

4. Whether the District has failed to provide Student a program in the least restrictive environment.
5. Whether the District procedurally violated the IDEA by failing to hold a Manifestation Determination Review (MDR) regarding Student's conduct.
6. Whether the District predetermined Student's program, including change of placement, behavior supports, and rejecting parent requested supports.

A. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Petitioner's Complaint. The School District contends it provided Student with a FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

V. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to place Student in an appropriate educational setting that is not ***.
2. Order the District to provide Independent Education Evaluations (IEEs) in the area of neuropsychological, occupational therapy (OT), assistive technology (AT), and a functional behavior assessment (FBA) by a(*****).
3. Order the District to develop an appropriate program for Student based on the IEE findings, including social skills, behavior, and academics.
4. Order the District to provide Student direct Applied Behavior Analysis (ABA) therapy from a *****, OT and sensory processing support, psychological counseling in both talk and play based models, social skills instruction, academic and behavior support in the general education setting.
5. Order the District to create and implement an appropriate BIP for Student.
6. Order the District to monitor progress on new IEP goals.
7. Order the District to provide parent training by a ***** and opportunities for parent to observe Student at school.

8. Order the District to contract with the***** to train staff working with Student.
9. Order the District to develop a parent communication schedule.
10. Order the District to provide compensatory services to Student, including parent training, in-home training, OT, counseling, **support or ABA therapy, AT, social skills, academic instruction, and extracurricular opportunities.
11. Order the District to provide any other relief the Hearing Officer deems appropriate.

VI. FINDINGS OF FACT

Student's background

1. Student is*** years old and attends ***grade at *** in the District. She qualifies for special education as a student with an Intellectual Disability and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD).

result of *** difficulties and *** below-gradelevel academics, ***ISD placed Student in a *** classroom for Reading, English Language Arts, Mathematics, and Social Studies. The classroom was geared toward students with .**

9. During the 2020-21 school year in **ISD, Student received 30 minutes of weekly ***. She received an additional 20 minutes of weekly***. She also received 15 minutes per week of*** services so the*** could work with school staff to address Student's needs. Student also received ***hours of direct services from**a* over the course of the 2020-21 school year, with the amount per week to be determined based on the appropriateness. The goal of the*** services was to work on** strategies.***s are uniquely qualified to implement research-based*** as opposed to just "willy nilly trying something" new. ***ISD provided extended school year services (ESY) in the summer of 2020 and the summer of 2021 so Student could maintain **progress. During the summer of 2021, in addition to several weeks of ESY, **ISD placed Student in its summer *** camp to further work on ***skills.⁹
10. Student moved with ***family from ***ISD into the District prior to the 2021-22 school year. When *** arrived, the District placed Student in its **classroom for students with *** at *** home school;***. Student struggled *** as soon as *** arrived in the District, exhibiting*** *** had rarely displayed in ***ISD several times in the *** between the start of school and ***initial ARD Committee meeting. The District found t**be too high functioning academically for its* program.

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like, preteaching lessons, and many other strategies. Still, these strategies had limited effect. The duration they allowed new interventions to be effective before changing to other interventions is not clear from the record. The District never implemented Student's *** and *** support that had worked well in *** ISD and lead Student to only have one incident of *** during the 2020-21 school year. Instead, Student would perform well with few incidents for a couple of weeks at a time, but then would regress and exhibit ***. During the 2021-22 school year, the District *** five times for a total of 9.5 school days. Despite the District's interventions and, Student was *** approximately 9.6 times per week by the time the District could hold an ARD Committee meeting in February 2022. The District often called Parent to. Doing that and/or *** Student reinforced the ***, because *** allowed Student to escape doing challenging work.¹⁵

17. On February 2, 2022, the District held an annual ARD Committee meeting. During the meeting, the District recommended placing Student in ***. is a *** School outside the District. The school is a special campus for students who are receiving special education services in their home school districts and are experiencing issues. No general education students attend *** and students do not have access to any peers without disabilities while placed there. *** uses a universal behavioral model known as the *** model, a *** program that includes a *** to incentivize students and a model on *** skills. That is used for every Student regardless of what is in their IEPs. *** classrooms have two teachers and six students at any given time. There is *** employed with ***

an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(b)(9) of *Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-9, 20001, 20304 (1982).

B. Burden of Proof

Respondent correctly points out the District was not obligated under the IDEA to conduct an FBA. However, Respondent also contends it “exhausted everything in its toolbox” in an effort to serve Student.² While Student’s teachers did their best to identify strategies and incentives that could work, they were at a loss without additional support. A new FBA is one example of a tool that may have brought additional support and would have been consistent with best practices. However, more importantly than the potential efficacy of conducting an FBA, the District could have implemented the ***and*** services that resulted in Student only having one*** in the 202021 school year in ***ISD

The District had an obligation to implement *** supports that could help Student. *R.P.* 703 F.3d at 813. Instead, the District left Student’s teachers to seek whatever solutions they could by “willy nilly” trial and error. While they consulted with the District’s **, Student was one student among the many students on 48 campuses of which she was in charge. She could not provide the direct*** services with which Student had thrived in ***ISD. With Student’s teachers by their own testimony trying so many different strategies and interventions over the course of the 202122 school year, it is not clear from the record whether they tried any strategies long enough to determine their true efficacy. What the record does reveal is that, despite the documented success over the course of the 2020 school year of *** and *** services and despite Student’s teachers noting a continued decline in Student’s **, the District never attempted those*** supports.

2. Least Restrictive Environment

The IDEA requires that a student with a disability shall be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling, and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services

cannot be achieved satisfactorily. This provision is known as the “least restrictive environment requirement.” 34 C.F.R. § 300.114(a)(2)(i)(ii). State regulations require a school district’s continuum of instructional arrangements be based on students’ individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained—regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005.

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To determine whether a school district is educating a student with a disability in the LRE, 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



teachers could implement it. In short, the District possesses any tools ~~possesses~~ and can keep Student in the District in a less restrictive environment

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.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demand. *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 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 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 District provided services in a coordinated manner. The District held several ARD Committee meetings during the 2022 school year and Parent participated in each one. The District listened to Parent and considered her opinion appropriately. Parent agreed with most District decisions with the notable exception of placement in ***. The District arranged for Parent to have a tour of *** prior to the decision to recommend the placement for Student. The District then held multiple ARD Committee meetings with Parent regarding the placement. The District also incorporated some of the *** interventions suggested by Parent.

Petitioner also asserts the District predetermined Student's placement without parental input. "Predetermination occurs when the school district makes educational decisions too early in the planning process, in a way that deprives parents of a meaningful opportunity to fully participate as equal members of the IEP team." *R. by E. R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 769 (5th Cir. 2018) (quoting *R.L. ex rel. O.L. v. Miami Dade Cty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014)). "To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they

believe are necessary for their child'

and must conduct an evaluation of a student no less than every three years. 34 C.F.R. § 300.303(b)(i)
ii). A school district must also conduct a new evaluation if it seeks to change a student's eligibility for
special education and related services. 34 C.F.R. § 300.505(e).

***ISD conducted an appropriate FIE in March 2021 and a new one is not at this time
It would have required special parental consent to conduct a new evaluation prior to March 2022.

emphasis on ***, an assistive technology evaluation, or any other evaluations the *** recommends to allow Student to receive a FAPE in the District

3. The District shall offer ESY services

ALJ Signature:

Ian Spechler

Presiding Administrative Law Judge

XI. 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).