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IV. REQUESTED RELIEF

Petitioner requested the following

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reading comprehension, reading fluency, math calculation, and math problem solving.

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\*\*\*. Student attended\*\*\* until re-enrolling in the District on March \*\*\*, 2022.<sup>14</sup>

15. On March \*\*\*, 2022, the District convened Student's ARD committee to discuss Student's return to school. The District proposed conducting the previously agreed to functional behavior assessment. However, Parents indicated the assessment was not necessary because Student's behavior had improved. It was the consensus of the ARD committee that Student's behavior had improved since returning to school and no changes were needed to the IEP or services.<sup>15</sup>
16. On April \*\*\*, 2022, the District convened Student's ARD committee to conduct a manifestation determination review. The ARD committee reviewed an incident from \*\*\*, 2022, during which Student\*\*\*.<sup>16</sup>
17. The ARD committee determined Student's conduct was not directly or substantially related to Student's disabilities of specific learning disability (r) ]TJ628 (n)-01 (c)

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remain at \*\*\* for the rest of the schoolyear, instead of being 002 Tc d.w 296H78chins.2

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2022-23 School Year

24. Student was<sup>\*\*\*</sup>.<sup>24</sup>
25. The District completed Student's functional behavior assessment on October <sup>\*\*\*</sup>, 2022. Student's problem behaviors were identified as noncompliance with teacher directives, elopement from class, and verbal aggression. Student was assessed to engage in Student's problem behaviors when Student was engaged in nonpreferred activities, in a nonpreferred class, or provoked by other students. It was hypothesized that student engaged in the behaviors to gain attention, gain a desired activity, and avoid an activity.<sup>25</sup>
26. The District school psychologist prepared the functional behavior assessment based upon anecdotal information from District staff and one observation of Student. The functional behavior assessment was completed over a short period of time in October of 2022 and did not include frequency behavior data.<sup>26</sup>
27. On October <sup>\*\*\*</sup>, 2022, the District convened Student's ARD committee for Student's annual meeting. The ARD committee documented Student's present levels as cognitive weaknesses in comprehension knowledge, fluid reasoning, short-term working memory, processing speed, and visual spatial relations; academic deficits in reading comprehension, reading fluency, math calculation and math problem solving; cognitive strengths in long-term retrieval and visual processing; academic strengths in basic reading skills and written expression; and difficulty staying on task, requiring frequent redirection.<sup>27</sup>
28. The ARD committee adopted one <sup>\*\*\*</sup> reading comprehension IEP goal; one math problem solving IEP goal; one math calculation IEP goal; one <sup>\*\*\*</sup> problem solving IEP goal; one <sup>\*\*\*</sup> reading comprehension IEP

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<sup>24</sup> JE 19 at 17-18.

<sup>25</sup> JE3 at 23-24.

<sup>26</sup> TR at 188-189, 286-288.

<sup>27</sup> JE3 at 6-7.

goal; one \*\*\* reading comprehension IEP goal; one behavior goal addressing elopement; one behavior goal addressing noncompliance; and one behavior goal addressing verbal interactions.<sup>28</sup>

29. The ARD committee placed Student at \*\*\*, Student home campus, with 50 minutes per day special education resource reading; 50 minutes per day special education resource math; general education \*\*\* with 20 minutes per day of inclusion support; general education \*\* with 20 minutes per day of inclusion support; general education \*\*\*; and general education for \*\*\* per day.<sup>29</sup>
30. The ARD committee reviewed the functional behavior assessment and determined Student needed a behavior intervention plan. The behavior intervention plan targeted noncompliance with teacher directives, elopement

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classes for the 2022-23 school year, receiving \*\*\*, and \*\*\*.<sup>43</sup>

44. While at \*\*\* and in the \*\*\* program, Student had \*\*\* disciplinary incidents. Student was \*\*\*.<sup>44</sup>
45. Student engages in aggressive behavior at home, and Parents struggle with Student's supervision in the home.<sup>45</sup>
46. In the summer of 2023, Parents decided to place Student at the enrolling Student in September of 2023. Parents first informed the District of the decision to privately place Student after they filed the complaint in this case.<sup>46</sup>

## VI. DISCUSSION

### A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative

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determined Student's educational needs warranted such a reevaluation. 20 U.S.C.

§ 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1). A school district must also conduct a reevaluation at least once every three years, unless the school district and the student's parent agree it is unnecessary 34 C.F.R. § 300.303(b)(2).

Here, the relevant question is whether Student's "educational needs" necessitated a reevaluation for an emotional disturbance prior to fall of 2022. Given Student's \*\*\* during the 2021-22 school year, the District was well aware Student was struggling emotionally. However, the record does not support a conclusion that a reevaluation, including an evaluation for emotional disturbance, prior to fall of 2022 was necessitated b(a) 51.94 52d327c95-4.2 (on) 1.1 (at) -4 | s novaemyears,

place for Student was appropriate. Thus, as of the end of March of 2022, there was no indication Student's educational needs warranted a reevaluation.

During the last two months of the 2021-22 school year, Student experienced behavioral issues at school Student was again \*\*\* at the beginning of the 2022-23 school year. When Student returned to school in October of 2022, the District convened Student's ARD committee, conducted a REED, and determined psychological assessments were necessary. Between Student's initial FIE in 2020 and the District's determination to conduct psychological testing in October of 2022, Student only attended school for approximately \*\*\* months. During this limited attendance time, Student's educational needs did not clearly indicate additional evaluations were necessary.

Moreover, under the IDEA, a student's category of eligibility is not determinative of the services Student receives. IDEA does not concern itself with labels, but with whether a student is receiving a FAPE. *Lauren C. bnf Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 377 (5th Cir. 2018). The IDEA does not even require that eligible students be classified by their particular disability. 20 U.S.C. § 1412(a)(3)(B). Here, with Student determined eligible for special education and receiving services since 2020, Petitioner failed to prove beginning an evaluation for emotional disturbance prior to October of 2022 was necessitated by Student's educational needs or would have impacted the provision of a FAPE to Student.

#### D. Appropriate Program

A hearing officer applies a four-factor test to determine whether a school district's program is appropriate and meets IDEA requirements. Those factors are:



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1. Whether the program is individualized on the basis of the student's assessment and performance;
2. Whether the program is administered in the least restrictive environment;
3. Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
4. Whether positive academic and non-academic benefits are demonstrated.

Cypress Fairbanks Indep Sch. Dist. v. Michael







Student's needs providing behavioral support in class, during transitions, and when additional support was required. The evidence showed, while in the \*\*\* program, Student was successful in academic classes and had fewer behavioral issues. The record reflects only three disciplinary referrals during this time. Additionally, Student rarely missed academic instruction as the result of behavior issues and was not reported to be regularly disrupting class.

In sum, the District took into account Student's needs, Parents' input, the results of the assessments, and developed an individualized IEP and program reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. *Endrew F.*, 580 U.S. at 403.

## 2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with non-disabled peers 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." 20 U.S.C. § 1412(a)(5)(D)(i).

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To determine whether a school district is educating a -1.10.04 j 0 10.04 300.72 68c.8 Trm

3. Services Provided in a Coordinated, Collaborative  
Manner by Key Stakeholders

TheIDEA

4. 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., 703 F.3d at 813-14. Petitioner contends Student failed to benefit from Student's program because Student continued to have behavioral struggles at school. However, the District's obligation is to ensure Student receives overall educational benefit from Student's program, and not to remediate Student's disability, am [(Ac)rof t E





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Student's IEP was reasonably calculated to address Student's needs in light of Student's unique

circumstances. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 188, 203 (1982); Endrew F. ex rel. Joseph v. Douglas Cty. Sch. Dist.