

SOAH Docket No. 701-23-25689.IDEA  
TEA Docket No. 354-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.**

**Houston Independent School District,  
Respondent**

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**DECISION OF THE HEARING OFFICER**

\*\*\* (Student), by next friends \*\*\* and \*\*\* (Parents, and collectively, Petitioner), brings this action against the Houston Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations.

The main issues in this case are whether the District denied Student a free, appropriate public education (FAPE) by failing to develop and implement an appropriate program and failing to ensure meaningful parental participation in the process. The Hearing Officer concludes the District procedurally and substantively complied with the IDEA and that Student's educational program was reasonably calculated to provide educational benefit in light of Student's circumstances.

## **I. DUE PROCESS HEARING**

The due process hearing convened December 12-13, 2023, via the Zoom videoconferencing platform. Petitioner was represented throughout this litigation by Michael O'Dell of the Law Office of Michael O'Dell. Parents, \*\*\* and \*\*\*, attended the hearing. Respondent was represented throughout this litigation by Amy Tucker of Rogers, Morris & Grover, LLP and \*\*\*, Assistant General Counsel for the District. \*\*\*, the principal of \*\*\*, attended as party representative for Respondent.

The parties offered joint and separately disclosed exhibits. Petitioner offered testimony of Parents and \*\*\*, a District licensed specialist in school psychology (LSSP). Respondent offered the testimony of \*\*\*, Special Education Services Coordinator; \*\*\*, \*\*\* teacher; \*\*\*, \*\*\* Teacher; \*\*\*, Special Education teacher; \*\*\*, \*\*\* teacher; \*\*\*, \*\*\* teacher;

\*\*\*, \*\*\* teacher; \*\*\*, \*\*\* teacher; \*\*\*, Special Education teacher; \*\*\*, Assistant Principal; and \*\*\*, Principal.

The parties filed timely written closing briefs. The Hearing Officer's decision is due on February 12, 2024.

## **II. ISSUES PRESENTED**

### **A. PETITIONER'S CLAIMS**

The relevant time period is the two-year period before the case was filed and includes the 2023-24 school year. Petitioner raised the following legal issues for decision:

1. Whether Respondent denied Student a FAPE by failing to implement Student's individualized education program (IEP), including:
  - a. the accommodations set forth in Student's IEP;
  - b. staff training requirements;
  - c. goal-related activities;
  - d. social skills training; and
  - e. in-home training.
2. Whether Respondent failed to ensure meaningful parent participation in the IEP development process by failing to appropriately consider

and respond to parental concerns and failing to schedule admission, review, and dismissal (ARD) committee meetings when Parents can attend.

3. Whether Respondent failed to provide Student occupational therapy (OT) services.
4. Whether Respondent failed to develop an appropriate IEP for Student for the 2023-24 school year.

**B. REQUESTED RELIEF**

Petitioner seeks the following items of relief:

1. An Order finding Student was denied a FAPE between December \*\*\*, 2020, and the date of filing due to Respondent's failure to appropriately implement Student's IEP in the areas of accommodations; working on Student's goals; social skills training; monitoring Student's computer usage and ensuring Student stays focused and pays attention in class; and parent training and in-home and community-based training (IH-CBT) as set forth in the IEP and Autism Supplement.
2. Compensatory educational services for the period in question.
3. An Order requiring Respondent to implement Student's IEP and Autism Supplement going forward with integrity and fidelity.
4. An Order requiring the case manager and school to improve communication with Parents and respond to questions and concerns in a timely fashion and with a detailed plan of action that is immediately put into effect; and requiring the case manager to provide frequent and timely updates on progress regarding the implementation of any plan of action.

5. Compensatory educational services for all missed IH-CBT and parent training for part of the 2020-21 school year, the 2021-22 school year, the 2022-23 school year, and the 2023-24 school year to the date a decision is issued; and an Order that all such services will be provided in accordance with the amount specified by the ARD committee on a timely basis.
6. An Order requiring Respondent to retrain all staff who come into contact with Student and Parents on the implementation of Student's accommodations, how to communicate with parents, and the social skills research-based program utilized with Student.
7. A finding that Student's current IEP in development is not being developed to provide Student with a unique and individualized educational program that is likely to provide a FAPE in compliance with the IDEA. Petitioner requests that the Hearing Officer order a facilitator to be appointed from Region IV to assist in the ARD process.
8. An Order requiring Respondent to convene an ARD committee meeting to reconsider the OT independent educational evaluation (IEE) and provide the necessary OT services recommended by the IEE; and requiring Respondent to provide OT services by a therapist who is a qualified \*\*\* specialist.
9. An Order requiring Respondent to reimburse Parents for all private OT services for the 2021-22 school year. If Respondent does not have a qualified occupational therapist specializing in \*\*\* for the 2023-24 school year, an Order directing Respondent to establish a compensatory educational fund to be set up in accordance with the hearing officer's orders to provide sufficient funds for these services (number of hours of service multiplied by the hourly rate).
10. An Order requiring Respondent to set up a compensatory educational fund in a sufficient sum and that over the next two years, Parents be permitted to hire credentialed social skills

tutor(s) to provide compensatory services in the area of social skills training and then be reimbursed from the fund upon provision of an invoice. The fund shall be calculated by the number of weeks and hours per week Student received inadequate social skills services this school year multiplied by the hourly rate, and Parents can also use the funds to pay for a social skills camp or training during the summer of 2023 and/or 2024.

11. An Order directing Respondent to resume provision of Student's social skills services by \*\*\*, the former successful provider. If Respondent cannot or refuses to do so, an Order directing Respondent to provide additional funds to the compensatory education fund to cover social skills training from the date of the Order to the end of the school year.
12. An Order directing Respondent to provide funds to compensate for all IH-CBT and parent training Student has not received or does not receive going forward. Such funds will be calculated to compensate for the number of missed sessions multiplied by the appropriate rate for such service.
13. An Order directing Respondent to hire outside experts to assist with implementing Student's IEP and training staff.

### **C. RESPONDENT'S LEGAL POSITION**

Respondent generally and specifically denied the allegations and maintains it provided Student a FAPE consistent with its obligations under the IDEA at all relevant times. Respondent also raised the affirmative defense of the two-year statute of limitations.

### III. FINDINGS OF FACT

#### Background Information

1. Student is \*\*\* years old and lives with Parents \*\*\*. Student's interests include \*\*\*.<sup>1</sup>
2. Student's family moved to Texas from \*\*\*. Student began attending school in the District in \*\*\* grade and is now in \*\*\* grade at \*\*\* (\*\*\*). \*\*\* is \*\*\* in the District. Parents wanted Student to attend \*\*\* for \*\*\* because of the school's highly rated education.<sup>2</sup>
3. Student initially received services under a Section 504 plan. Student began receiving special education and related services at the end of \*\*\* grade. Student is eligible for special education and related services based on Autism an Other Health Impairment (OHI) due to Attention Deficit Hyperactivity Disorder (ADHD).<sup>3</sup>
4. Petitioner filed a prior due process hearing request challenging Student's \*\*\* grade program and raised similar claims. Petitioner dismissed that case prior to hearing and refiled the instant matter.<sup>4</sup>

#### 2021-22 School Year - \*\*\* Grade

5. The District convened ARD committee meetings on June \*\*\*, June \*\*\*, and October \*\*\*, 2021, to discuss Student's move to \*\*\*.<sup>5</sup>
6. An OT evaluation found that Student's needs could be met through accommodations, rather than OT as a related service. Parents disagreed

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1 Joint Exhibit (J. Ex.) 1 at 1.

2 Transcript at 390-91, 394.

3 J. Ex. 1 at 7-8; J. Ex. 4 at 7; J. Ex. 10; J. Ex. 11 at 1-2.

4 J. Ex. 4 at 52.

5 J. Ex. 8 at 40, 44.

with the conclusion by the District's occupational therapist that Student did not need OT. The District granted Parents' request for an OT IEE. Parents requested a physical therapy (PT) evaluation and requested Student receive twice the current amount of time for social skills instruction. The case manager explained that more social skills instruction was not necessary.<sup>6</sup>

7. The ARD committee reconvened on November \*\*\*, 2021. The occupational therapist reviewed the OT IEE, and explained the IEE did not support a need for school-based OT services and that Student's needs could be met with accommodations. Parents requested mediation and raised several other issues concerning Student's program, including social skills. The case manager did not believe any modifications to Student's services were needed but offered to add a "\*\*\*" every other week and an additional 5 minutes to each session. The meeting ended without consensus.<sup>7</sup>
8. At a reconvene meeting on December \*\*\*, 2021, the ARD committee again discussed OT services. The parties agreed to mediate this issue, and the meeting ended in disagreement.<sup>8</sup>
9. At a reconvene meeting on January \*\*\*, 2022, the ARD committee reviewed the PT evaluation. The District's physical therapist explained why these services were not necessary. Parents agreed.<sup>9</sup>
10. The case manager proposed increasing the mastery criteria on three of the five goals due to progress. Parents requested assignment of the LSSP to implement Student's counseling goal. Parents also asked that deliberations from previous committee meetings be included in the IEP.<sup>10</sup>
11. The District convened an annual meeting on April \*\*\*, 2022. District staff discussed Student's successes that year, with Parents articulating concerns

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<sup>6</sup> J. Ex. 8 at 43-44.

<sup>7</sup> J. Ex. 7 at 38-39.

<sup>8</sup> J. Ex. 7 at 40-42.

<sup>9</sup> J. Ex. 6 at 38.

<sup>10</sup> J. Ex. 6 at 39, 41.



with continued weaknesses in the area of social skills and generalization of those skills at home and outside of school. Because educators had not seen this, Ms. \*\*\* noted “a disconnect between ‘home [Student] and ‘school [Student].” The ARD committee discussed goals and other elements of Student’s IEP and agreed on services and supports.<sup>11</sup>

12. The April \*\*\*, 2022 IEP became the stay-put IEP after litigation began. The IEP included 26 accommodations, five new goals, a \*\*\*; an Autism Supplement, and a Behavior Support and Intervention Plan (BSIP).<sup>12</sup>
13. The ARD committee reconvened on April \*\*\*, 2022. The parties disagreed as to where “parent input” belonged in the draft document. When District staff continued to disagree with Parents, Parents expressed they did not feel “the team was working together” and that they were “feeling ignored.” The ARD committee agreed to note parent input in the present levels of academic achievement and functional performance.<sup>13</sup>
14. The case manager reported that, “[Student] has been observed to be making friends.” Parents wanted the statement removed from the deliberations because “a friend can be subjective” and the inability to “quantify a friend.” Parents also indicated they had received parent training only, not IH-CBT training. The District agreed to insert certain deliberations from other meetings into the IEP at Parents’ request.<sup>14</sup>
15. Student performed well in \*\*\* grade. Student achieved straight As, with high marks for conduct. The case manager reported Student mastered Student’s social skills. The LSSP reported Student made progress in understanding and applying social skills. At the time, Student did not have much left to learn apart from

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<sup>11</sup> J. Ex. 4 at 42-46.

<sup>12</sup> J. Ex. 4 at 10-11, 13-15-33.

<sup>13</sup> J. Ex. 4 at 46-47, 50.

<sup>14</sup> J. Ex. 4 at 46-50.

“social nuance.” Educators observed Student acted appropriately with peers and friends in \*\*\* grade.<sup>15</sup>

### **2022-23 School Year - \*\*\* Grade**

16. Parents had a positive experience working with Student’s case manager, even calling themselves fans. On September \*\*\*, 2022, Parents emailed the case manager and insinuated she was not providing Student’s social skills instruction. The case manager asked to be removed from Student’s case because she no longer wanted to work with Parents. The principal assigned the case manager’s supervisor to work with Student and Parents going forward. Parents were not aware the case manager felt so overwhelmed working with them until she testified at the hearing.<sup>16</sup>
17. Parents report concerns with the new case manager’s communications, including not communicating each week about social skills instruction.<sup>17</sup>
18. The ARD committee reconvened on September \*\*\*, 2022, to review Parents’ concerns with IH-CBT. The committee discussed the past consideration of IH-CBT, its purpose, and how it could be implemented. District staff acknowledged that, although they were implementing the “viable alternatives” noted in the IEP, staff had not used that terminology to describe the home to school communications about the social skills instruction Student received. The District offered to reassess the need for IH-CBT going forward. Parents declined.<sup>18</sup>
19. The ARD committee reconvened on October \*\*\*, 2022. Parents again rejected the District’s recommendations concerning IH-CBT services. The committee agreed to reconvene on October \*\*\*, 2022.<sup>19</sup>

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<sup>15</sup> J. Ex. 18 at 3; Tr. at 152, 154-55, 157-58, 161-62, 165, 255-57, 267-68.

<sup>16</sup> Ex. 28 at 258; Tr. at 263-64; cite.

<sup>17</sup> Tr. at 35-36.

<sup>18</sup> J. Ex. 3 at 42.

<sup>19</sup> J. Ex. 3 at 41-42, 44-47; Tr. at 25, 272.

20. At the reconvene meeting, the committee reviewed a plan for IH-CBT. Parents disagreed with the proposed goals and program. The District offered compensatory IH-CBT services. When classes were released for the day, staff explained a break was necessary so they could assist students with dismissal. Parents objected and left campus.<sup>20</sup>
21. The ARD committee again discussed IH-CBT services at a reconvene meeting on December \*\*\*, 2022. The District offered ten hours of compensatory IH-CBT. Parents indicated their disagreement with the proposal. Parents also waived the right to a reconvene meeting because of the pending due process hearing, which had been filed two days before the meeting occurred.<sup>21</sup>
22. The District convened an annual ARD committee meeting on April \*\*\*, 2023. Student attended to share Student's input. Student's Parent read the answers Student provided to the committee. When Student verbally gave Student's input, Student articulated Student did not like being pulled from Student's \*\*\* class for social skills instruction with Ms. \*\*\*. Student instead wanted to use \*\*\* to finish schoolwork.<sup>22</sup>
23. At the April \*\*\* and May \*\*\*, 2022 reconvene meetings, the District presented a proposed IEP. Due to Student's successes, the District recommended no direct one-on-one social skills instruction and fewer accommodations.<sup>23</sup>
24. The April 2022 IEP contains three goals. The first targets organizational skills and calls for use of a planner to track homework assignments, projects, tests, quizzes, and missing assignments or indicate that no homework was assigned. A counseling goal targets defining social rules, social situations, and social conflicts both in and out of counseling sessions. A third goal monitors Student's ability to remain on-task while using a computer in class.<sup>24</sup>

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<sup>20</sup> J. Ex. 2 at 48, 50; Petitioner's Exhibit (P. Ex.) 8 at 52-53.

<sup>21</sup> P. Ex. 8 at 50-52.

<sup>22</sup> J. Ex. 1 at 60-62.

<sup>23</sup> J. Ex. 1 at 56-60, 62-65.

<sup>24</sup> J. Ex. 1 at 18-19.

25. The April 2022 IEP also calls for direct counseling services for 30 minutes a week to support the counseling goal and direct executive functioning and organizational services for 25 minutes a week.<sup>25</sup>
26. Although a general education program for all \*\*\* students, Student also receives social and behavioral instruction during \*\*\*, a social/emotional development curriculum used for all \*\*\* students. The District also uses \*\*\*, a social skills curriculum designed for improving social emotional skills.<sup>26</sup>
27. The April 2022 IEP lists approximately 20 accommodations. These include preferential seating; following routines or schedules; not penalizing for penmanship; teaching behavioral, social, and organizational skills; allowing a brace for handwritten assignments; typing assignments; providing extra time for assignments; and using an agenda for recording assignments and tests.<sup>27</sup>
28. The ARD committee agreed that Student had mastered Student’s self-advocacy goals and demonstrated no issues with self-advocacy. Student made progress on Student’s on-task behavior goal, and the ARD committee recommended addressing on-task behavior concerns with a new goal.<sup>28</sup>
29. Student also mastered Student’s frustration goal and did not demonstrate significant behavioral or emotional issues. The proposed counseling goal would help support self-regulation at school. Student had also mastered the District’s research-based social skills program and had generalized the social skills Student learned. Student made significant progress on Student’s counseling goal. Parents agreed. The LSSP updated the goal “to promote self-monitoring.” The April 2022 IEP removed 60 minutes per two-weeks of direct social skills instruction. According to Parents, Student struggled to remain focused in class and is disorganized due to Student’s ADHD.<sup>29</sup>

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25 J. Ex. 1 at 37-38.

26 Tr. at 119-20, 48-49.

27 J. Ex. 1 at 16-17.

28 J. Ex. 1 at 59; J. Ex. 21; Tr. at 235-36, 316, 318-19, 327-28, 335-36, 347.

29 J. Ex. 1 at 37-38, 59; J. Ex. 21; Tr. at 102-03, 112, 246-47, 251, 267-68, 295, 362.

30. According to the BSIP, Student occasionally struggled with off-task behavior and did not always complete assignments. These behaviors caused significant concern for Parents. The BSIP supports the behavior goal and identifies effective positive supports, reinforcers, and consequences to address off-task behavior. Parents asked the District to search Student's browsing history to measure progress on Student's related behavioral goal.<sup>30</sup>
31. The District offered ten one-hour monthly sessions of compensatory IH-CBT even though IH-CBT was not necessary for Student.<sup>31</sup>
32. The April 2022 IEP removed certain accommodations from the IEP based on data, including progress reports and observations, demonstrating a lack of need.<sup>32</sup>
33. Student maintained Student's academic and nonacademic success in \*\*\* grade. Student received straight As. Student's \*\*\*-grade teachers and other \*\*\* staff reported no concerns and described Student as attentive and sociable in class.<sup>33</sup>

### **2023-24 School Year – \*\*\* Grade**

34. Student's annual ARD committee meeting continued for four more days, June \*\*\*, August \*\*\*, September \*\*\*, and September \*\*\*, 2023. Between the June and August meetings, the parties participated in an eight-hour meeting with counsel present in an attempt to narrow areas of disagreement. Participants included Parents, campus administration, and special education staff.<sup>34</sup>

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30 J. Ex.1 at 34-35; Tr. at 235-36, 286, 305-09, 318-19, 327-28, 364-65, 426.

31 J. Ex. 2 at 48, 51.

32 J. Ex. 25; Tr. at 251, 265-67, 303, 347, 363, 404-05.

33 J. Ex. x. 3 at 3-5, 37; J. Ex. 18 at 2; J. Ex. 2 at 4-5.

34 J. Ex. 27 at 14, 20-39.

35. Student's success continued in \*\*\* grade. Student achieved good grades, scored in the \*\*\* percentile \*\*\*, and exceeded expectations in \*\*\* classes.<sup>35</sup>
36. Parents filed a TEA Complaint alleging various concerns, including with the same issues raised in this case. TEA sustained many of Parents' concerns in an investigation letter. Parents believe the District has not appropriately implemented the corrective action plan prescribed by TEA.<sup>36</sup>
37. The District offered to conduct an OHI evaluation to determine the scope of Student's needs related to \*\*\*. Parents declined. The District updated Student's \*\*\* so Student's \*\*\* needs were accommodated.<sup>37</sup>
38. Parents have concerns about off-task behavior during academic classes and asked the District to track Student's browser history.<sup>38</sup>
39. Student scored \*\*\*, placing Student in the \*\*\*. Student also scored in the highest percentile on the \*\*\*, a national assessment in \*\*\*.<sup>39</sup>
40. Student participated in \*\*\* during \*\*\* grade. Student's teacher noted Student's creativity and ability to think outside the box. Student participated well in groups and demonstrated strong leadership skills in this class.<sup>40</sup>
41. Student's teachers believe Student's IEP has too many accommodations. Teachers further believe Student may not need an IEP.<sup>41</sup>

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35 J. Ex. 19 at 1; Tr. at 385.

36 P. Ex. at 1.

37 J. Ex. 1 at 22-24, 51; Tr. at 98.

38 Tr. at 103-04.

39 Tr. at 396.

40 Tr. at 334.

41 J. Ex. 1 at 56-60, 62-65.

## **IV. DISCUSSION**

Petitioner alleges the District failed to implement Student's IEP, failed to ensure meaningful parental participation in the IEP development process, and failed to provide OT services. As relief, Petitioner seeks compensatory education; an IEE at public expense; revisions to Student's IEP, to include Student's social skills program; reimbursement for parentally obtained services and evaluations; and staff training.

As an initial matter, the Hearing Officer establishes the relevant time period for the claims. Petitioner filed the instant case on August 12, 2023, and challenges Student's educational program beginning on December \*\*\*, 2020. Complaint at 4. Petitioner did not raise either exception to the two-year statute of limitations. Tex. Educ. Code § 29.0164; 19 Tex. Admin. Code § 89.1151(c). The relevant timeframe for the claims thus begins on August 12, 2021.

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

The burden of proof in a due process hearing is on the party challenging the IEP and/or placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).<sup>42</sup> The burden of proof in this case is on Petitioner to show that the District failed to

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<sup>42</sup> 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).

provide Student with a FAPE and to offer a program that was reasonably calculated to provide Student with the requisite educational benefit.

**B. FREE, APPROPRIATE PUBLIC EDUCATION**

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)(1)(A). A school 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.

A school district is responsible for providing a student with specially designed personalized instruction with sufficient support services to meet the student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The central inquiry is whether a school district provided an educational program that "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).



## 1. Educational Program

Petitioner alleges the District failed to develop an appropriately individualized IEP and challenges its failure to provide appropriate and sufficient related services.

In Texas, a hearing officer applies a four-factor test to determine whether a school district's program meets IDEA requirements. Those 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); *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

**C. 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, 300.323(a). The District's obligation when developing Student's IEP is to consider Student's strengths, Parents' 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).

While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The inquiry in this case is whether the IEPs proposed and implemented by the school district were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *Andrew F.*, 580 U.S. at 399.

Petitioner argues the District's proposed program is inappropriate in numerous areas. On the other hand, Respondent argues the April 2022 stay-put IEP is no longer appropriate to meet Student's needs.

## **1. Social Skills**

The evidence showed that Student's IEPs were individualized on the basis of assessment and performance in the area of social skills.

Petitioner argues Student needs a research-based social skills program designed for students with autism, and further asserts that the \*\*\* Program used by the District is not tailored to meet Student's needs. The choice of educational methodology falls within the discretion of the school district. *See Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-08 (1982) (holding that once a court determines that the requirements of the act have been met, questions of methodology are for resolution by the states); *Fairfax Cnty. Sch. Dist. v. Knight*, 261 Fed. Appx. 606 (4th Cir. 2008). Even if a parent prefers a specific methodology, a district is not obligated to carry out that program. *Matthews v. Douglas County Sch. Dist. RE*, 2018 WL 4790715 (D. Colo. 2018).

While Parents would prefer a different social skills curriculum, Petitioner failed to offer sufficient evidence showing that the curriculum used by the District was not appropriate to meet Student's needs. Even setting aside the considerable latitude school districts have in choosing a methodology to deliver components of a

student's IEP, Petitioner failed to present an evaluation or other evidence the District's program was not appropriate. While Parents point to lack of generalization of social skills in the community, \*\*\* staff consistently observed otherwise of Student's ability to navigate social demands at school. Importantly, when Student provided Student's input into the draft IEP at the April 2022 annual meeting, Student articulated a desire for less social skills, not more, so Student could focus more on Student's studies and keep up with the demands of Student's academic schedule.

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). While Student has autism and emerging social skills in certain areas, including consistently demonstrating "social nuance," Petitioner failed to meet Petitioner's burden of proving this aspect of Student's program was not appropriate.

## **2. Occupational Therapy**

Petitioner challenges the District's failure to provide Student OT services. The evidence did not support this contention.

Related services are "such developmental, corrective, and other supportive services as are required to assist a child . . . to benefit from special education." 34

C.F.R. § 300.34. Student has identified difficulties with \*\*\*, including with \*\*\*. The District conducted two OT evaluations, both of which found that Student's needs in this area could be addressed with accommodations and OT as a related service was not needed or appropriate. Student's IEPs, including the April 2022 stay-put IEP, consistently indicate that Student's \*\*\* is \*\*\* and current and former teachers agreed with the description of Student's \*\*\* abilities in the IEP.

Petitioner failed to present an evaluation or other evidence the District's program was not appropriate in this area.

**3. \*\*\***

Petitioner alleges Student's \*\*\* is not addressed in the proposed IEP. \*\*\* can be a qualifying disability under the IDEA under the OHI eligibility category. 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(c)(9). To determine whether a student has a qualifying disability under the IDEA, a school district must conduct an evaluation. 34 C.F.R. §§ 300.15, 300.306. An outside evaluation or diagnosis, by itself, is not a sufficient basis on which a school can qualify a student for special education and related services. *See id.*; *K.R.*, 2022 WL 19559117, at \*8. A parent may withhold consent for an evaluation, in which case the school district has no further obligations. *Frisco Indep. Sch. Dist.*, 123 LRP 34077 (TX SEA 2023) (citing 34 C.F.R. § 300.300(c)).

The District offered to conduct an OHI evaluation to determine whether Student may have educational needs related to \*\*\*, but Parents declined. To the extent Petitioner asserts the District failed to collaborate with Parents, the evidence showed otherwise, with the ARD committee updating Student's \*\*\* to ensure Student's \*\*\* needs were accommodated. Petitioner failed to present sufficient evidence in support of this claim.

#### **4. Autism Supplement**

For students with autism in Texas, the ARD committee must also consider whether the student's IEP should include the following: extended educational programming; daily schedules reflecting minimal unstructured time and active engagement in learning activities; in-home and community-based training; positive behavior support strategies based on relevant information; futures planning for post-secondary environments; parent/family training and support; suitable staff-to-student ratios; communication interventions; social skills supports; professional educator/staff support; and teaching strategies based on peer-reviewed, research-based practices for students with autism. 19 Tex. Admin. Code § 89.1055(e). This regulation is commonly referred to as "the Autism Supplement."

Petitioner argues the District failed to discuss "viable alternatives" to parent training/IH-CBT, and that Parents were unaware of this term until the hearing. The evidence, however, showed that Student's IEPs developed during the relevant time

period, including the April 2022 proposed IEP, include an Autism Supplement addressing the required regulatory components and Student's program was appropriate in this regard.

Overall, the evidence showed that Student's educational programs during the relevant time period were individualized on the basis of assessment and performance.

#### **D. LEAST RESTRICTIVE ENVIRONMENT**

The IDEA requires a student with a disability to be educated with non-disabled peers to the maximum extent appropriate. Special classes, separate schooling, and other removal from the regular education environment may occur 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. 34 C.F.R. § 300.114(a)(2). This is known as the "least restrictive environment" requirement. To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

- whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- if not, whether the school district mainstreamed the student to the maximum extent appropriate.

*Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

There is no genuine dispute that Student is being educated with peers and enjoys an included education, apart from necessary related services during the school day. The evidence showed that Student’s educational placement was the least restrictive environment appropriate to Student’s needs and Student was provided an inclusive education to the maximum extent appropriate.

**E. 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.*, 909 F.3d 754, 766 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student’s parents, to accede to a parent’s demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student’s parents have the right to dictate an outcome, because parents do not possess “veto power” over a school district’s decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student’s parents or refusal to listen to them, a school district must be deemed to have met the IDEA’s requirements regarding collaborating with a student’s parents. *Id.*



The record showed concerted efforts by the District to reach agreement with Parents on the contents of Student's IEP. ARD committee meetings were timely convened, Parents were allowed to be active participants, and rigorous discussions occurred over sometimes a series of meetings without consensus. Parents showed a strong command of the timeline and had knowledge about the services offered and provided. It was clear from their testimony Parents felt disrespected by ARD committee members and school personnel.

The record further showed that the parties spent hours developing the elements of Student's program and attempting to find common ground to no avail. In closing, Petitioner points to the fact that "[T]he latest IEP has taken some 6 ARD meetings to finish in disagreement." This statement, while accurate, summarizes why the District prevails on this factor. While it is appropriate for a school district to continue efforts to reach agreement with parents, at some point the school district must cease negotiating and make a final offer of FAPE. The District did so, and Parents have resisted both evaluations and changes to Student's IEP, even ones that appear to be supported by the ample data gathered by the District concerning Student's mastery of the skills needed to benefit from Student's IEP. Importantly, the District honored stay-put through \*\*\* almost two years ago.

The removal, however, of Ms. \*\*\* as Student's case manager was a significant change in Student's program from Parents' perspective. Parents' confusion over the change, as explained through their testimony, was genuine. While parents of students with disabilities do not get to choose assigned staff and a school district cannot share personnel information with parents, Parents did not learn until the

hearing Ms. \*\*\* did not want to continue working with them and why. The evidence supported Ms. \*\*\*'s testimony that Parents' high expectations of her and her time were difficult to manage. However, had the reason for the change been more clearly communicated to Parents, the relationship between the parties may have fared better.

In conclusion, this factor favors the District. To the extent there was lack of collaboration, it was attributable to Parents for the reasons discussed. Petitioner failed to establish that the District excluded Parents in bad faith or refused to listen to them.

#### **F. 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).

##### **1. Academic Progress**

School districts must create an IEP designed for a student to make “meaningful” progress considering the student’s disabilities. *William V. ex rel. W.V. v. Copperas Cove Indep. Sch. Dist.*, 826 F. App’x 374, 379 (5th Cir. 2020); *Andrew F.*, 580 U.S. at 400. To determine whether the student made academic

progress, hearing officers consider the student's class grades, state assessments, grade advancement, and other standardized tests. *Bobby R.*, 200 F.3d at 349; *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 798 n.12 (5th Cir. 2021). "[P]assing marks and advancement from grade to grade" are "sufficient indicia" of academic progress to satisfy the IDEA. *Bobby R.*, 200 F.3d at 349.

The evidence showed Student made academic progress during the relevant time period. Student consistently achieved high grades, performed in the top tier on the \*\*\*, and successfully completed several \*\*\*. Student made progress on Student's IEP goals and objectives, mastering them within the annual review periods. In \*\*\*, \*\*\*, and \*\*\* grade, Student received straight As. Student mastered every state assessment. More recently, Student scored \*\*\* on the \*\*\* placing Student in \*\*\*. Student also scored in the highest percentile on the \*\*\*, a national assessment in \*\*\*. These successes are strong indicators of the benefit Student received from Student's program.

## **2. Non-academic Progress**

To determine whether the student made nonacademic progress, hearing officers consider whether the student "made friends and demonstrated other signs of social interactions." *A.A. v. Northside Indep. Sch. Dist.*, 951 F.3d 678, 691 (5th Cir. 2020). This inquiry focuses on the student's nonacademic progress at school.

*Thompson R2-J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1150–51 (10th Cir. 2008).

Petitioner argues the District denied Student a FAPE because Student cannot generalize Student’s social skills outside of school. However, the weight of the credible evidence established that Student made non-academic progress as demonstrated by the consistent and credible testimony of former and current \*\*\* staff about Student’s social interactions at school. Student also participated in extracurricular activities, including \*\*\*. Once again, Student’s performance in the non- academic realm are strong indicators of the benefit Student received from Student’s program.

#### **G. CONCLUSION AS TO THE FOUR FACTORS**

“[T]he basic floor of opportunity provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit[s]” to students with disabilities. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982). The weight of the credible evidence showed that Student’s educational program was individualized on the basis of assessment and performance, offered an educational placement in the least restrictive environment, and that the District made appropriate efforts to ensure Student’s program was coordinated in a collaborative manner by key stakeholders. A preponderance of the evidence demonstrated that Student’s IEPs were reasonably calculated to address Student’s needs in light of Student’s unique circumstances. *Rowley*, 458 U.S. at 188-89, 203-04; *Andrew F.*, 580 U.S. at 399.

## **H. FAILURE TO IMPLEMENT**

Finally, Petitioner alleges the District denied Student a FAPE by failing to implement Student's IEPs in the areas of accommodations; staff training requirements; goal-related activities; social skills training; and in-home training.

In determining whether a school district failed to adequately implement a student's IEP, a hearing officer must consider whether there was a significant or substantial failure to implement the IEP under the third *Michael F.* factor and whether the student received academic and nonacademic benefits from the IEP under the fourth factor. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020). To prevail on Student's claim under the IDEA, Petitioner must show 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).

### **1. In-Home and Community-Based Training**

Petitioner argues the District failed to provide IH-CBT. When an IEP gives school districts options or is silent, implementation decisions are one of educational methodology. Hearing officers may "not decide whether a particular methodology would have been better than the one actually used; this is a matter for the school district." *Clear Creek Indep. Sch. Dist. v. J.K.*, 400 F. Supp. 2d 991, 995 (S.D. Tex.

2005); *W.B. v. Houston Indep. Sch. Dist.*, No. H:12-0083, 2012 WL 6021320, at \*6 (S.D. Tex. Nov. 30, 2012).

As Respondent argues in closing, the April 2022 stay-put IEP indicates, in the disjunctive, that IH-CBT or viable alternatives are needed. The evidence showed that the District provided viable alternatives by providing weekly, detailed samples of supports for Parents to use at home to generalize skills. Given the District's implementation of viable alternatives and Parents' repeated refusal to avail themselves of IH-CBT services, the hearing officer concludes the District did not fail to implement this aspect of Student's program.

Petitioner failed to present sufficient evidence in support of this claim. The evidence showed that the District did not substantially fail to implement this aspect of Student's IEP.

## **2. Accommodations**

Petitioner contends the District failed to properly implement Student's services and accommodations, but the record evidenced otherwise. The District collected extensive accommodation implementation data and work samples. District witnesses who testified on this subject indicated that the District implemented the IEP with fidelity and these statements are supported by the District's tracking of the use of each accommodation based on individual assignments.

Parents consistently raised concerns with off-task behavior in class and Student's ability to circumvent campus protections against unauthorized student browser use. While off-task behavior is an identified need in Student's IEP, the District did not agree to track Student's browser use as diligently as would be required to entirely eliminate this behavior.

Even if Petitioner had offered evidence in support of the position that the District did not perfectly implement Student's accommodations, Student would still need to prove that the relevant accommodations were important and prevented Student from achieving an educational benefit. *V.P.*, 582 F.3d at 587.

### **3. Staff Training Requirements**

Petitioner argues that the case manager is supposed to be trained in the program by the Autism team and that did not happen last year and this year the school will not tell the parents if it was done. Nothing in the IDEA, however, requires this and the evidence showed significant and substantive communications to Parents concerning Student during the relevant time period. Petitioner failed to present sufficient evidence in support of this claim.

### **4. Social Skills**

Petitioner alleges the District failed to implement Student's IEP in the area of social skills. The evidence did not support this allegation.

Petitioner asserts that Parents were not apprised of Student's performance in social skills instruction. Periodic reports to parents of students with disabilities on the progress he or she is making on his or her goals are required under IDEA, such as through the use of quarterly reports, other periodic reports, or concurrently with report cards. 34 C.F.R. § 300.320(a)(3)(ii). In addition to providing updates to Parents as appropriate, the record evidenced that the District complied with the progress reporting requirements of the IDEA.

Petitioner failed to present sufficient evidence in support of this claim. The evidence showed that the District did not substantially fail to implement this aspect of Student's IEP.

## **V. CONCLUSIONS OF LAW**

1. As the challenging party, Petitioner has the burden of proof to establish a violation of the IDEA. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. Student's educational programs during the relevant time period were reasonably calculated to confer educational benefit in light of Student's circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 203-04 (1982); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).
3. Respondent complied with the IDEA's procedural requirements. 19 Tex. Admin. Code § 89.1011(c)(1); 34 C.F.R. §§ 300.300(a)(1)(i), 300.613(a), 300.513(a)(2).



4. Petitioner did not meet Petitioner's burden of proving that Respondent failed to implement Student's IEP. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).
5. Petitioner did not meet Petitioner's burden of proving that Respondent denied Student a FAPE. *Schaffer*, 546 U.S. at 62.

## **VI. ORDERS**

Based upon the foregoing findings of fact and conclusions of law, it is ORDERED that Petitioner's requested relief is DENIED.

**Signed February 12, 2024.**



**Kathryn Lewis**

**Presiding Administrative Law Judge**

## **VII. NOTICE TO PARTIES**

The Decision of the Hearing Officer 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. § 300.516(a); 19 Tex. Admin. Code § 89.1185(n).