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appropriate public education (FAPE) and whether the District failed to develop and implement an appropriate individualized education program (IEP) for Student. The Hearing Officer concludes the District provided Student with a FAPE reasonably calculated to allow Student to make progress in light of Student's unique circumstances and appropriately implemented Student's IEP.

The due process hearing was conducted on August 23-25, 2023 through the Zoom videoconferencing platform. Student was represented in this litigation by Student's attorney, Mark Whitburn of Whitburn & Pevsner PLLC. Both of Student's parents were present. The District was represented by its in-house legal counsel, \*\*\*. In addition, Dr. \*\*\*, the Assistant Superintendent of Special Education, attended the hearing as party representative for the District. Petitioner requested that the hearing be open to the public and observers were present.

The parties offered joint and separate exhibits. Petitioner offered testimony of Student's teacher, the District's \*\*\* program specialist, Student's Parent, Student's speech language pathologist (SLP), and a paraprofessional. Respondent offered testimony from the campus admission review and dismissal (ARD) committee meeting facilitator, Student's occupational therapist, the campus nurse, Student's

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III. FINDINGS OF FACT

1. Student is \*\*\* years old and attends the District's \*\*\* program at \*\*\*. Student lives with Student's parents \*\*\* and has attended the District since \*\*\*. Both \*\*\* and English are spoken at home. Parent is bilingual and Student's Parent speaks primarily \*\*\*.<sup>2</sup>
2. Student is eligible for special education based on \*\*\* (\*\*\* ) and other health impairments (OHIs) of \*\*\* and \*\*\*. Student has historically also been eligible based on speech impairment. Student has additional medical diagnoses of \*\*\*. Student is \*\*\*. Student requires extensive \*\*\* services for \*\*\*.<sup>3</sup>
3. Student has historically experienced \*\*\*. Student has \*\*\*. Student has an individual healthcare plan for \*\*\* at school.<sup>4</sup>
4. Student's \*\*\* plans documented in Student's IEP \*\*\* plans over the years have consistently been to \*\*\*.<sup>5</sup>
5. In \*\*\* grade (the 2017-2018 school year), Student was able to \*\*\*.<sup>6</sup>

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15. Student completed the\*\*\* grade in the 2021-2022 school year while on homeboundand participated in a\*\*\*.<sup>16</sup>
16. On April \*\*\*, 2022, the District completed a \*\*\* with Parent discussing Student'sskills, 4mm47.04 84mm47.04

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\*\*\*. Because Student exhibited more resistant behaviors to staff members than Student did to family members, staff members would have needed to use more force than family members did to restrain Student\*\*\*.<sup>27</sup>

27. Staff discussed whether a half day school schedule would be more appropriate for Student to ensure Student received\*\*\*. Staff did not think \*\*\* was appropriate.<sup>28</sup>
  28. An ARD Committee meeting was held on November\*\*\*, 2022 because Student was not making progress on Student's IEP goals and was still mostly\*\* during the school day. Student's parents participated with the assistance of a\*\*\* translator. The ARD Committee discussed that since returning to school in person that semester, Student's functional skills proved to be lower than expected when Student's IEP goals were developed in April 2022. Student would not \*\*\*. Student did not \*\*\*. Staff shared that they could not restrain Student to force Student\*\*\*. Parent asked if Student's Parent could come to school to \*\*\*. District staff denied this request. District staff proposed new IEP goals for total\*\*\* that were more appropriate to Student's present levels. Parent disagreed with changing the goals and stated that staff were not instructing Student correctly to result in progress on the
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tabled to consider the new

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\*\*\*. Student had made some limited progress within this level of communication in the years Student attended school before COVID. However, Student had reached a plateau in performance, and, with consideration of Student's overall developmental profile, further development of communication skills was not expected with ongoing speech therapy. The report therefore recommended that Student no longer be considered eligib

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003 [( investigated." On March \*\*\*

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A hearing officer applies a four-factor test to determine whether a school district's program is reasonably calculated to enable the child to receive educational benefit. 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).

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

intended to provide the fact-sensitive inquiry required by the statute as applied to the facts of the case.

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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

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program after not attending school in person for more than \*\*\* years. The IEP included a full day schedule of instruction and related services, accommodations and supports, and annual goals. The IEP included all the required elements. See 34 C.F.R. §§ 300.22, 300.320, 300.323(a). The instructional arrangement and schedule of services were comparable to what Student received when Student attended school in person in the past. The accommodations and supports also mirrored what had typically been provided to Student when Student attended school in person.

Petitioner complains that the goals in the spring 2022 IEP were developed based on the \*\*\* and information from Parent, and that this was inadequate information. Petitioner also faults the District's reliance on the \*\*\* because Petitioner argues it was developed while Student was still on homebound services and therefore only considered Student's needs as a homebound student. The \*\*\* itself speaks more generally though to Student's skills and needs, including community experiences

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in November 2022. Petitioner complains that this was not soon enough. However, Parent disagreed with changing the goals and indicated Parent had new information to share with the committee about Student's functional levels. The District agreed to tab 6 (tr) 2/Tal





Petitioner's Complaint asserted that the District offered inadequate services as well. However, Petitioner offers no argument on Student's services. The record supports that Student's services were appropriately tailored to the data on Student's needs.

Petitioner asked numerous District witnesses why they did not request an FBA when Student was during the fall 2022 semester. However, once an FBA was completed, the LSSP was unable to determine a reason for Student's, beyond the function of, based on observation alone. Petitioner did not meet Student's burden to show that an earlier FBA was a missing piece of evaluation data that the District needed to develop an appropriate program for Student.

Petitioner has also complained about the District's decision to. During the hearing, Petitioner asked multiple staff witnesses about whether they considered various alternatives to allow Student to continue to participate in that had not been raised previously with District staff, including. Petitioner also asserts that Student could be. However, Petitioner offered no evidence that this could be. The evidence all indicates that Student requires the assistance of.

The Hearing Officer disagrees with the interpretation by District staff that checking a particular box about in the portion of the IEP is dispositive on whether Student could be included on. However, the decision to exclude Student from was based



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To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:

- x Whether the student with a disability c95a44EMC /LbI <</MCID 2 >>BDC 3(



finally came up at the March \*\*\*, 2023 ARD Committee meeting, District staff acknowledged that Student's goals would be implemented in the community and that the check-box would be checked in Student's \*\*\* supplement. However, the \*\*\* supplement was addressed at the end of the meeting when the advocate was attempting to table due to her schedule, and there was very little discussion about it. The District could have been much clearer in explaining to the parents that it did not believe it could take Student on \*\*\* until the box was checked and the IEP was implemented. The lack of coordination and collaboration on this issue can also be seen in the contradictory District positions

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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). Student is in an 18+ program, therefore Student's program is no longer focused on academics and can be assessed in terms of appropriately addressing Student's post-secondary needs. See 34 C.F.R. § 300.43.

It is undisputed that Student made no progress on Student's IEP goals in the 2022-2023 school year. The District gave up the possibility of progress on more

appropriate goals by attempting to reach consensus with the parents instead of implementing the new goals proposed in the fall 2022 ARD Committee meetings. Once the ARD Committee met again in the spring 2023 semester, the District proposed appropriate goals, taking into consideration Student's needs and present levels, that are more likely to result in progress. However, this IEP has yet to be implemented due to stay put.

While Student did not progress on Student's IEP goals, Student did benefit from Student's participation in the \*\*\* program. Participating in the classroom activities, \*\*\*, when permitted, gave Student the inclusion opportunities recommended by the Apr. 579 0e2boav. hr\*e

On the other hand, Student undoubtedly suffered from the \*\*\* Student took in during the school day throughout the school year. The impact this had on Student's overall progress is not known from the record. However, the record reflects that great efforts were made to understand and address this. A reasonable inference from the record, including the decline in Student's ability to \*\*\* beginning in the 2018-2019 school year and subsequent \*\*\*, supports that the issue is ultimately medical. Although \*\*\*



sufficiently coordinated and collaborative manner by the key stakeholders, and provided Student academic and non-academic benefit. The evidence showed that Student's program was reasonably calculated to provide meaningful educational benefit and was appropriately ambitious in light of Student's unique circumstances for the 2022-2023 school year. *Endrew F.*, 458 U.S. at 399. Based on the four factors of *Michael F.*, the evidence establishes that the District provided Student a FAPE during the relevant time frame.

### C. IEP IMPLEMENTATION

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  
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