and is below average in reading comprehension. Student continued to meet special education eligibility criteria for a specific learning disability in the areas of written expression, basic reading, reading fluency, reading comprehension, math calculation, and math problem solving. Student also was identified as a student with dyslexia.⁷

7. In spring of 2021, Student did not pass the State of Texas Assessments of Academic Readiness (STAAR) in **. Student did make expected progress on the ** component and accelerated progress on the ** component compared to Student's prior year scores.⁸

2021-22 School Year

8. On August **, 2021, the District conducted an admission, review, and dismissal (ARD) committee meeting for Student solely to discuss Student's STAAR results. The ARD committee developed a plan for delivering 30 hours of instruction to Student in **to address Student's failure to meet passing standards in these areas.⁹
9. On September **, 2021, the District convened Student's ARD committee for Student's annual meeting. Student's present levels of academic achievement and functional performance (present levels) were identified as: ability to read grade level text with 100% accuracy; strength in understanding and analyzing informational text; weakness in understanding literary text; strength in participating in classroom discussions; weakness in spelling for written expression; and difficulty in all areas of math computation. The ARD committee developed two reading goals addressing comprehension,

⁷ JE 19 at 151 and 163.

⁸ JE 23; TR at 135.

⁹ JE 1 at 2.

one written expression goal addressing spelling, and two math goals addressing computation.¹⁰

10. Student was placed in general education for all classes with 90 minutes per week of special education inclusion support for ***, 90 minutes per week of special education inclusion support for ***, and 65 minutes per day of dyslexia services. Student's schedule included general education ***. Student's IEP included contingent, remote, direct special education services in the event of COVID-related school closures.¹¹
11. As part of the September ***, 2021 meeting, the ARD committee again completed a REED. At ***' request, the District initiated updated cognitive and achievement testing for Student.¹²
12. On November ***, 2021, the District completed formal cognitive and achievement testing. Student was assessed to have a full scale IQ of *** and a composite achievement score of ***, placing Student in the very low range on both measures. Student's cognitive abilities and academic achievement level impact Student's ability to make academic progress relative to Student's same-aged peers and will lead to a gap between Student and Student's same-aged peers growing each year.¹³
13. On December ***, 2021, the District convened Student's ARD committee to review the recently completed assessments. The ARD committee determined no changes were necessary to the IEP based upon the new cognitive and achievement testing results.¹⁴
14. On May ***, 2022, the District convened Student's ARD committee to review STAAR results and to develop an accelerated instruction plan to address Student not meeting passing standards in spring of 2022 in ***

¹⁰ JE 13 at 68, 70-71, and 79.

¹¹ JE 13 at 68, 70-71, and 79.

¹² JE 20 at 166 and 172.

¹³ JE 21 at 179-80; TR at 326-27 and 335-36.

¹⁴ JE 4 at 19-20.

- ***. Because Student was unable to attend summer school, the committee developed a plan for delivering 30 hours of instruction in *** and 30 hours of instruction in *** after school during the fall of 2022.¹⁵
15. Student made progress on Student's IEP goals during the 2021-22 school year.¹⁶

Communication Plan

16. On August ***, 2022, Superintendent *** sent *** a letter establishing a communication plan for *** in the District. The letter directed *** to direct all their communication with the District to Superintendent *** and to communicate with him only via email. Other communication attempts, including phone calls to District personnel, emails to District personnel other than the Superintendent, and handwritten notes to District personnel, would not receive a response from the District.¹⁷
17. The letter stated that the frequency of the phone calls, emails, and campus visits by Student's *** is monopolizing the time of District employees and is hindering employees from effectively completing assigned tasks, teaching students, and communicating with other students. Superintendent *** indicated the monopolization of time is well documented from prior school years. He instituted the communication plan after reportedly receiving complaints from District personnel about the frequency of ***'s communication.¹⁸
18. The letter further stated campus staff would contact *** directly to schedule ARD committee meetings, teacher conferences, or disciplinary actions. *** was allowed to visit campus for scheduled meetings and events open to all parents. If *** interrupted the instructional

¹⁵ JE 7 at 35-36; Respondent's Exhibit (RE) 20; TR at 229.

¹⁶ JE 22; JE 24; TR at 388-89 and 393-95.

¹⁷ Petitioner's Exhibit (PE) 28.

¹⁸ PE 28; TR at 237-38.

environment while on campus, the letter indicated further repercussions could occur.¹⁹

19. After sending the communication plan, Superintendent *** clarified that *** was to contact him to obtain information from teachers and other campus personnel. He would then obtain the requested information and provide it to ***.²⁰
20. After the communication plan was instituted, ***, when contacting the District, primarily communicated with Superintendent *** via email. *** did also periodically contact Student's teachers directly and receive responses from them directly.²¹

2022-23 School Year

21. On August ***, 2022, the District convened Student's ARD committee for Student's annual meeting. The ARD committee identified Student's strengths in reading as appropriate classroom behavior, working with other students, knowledge of informational texts, and spelling. Student's needs were identified as improvement in analysis of literary texts and staying caught up with Student's class work. Student's strengths in math were identified as completing work and knowledge of ***.²²
22. The ARD committee developed an *** goal addressing spelling, an *** goal addressing reading comprehension, a math goal addressing ***, and a *** goal addressing ***. Student was placed in general education for all classes with 46 minutes per day of general education dyslexia instruction, 90 minutes per week of special education inclusion support in ***, and 90 minutes per week of special education inclusion support for ***. Student's schedule included ***

¹⁹ PE 28.

²⁰ JE 29.

²¹ JE 34 at 304; PE 15; PE 21; TR at 139-41 and 435.

²² JE 14 at 89-90.

- class. Student's IEP included contingent, remote, direct special education services in the event of COVID-related school closures.²³
23. District special education teachers delivered the special education inclusion support outlined in Student's IEP with fidelity and ensured Student received the accommodations set forth in the IEP. A District special education and dyslexia teacher delivered dyslexia services as outlined in the IEP with fidelity.²⁴
24. On January ***, 2023, the District proposed an IEP amendment to have Student's semester final exam grades count only if the scores benefit Student's final grade. *** agreed to the IEP amendment.²⁵
25. In spring of 2023, Student did not pass the STAAR in ***.²⁶
26. Student mastered all of Student's IEP goals during the 2022-23 school year and received passing grades in all of Student's classes. Student can decode to read passages on grade-level but is unable to fully comprehend what Student has read.²⁷
27. Student participates in non-academic activities with Student's nondisabled peers and has friends at school.²⁸
28. The District provides access to student records and grades electronically through an online system. *** struggle using technology and efficiently accessing records for their grandchildren, including Student.²⁹

²³ JE 14 at 95-96, 103-04.

²⁴ TR at 268, 274, 287, and 387.

²⁵ JE 15.

²⁶ PE 2.

²⁷ RE 14; JE 27; TR at 401-02.

²⁸ TR at 288.

²⁹ TR at 85; JE 11.

Bullying Allegations

29. On January ***, 2023, Student alleged ***. On January ***, 2023, and January ***, 2023, Student alleged ***. Also on January ***, 2023, Student alleged ***. The District investigated all of the incidents alleged by Student. The District determined *** violated school rules and imposed discipline on *** for these incidents, but the specific consequences are confidential and could not be shared with ***.³⁰
30. In March 2023, the District investigated an allegation by *** that Student was the victim of bullying ***. The District determined *** violated school rules and were subject to discipline. The District conducted a formal bullying investigation and determined the incident did not constitute bullying, because no physical harm was experienced by Student, the actions were not severe, persistent, or pervasive, the incident did not disrupt the educational environment, and Student's rights were not infringed. On March ***, 2023, the District informed *** of the outcome of the bullying investigation.³¹

V. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *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

³⁰ RE 23; TR at 213-18, 224-25, 228, and 255-57.

³¹ JE 34 at 317; RE 23 at 105, 109-11, and 114; RE 25.

the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *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), 300.201; 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 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 PROGRAM

A hearing officer applies a four factor test to determine whether a school district's program for a particular student 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, 300.320, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student’s potential, the District must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The 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).

The evidence showed that the District developed a program for Student that addressed Student’s identified needs for specialized instruction in ***. Petitioner argues Student’s program was not individualized to meet Student’s identified needs because the program never resulted in Student passing the *** STAAR. However, with a full scale IQ of ***, Student is unlikely to ever meet that standard on the STAAR. Instead, Student’s program, as the District did here, was required to focus on addressing Student’s deficits and providing Student supports and accommodations in Student’s areas of need. The District completed timely FIEs and conducted an additional dyslexia evaluation when Student’s performance indicated unidentified needs may exist. The District’s evaluations identified

Student's deficits in ***.

To address the deficits revealed in the evaluations, the District provided inclusion support from special education teachers in *** and direct dyslexia instruction from a special education dyslexia teacher. Student's IEP goals focussed on Student's specific deficits of reading comprehension, math computation, and spelling. Given Student's low IQ and specific learning disabilities, Student is likely to continue to have difficulties with reading comprehension, math computation, and spelling, requiring on-going specialized instruction. Nevertheless, Student's program is appropriately individualized on the basis of assessment and performance. *V.P.*, 582 F.3d at 591 (noting that ultimately judges must consider a Student's IEP and not Student's test scores in determining whether a school district provided Student a FAPE).

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).

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, Student is being educated in the least restrictive environment. Student is educated in general education classes for all subjects. The evidence presented through the testimony of Student's teachers demonstrated this placement, which includes significant inclusion support in the general education setting, is successful and appropriate. Moreover, Student is included with nondisabled peers for ***. Student is being educated with Student's non-disabled peers to the maximum extent appropriate and being provided the special education services necessary to make the placement successful. 34 C.F.R. § 300.114(a)(2)(i), (ii).

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 evidence in this case raises questions about whether the District collaborated with ***. The District instituted a restrictive communication plan for ***. While the communication plan itself alleges Student's *** was monopolizing District employee's time and disrupting their ability to carry out their responsibilities, the District presented very little direct evidence at hearing to support these

allegations. Moreover, ***, ***, potentially giving them legitimate reasons to be in frequent communication with District personnel.

The question to be resolved relative to the communication plan is whether the District, by implementing the plan, restricted parental participation to such a degree that ***' ability to obtain pertinent information for effective participation in ARD committee meetings was unnecessarily limited. *Lynwood (CA) Unified School District*, 57 IDELR 82, 111 LRP 49278 (OCR, Western Division 2011). The evidence shows that *** participated in all of Student's ARD committee meetings during the relevant time period. In addition, a request from *** during an ARD committee meeting resulted in the District conducting cognitive and achievement testing. Petitioner did not show how the communication plan specifically limited ***' ability to participate in the decision-making for Student's program.

*** struggle with efficiently retrieving electronic information, which led to frustrations with access to educational materials. However, this type of struggle is the result of society's growing reliance upon digital media and not the communication plan. Petitioner failed to show the communication plan restricted ***' ability to obtain pertinent information to participate in ARD committee meetings. *Id.*

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. *White ex rel. White v. Ascension Parish Sch. Bd.*,

343 F.3d 373, 380 (5th Cir. 2003). While the communication plan instituted by the District appears to be restrictive, the District, acting in good faith, based upon valid and current evaluations, developed Student's program.

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 showed Student made progress on Student's IEP goals in both the 2021-22 and 2022-23 school years. In addition, Student made passing grades both school years and participated in multiple non-academic activities with nondisabled peers.

Petitioner alleges Student did not receive academic benefit under the program developed and provided by the District. To support this allegation, Petitioner points out Student has struggled on the STAAR in *** and continues to require the same types of specialized instruction for ***. However, disability remediation, as Petitioner requests, is not the goal of the IDEA. Rather, overall educational benefit is the IDEA's statutory goal. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 398 (5th Cir. 2012) (rejecting the argument that a student's IEP was insufficient because it failed to enable Student to write and spell better where Student earned passing marks and advanced from grade to grade). In this case, Student is receiving passing grades and making improvements in reading, math, and spelling. Under the program provided and implemented by the District, Student is obtaining overall academic and non-academic benefit.

D. BULLYING AS A DENIAL OF FAPE

A school district's failure to stop bullying may constitute a denial of a FAPE. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3d Cir. 2004); *Letter to Dear Colleague*, 113 LRP 33753 (OSERS Aug. 20, 2013). Bullying means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct. Conduct is bullying if it has the effect of or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property. Bullying must be sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student, materially and substantially disrupts the educational process, or infringes the rights of the victim at school. Tex. Educ. Code § 37.0832.

Petitioner alleges Student was a victim of bullying and that the District failed to appropriately address the allegations of bullying. When *** made an allegation that Student was a victim of bullying, the District immediately undertook an investigation. The District determined *** had violated school rules and should be disciplined ***. The District, however, did not find the allegations constituted bullying, because no physical harm was experienced by Student, the actions were not severe, persistent, or pervasive, the incident did not disrupt the educational environment, and Student's rights were not infringed. Petitioner failed to present evidence to show that any bullying occurred, contrary to the District's conclusion following its

investigation. In fact, Petitioner failed to mention the District's bullying investigation in their closing brief. The District also demonstrated it took steps to address Student's safety at school in January 2023. The District promptly investigated the January allegations and disciplined *** involved in the incidents with Student.

Bullying may lead to a denial of a FAPE if school personnel were deliberately indifferent, or failed to take reasonable steps, to prevent bullying that adversely affects or results in the regression of educational benefit or substantially restricts the student with a disability from accessing educational opportunities. *T.K. and S.K. ex rel K.K. v. New York City Dept. of Educ.*, 779 F. Supp. 2d 289, 316 (S.D. N.Y. 2011). The bullying need not be outrageous, but sufficiently severe, persistent, or pervasive to create a hostile environment for the student with a disability. Petitioner must show the bullying is likely to impact a student's opportunity for an appropriate education. *Id.* at 317.

Here, the evidence demonstrated the District was not deliberately indifferent to Student's safety. Rather, the District took prompt and reasonable steps to investigate bullying allegations and other allegations of misconduct against Student. Additionally, Petitioner presented no evidence indicating Student's educational opportunities were impacted by incidents at school. Petitioner failed to show Student was subject to a hostile environment from severe, persistent, or pervasive bullying. *Id.* To the contrary, Student participated in academic and non-academic activities at school and had positive relationships with peers. Petitioner failed to show Student was denied a FAPE as the result of any alleged bullying. *P.S.*, 381 F.3d at 194.

E. 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 whether a FAPE was denied by considering, under the third *Michael F.* factor, whether there was a significant or substantial failure to implement the IEP and whether, under the fourth *Michael F.* factor, 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 alleged in the Complaint and closing brief that the District failed to implement Student's IEP. However, Petitioner presented no evidence of any specific portions of the IEP that were not implemented. For example, Petitioner did not offer evidence pointing to dyslexia sessions that were missed, special education instruction not delivered, or accommodations not provided. In the closing brief, Petitioner argues the District failed to implement Student's IEP because *** were unaware of the specific teachers delivering the inclusion support and were not provided copies of the logs documenting the delivery of the inclusion services. However, the evidence at the hearing clearly established Student's IEP was implemented with fidelity with the special education services and accommodations delivered as detailed in the IEP. The District staff who delivered the inclusion support delivered unrefuted, credible testimony establishing the services detailed in Student's IEP were in fact delivered. Petitioner failed to present sufficient evidence to rebut this testimony.

At hearing, Petitioner attempted to allege an implementation failure based upon the COVID contingent services in the IEP, arguing these services were

intended to be delivered simultaneously with the in-person services in the IEP. However, the evidence established the virtual special education services were contingent services to address a potential COVID outbreak, and not simultaneous services as Petitioner alleged. To prevail on an implementation claim under the IDEA, Petitioner must have shown more than a *de minimis* failure to implement all elements of Student's IEP, and instead, must demonstrate that the District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). Here, Petitioner failed to show that the District did not implement significant or substantial portions of Student's IEP and, as detailed above, Student received appropriate benefit from Student's IEP.

F. FAPE CONCLUSION

The District developed a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs. *Andrew F.*, 580 U.S.at 399, 403. Student's program was developed using District evaluations and placed Student in Student's least restrictive environment. ***, as well as key stakeholders from the District, provided input to develop Student's program and Student made progress in reading, math, and spelling. 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.

VI. 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 IEPs were 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, 403 (2017).
3. Petitioner did not meet their burden to show Student was denied a FAPE as the result of bullying. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3d Cir. 2004).

ORDER

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

Signed February 5, 2024.



Steve Elliot
Special Education Hearing Officer
For the State of Texas

VII. NOTICE TO THE PARTIES

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