

DOCKET NO. 300-SE-0519

**STUDENT B/N/F PARENT,
Petitioner**

V.

**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT,
Respondent**

§
§
§
§
§
§
§
§

BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, STUDENT, by Student’s next friend PARENT (Student or, collectively, Petitioner), filed a request for an impartial due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA) and its implementing state and federal regulations on May 16, 2019, with Notice of the Complaint issued by the Texas Education Agency (TEA) on the same day. The Respondent to the Complaint is the Northside Independent School District (Respondent or District). The main issue in this case is

II. PROCEDURAL HISTORY

A. Legal Representatives

Petitioner w-0.00Y1y3.004e1.55Tw 3.89 0 Td004nLIEEIEdAPPPFl l(F)6[(F)6t(F)

IV. ISSUES

A. Petitioner's Issues

Petitioner submitted the following issues, as stated in Order No. 4:

1. Whether Respondent provided Student educational services in Student's LRE.
2. Whether Respondent failed to provide Student services from *** and, by failing to do so, denied Student the opportunity to interact appropriately with Student's peers.
- 3.

2. Student qualifies for special education with a primary disability of *** and a secondary disability of Speech Impairment. *** (***).⁵
- 3.

Student *** during the school day.¹⁴ The District is not required to provide more than *** for Student, but does so in accordance with best practices.¹⁵ At times, one of Student's *** is unavailable to Student, leaving Student with ***.¹⁶ The vast majority of the time, Student has ***.¹⁷

8. The *** attended each of Student's classes with Student.¹⁸ The *** are also with Student when Student ***.¹⁹ Student also receives transportation services each day from the District, but the *** do not accompany Student on the school bus.²⁰
9. Student receives 60 minutes per year of "itinerant support" ***.²¹ Student also receives counseling in school from a counselor ***. Before she started working with Student, the counselor conducted a counseling assessment to guide the services *** provided.²² The counselor also serves as a role model for Student.²³ She encouraged Student to be a strong self-advocate and helped Student decide what Student wanted in Student's future.²⁴ The District provides Student 45 minutes per month of counseling.²⁵

The 2018-19 School Year

10. During the summer of 2018, Student attended a *** camp *** with *** students from around the state. The District provided Student's *** from the District for the *** so Student could participate.²⁶
11. Student attended *** for *** grade during the 2018-19 school year. Academically, Student was successful and excelled in Student's classes. Both parties acknowledge that the District fulfilled its obligations under the IDEA academically during the 2018-19 school year.²⁷

12. Student ***. The District provided *** for Student during ***. Student also ***, where the District also provided Student ***.²⁸
13. Student started *** at ***. The goal of *** so Student could better communicate with them.²⁹
14. Student also advocated for ***self and other students to receive better services ***. Student believed the students needed more *** on their campuses 4(s)e alm64lj /o[(on t)-2(he)4(i)-2

20. ***. ***. Student did not know what was happening.³⁹

In order for a student to receive a FAPE, a school district must provide the student an educational program reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 983, 1001 (2017). The student's progress must be something more than mere *de minimis* progress. *Id.*, at 1000.

The Fifth Circuit has articulated a four-factor test to determine whether a school district's program meets IDEA requirements. Even after the Supreme Court's decision in *Andrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018). Those factors are:

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

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

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 Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). Application of the four factors to the evidence in this case supports the conclusion that the school district's program was appropriate.

1. Whether the Program Is Individualized on the basis of assessment and performance

A program is sufficiently individualized when multiple assessments are conducted of the student, the ARD committee considers these assessments along with parent and teacher input in developing the student's IEP, accommodations and modifications are made based on the student's test performance and parent input, and the IEP goals are revised based on new assessment data.

Candi M. v. Riesel Indep. Sch. Dist. 61 0 Tc 0 S6.86 0

§ 300.114(a)(1)(2)(i-ii). This requirement of the IDEA is refer

committee's decision. In the fall of 2018, when Student requested *** so Student could ***, the ARD Committee met to amend the IEP so Student could have ***. The District then attempted to set two ARD meetings at Student's parents' request in the spring of 2019 after Student's experience with ***, but it could not secure Student's parents' participation. The District based its program on the input of an appropriate number of stakeholders.

4. Academic and Non-Academic Benefit

Fourth, Student received both academic and non-academic benefit from Student's program. Petitioner conceded that Student received academic benefit from the District's program and the District fulfilled its obligations to Student academically.

Non-academically, Student was able to participate *** with the help of Student's ***. Student also was able to ***. ***.

It cannot be easy to ***. It is to Student's immense credit that Student has handled the responsibility so well and served as an example for other students.

5. Conclusion

E. ***

***. ***. Therefore, Petitioner did not meet Petitioner's burden as to this issue.

F. Use of * for transportation**

While Student received both academic and non-academic benefit from the District, the District should provide *** during transportation services it provides. A hearing officer cannot predicate a finding of a denial of FAPE on the safety of the student unless the risk to the safety of the student resulted in a denial of FAPE. *J.N. v. Pittsburgh City Sch. Dist.*, 536 F.Supp.2d 564, 577 (W.D. Pa. 2008). In this case, Student received a FAPE from the District despite the risk to Student's safety of not having access to *** on the bus.

However, *** was foreseeable and could likely happen again. It was equally foreseeable that Student would feel scared during a time where Student is unaware what is happening. Student requires access to *** during those times. That accommodation should be added to Student's IEP.

VIII.

X. 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 h itn-14(y)212rtn-14((t)-6(ha)6(c-6.1(i)-6(n)-4o690(n)-14.1(g