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appropriate public education (FAPE) during the 2021-22 school year and whether the District denied Student a FAPE by failing to provide a safe, non-hostile learning environment. The hearing officer concludes the District procedurally and substantively complied with the IDEA and Petitioner is not entitled to the relief requested.

### I. DUE PROCESS HEARING

The due process hearing convened on August 30 - September 1, 2023, via the Zoom videoconferencing platform. The hearing was recorded and transcribed by a certified court reporter. Petitioner requested an open hearing and observers were present.

Petitioner was represented throughout this litigation by Jordan McKnight of the Law Office of Jordan McKnight. Student's Parent, \*\*\*, attended, as did Petitioner's advocates Debra Liva and Bonnie Garza. Respondent was represented



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8. Whether Respondent violated the IDEA by failing to protect Student's confidential record and information.
9. Whether Respondent denied Student access to \*\*\*.
10. Whether Respondent denied Student a FAPE under the IDEA by failing to provide a safe, non-hostile learning environment.

**B. Requested Relief**

Petitioner seeks the following items of relief:

1. An order requiring Respondent

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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 (t)-2m3en (l)-2.( R)-0.9 (es)-5.6 (p)0.9 (02 15 0 )2.4 (i6 75)-3999 (

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17. The ARD committee recommended a change in Student's instructional arrangement from special education setting for more than 60% of the day to special education setting for less than 50% of the day. ARD committee meeting minutes document that the placement change was due to progress.<sup>17</sup>
  18. The October<sup>\*\*\*</sup>, 2021 ARD committee meeting added two new English goals, updated the previous math goal, added a physical education goal, updated the previous OT goal and updated previous speech goals.<sup>18</sup>
  19. The committee agreed to add numerous accommodations to Student's IEP to support Student in the new placement.<sup>19</sup>
  20. Student's ARD committee convened on January<sup>\*\*</sup>, 2022 at Parent's request. The committee agreed to change Student's instructional arrangement from special education setting for less than 50% of the day to special education setting for less than 21% of the day. The
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v. New York City Dep't of Educ., 643 Fed. Appx 31 (2d Cir. 2016) (a school district's decision to forgo an FBA when the student began to act out at school did not rise to the level of a denial of a FAPE because the IEP adequately identified the behavioral issues and implemented strategies to address them).

The evidence showed that Student had behavioral needs and these behavioral needs were considered and addressed in Student's IEPs. Student's behavioral needs were in part managed by consideration of the appropriate staff to student ratio Student required, and the level of supports and services that Student required to make progress on Student's IEP goals. The record does not support the conclusion that Student's behavioral needs could not be supported through the use of classroom and other targeted supports, or that Student required an FBA and behavior intervention plan to benefit from instruction.

### 3. 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







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Student also made non-academic progress. Student was included to maximum extent appropriate, participating in general education classroom activities and electives with Student's peers. Student's IEP also included a \*\*\* goal aimed at increasing Student's level of independence at school.

e. Conclusion as to the Four Factors

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, that the District made appropriate efforts to ensure Student's program was coordinated in a collaborative manner by key stakeholders, and that Student made appropriate academic and non-academic progress. 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. 188-89, 203-04; *Endrew F.*, 580 U.S. 399.

C. IEP Implementation

Petitioner alleges Respondent failed to implement Student's IEP. 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 non-academic 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

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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, 348 (5th Cir. 2000).

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<sup>26</sup> Norma V. Cantu & Judith E. Heumann, Prohibited Disability Harassment, U.S. Dep't of Educ. (July 25, 2000), <https://www2.ed.gov/print/about/offices/list/ocr/docs/disabharassltr.html>.

on whether the hostile environment affected the student's ability to receive a FAPE.<sup>27</sup>

According to Petitioner, the failure to provide Student a safe, non-hostile learning environment ... "is most easily demonstrated by the fact that the evidence strongly indicates that Students (ic) were being unlawfully restrained in the classroom on a constant basis.<sup>28</sup> While the campus principal agreed that the \*\*\* was inappropriate and should have been reported earlier, Petitioner's argument focuses too broadly on the overall classroom setting. What Petitioner describes as an "extremely simple inference"<sup>29</sup> that, had the cameras in the \*\*\* classroom been operating before May 2022, more abuse would have been documented, is speculation that was not supported or otherwise substantiated by the record.

The January 2021 FIE included parental reports of difficulty adjusting to new environments, low frustration tolerance, and difficulty with mornings. Parent's testimony supports these reports. However, based on brief video footage of Student resisting entering the \*\*\* classroom, Petitioner asks the hearing officer to make another unsupported inference that these instances, to the extent they occurred, were because Student feared the \*\*\* classroom, as opposed to Student's documented issues with school refusal.

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<sup>27</sup> Id.

<sup>28</sup> Petitioner's Closing Brief at 2.

<sup>29</sup> Id. at 3.

Moreover, of the more than 100 hours of classroom video footage introduced, Student is featured minimally. While the videos reviewed at hearing indeed depict treatment of other students in the \*\*\* classroom that was unacceptable and harmful to the students involved, Student was not involved in these incidents. Petitioner's tenuous argument that Student was "clearly" subjected to an unsafe learning environment is not supported by the record or the weight of the credible evidence.

Finally, while Parent's concern for other students in the \*\*\* classroom was warranted, it is not Petitioner's role to assert the rights of other students in the classroom in a due process hearing concerning Student. Though certain footage displays improper use of restraint and inappropriate treatment of students, the incidents reviewed at hearing did not concern Student directly.

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). For the reasons discussed, Petitioner did not meet Petitioner's burden of proof on this claim.

#### E. Procedural Violations of the IDEA

Petitioner raised several procedural claims, and more broadly alleges that Respondent violated Parent's right to meaningful participation in the IEP development process. Liability for a procedural violation only arises if the procedural

deficiency impeded the student's right to a FAPE, significantly impeded parental opportunity to participate in the decision-making process regarding the provision of a FAPE or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); also *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

#### 1. Progress Reports

Petitioner alleges the District denied Parent meaningful participation by failing to provide timely and appropriate progress reports. The IDEA requires periodic reports to parents on the progress a student is making on his or her goals, such as through quarterly or other periodic reports or concurrent with report cards. 34 C.F.R. § 300.320(a)(3)(i)-(ii).

The evidence, including the testimony of the special education director, proved that certain progress reports provided to Parent did not adequately communicate Student's progress. However, the record does not evidence other inconsistencies in the District's communication about Student's progress or lack











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5. 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).
6. 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 November 2, 2023.

Kathryn Lewis  
Special