

jurisdiction, arguing that the Hearing Officer had no jurisdiction to consider or enter findings on issues outside his limited subject matter jurisdiction under the IDEA. The Hearing Officer granted the District's plea to the jurisdiction.

Findings of Fact¹

Student's background and special education history

1. Student

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- ***, written expression, and math *in a resource setting* by a special education teacher.² (*JX 1 at 9-10*).
4. Later, Student received a multidisciplinary Full and Individual Evaluation (FIE) in December 2019 in the *** grade. Student met eligibility for special education services as a student with specific learning disability in basic *** skills with dyslexia, written expression with ***, and ***. (*JX 3 at 1, 53*). The evaluators recommended several accommodations and assistive technologies for Student which were implemented in subsequent IEPs for Student. (*Id. at 53-55*). Student continued to receive all instruction in a general education setting with in-class support from special education teachers. Student also received basic *** services related to Student's dyslexia in a Resource class. (*Tr. at 321*).
 5. In the *** grade, according to Student's Present Level of Academic Achievement and Functional Performance (PLAAFP) Student received only one grade under 90 – ***. (*JX 12 at 4*). But according to Student's "****" test, Student scored in the *** percentile nationally for ***, compared to Student's *** grade peers.³ (*JX 12 at 5*). Later in the mid-school year, Student took the *** test again and scored higher at the *** percentile nationally. (*Id.*) Similarly, Student scored in the *** percentile in *** on the *** and in the *** percentile nationally when Student retested mid-school year. (*Id. at 6*).

² Resource setting is another term for self-contained special education classroom rather than in-class support by special education teachers in a general education classroom setting. Resource classrooms look identical to general education classrooms. Only the class size is different. (*Tr. at 708*).

³ *** refers to a universal assessment the District uses to track progress on students in ***.

6. On the Texas STAAR report card for the^{***} grade, Student did not meet grade level in either ^{***}. Student did, however, show noteworthy progress from the previous year. (*JX 30*).

^{***} *grade – 2021-2022 school year*

7. The District held an annual Admission, Review and Dismissal (ARD) meeting on April ^{***}, 2021 to review Student's IEP for the upcoming 2021-2022 school year. Student continued to meet eligibility for special education services based on specific learning disabilities in basic ^{***} skills, wri/MCID 4 >>om-i24 1d f:12 3Qy84.

subjects for tutoring. (*JX 24 at 6-7*). Guardian later supplemented the February 2022 ARD notes with Guardian's version of events relating to tutoring for Student. (*JX 25*).

23. Student's *** assessments throughout Student's *** grade indicated Student need "urgent intervention" in both ***. (*RX 22*).

***** grade – 2023-2024 school year – First year at*****

24. In March 2023, the ARD committee convened its annual meeting to develop an IEP for Student for Student's next school year, 2023-2024, in which Student will be ***. (*JX 27*). Student continues to be eligible for special education services based on a specific learning disability in the areas of basic ***/dyslexia, written expression/***, and ***. (*JX 27 at 6*).

25. A review of then current PLAAFPs suggest that, academically, Student is regressing according to Student's *** scores. Particularly in***, "this is an area of academic struggle" for Student. (*JX 27 at 7*). Student's *** teacher reports that Student needs to be taught concepts using the "***" and requires direct support to complete independent tasks in ***." (*Id. at 8*). Student's *** score also shows Student did not grasp the concepts Student should understand in *** grade. (*Tr. at 134-135*). The ARD committee agreed with the PLAAFPs. (*JX 27 at 23*).

26. The ARD committee continued its meeting to April ***, 2023. During this meeting, the District proposed a Resource setting for *** for Student, along with in-class support in general education for ***. (*JX 27 at 24*). Guardian agreed with continuing in-class support for ***. Guardian did not agree with the proposed Resource instruction for Student in ***, stating that Student's grades have been great all year, which suggests Student's supports in regular education are working. The District responded that Student "does achieve

requires intensive direct instruction and support to access the general curriculum with modifications and accommodations. [Student] requires pacing and extended time to understand concepts and processes, apply, and complete assignments. [Student] lacks basic foundational skills required to keep up with the rigor and pacing in the general education setting. (*JX 28 at 11*).

31. The District also continued to propose several accommodations for Student but reduced the number of accommodations needed in *** since Student would be receiving Resource instruction and accommodations in a more intensive and continuous setting.⁴
32. Student's Guardian filed the current request for due process hearing on Student's behalf on August 11, 2023, which resulted in a "stay put" placement and subsequently paused the proposed placement of Student in Resource instruction for ***.⁵
33. On October ***, 2023, the ARD committee held a brief meeting reinstating the prior IEP for Student as a result of Student's stay put requirement in light of Student's earlier request for the instant IDEA due process hearing. That meeting removed the previous recommendations for Resource placement for ***, replacing them with continued placement in general education with in-class supports, and implementing some additional goals and accommodations. (*JX 29*).
34. Student's *** score in early *** grade also suggested Student needed "urgent intervention" in both ***. (*RX 37*).
35. Significantly, for the most recent school years, Student's teacher kept and maintained "accommodation logs" reflecting the in-class accommodations

⁴ Compare "Accommodations" in Student's proposed 2023-2024 IEP (*JX 28 at 7-8*) with Student's 2022-2023 IEP (*JX 27 at 9-11*).

⁵ The Hearing Officer takes judicial notice of Petitioner's Request for a Due Process Hearing filed on behalf of Student on August 11, 2023.

42. *** has been Student's in-class special education support teacher for *** for the last three school years. (*Tr. at 191-192*). He testified that Student made some progress toward *** goals in *** grade. (*Tr. at 199-200*). *** stated that he spent 80-85 % of his class time with Student in *** in *** grade even though there were *** other special education students in the class, which was not enough time for providing those other students their special education services (*Tr. at 287-289*).
- 43.***, the Assistant Director for Special Education, testified that a Resource setting would be better for Student because Student's *** and Resource setting would be more appropriate to be ab13 (d)1 se

educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist. RE1*, 580 U.S.386, 137 S. Ct. 988993, 197 L.Ed.2d 335 (2017).

The Fifth Circuit has created a four-part test for determining whether a school district has provided FAPE to a student, using the following factors:

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 and collaborative manner by the key stakeholders; and
4. Whether both positive academic and nonacademic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 18 F.3d 245, 253 5th Cir. 1997). When reviewing these factors, courts have found there is no particular manner to consider or weigh them. Rather, the caselaw holds these factors are "indicators" of an IEP's appropriateness and intended to guide the fact-intensive inquiry for evaluating whether an IEP provided an educational benefit. *Michael Z.*, *supra*, 580 F.3d at 293294.

In this case, and essentially tracking the factors set forth in *Michael F.*, Petitioner Student challenges the Respondent District's provision of FAPE in the following respects:

- x *Whether the Respondent District failed to provide a FAPE to Petitioner Student;*
- x *Whether the District failed to develop and implement an IEP for Student's unique characteristics and needs;*
- x *Whether the District failed to provide instruction and services to Student in the least restrictive environment appropriate for Student's needs; and*

occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids or services cannot be achieved satisfactorily. This mainstreaming provision is known as the “least restrictive environment requirement” (LRE). 34 C.F.R. § 300.114(a)(2)(i). Further, TEA regulations require a school district to provide a continuum of instructional arrangements based on a student’s individual needs and IEPs, which include educational settings such as: mainstream, homebound, hospital class, resource room/services, self-contained (mild, moderate, or severe) regular campus, off-home campus, nonpublic day school, residential care and treatment facility (not school district resident). 19 Tex. Admin. Code § 89.63(c).

The Fifth Circuit in *Daniel R.R. v. State Bd. of Educ.* 874 F.2d 1036 (5th Cir.) created a two-part test for determining whether a school district is educating a student with a disability in the LRE:

- x Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- x If not, whether the school district mainstreamed the student to the

Student, the possible detriment to others in Student's *** class was not as pronounced

developing an IEP is holistic, requiring the input and collaboration of various persons, including the student's parents, special and regular education teachers, therapists, and often the child ***self. 34 C.F.R. §§ 300.321-322, .324; 19 Tex. Admin. Code 89 § 1050(c). To the extent possible, the decision of the ARD committee should be by mutual agreement. 19 Tex. Admin. Code 89 § 1050(g).

Throughout the relevant period, the District provided special education services to Student based on a highly coordinated and collaborative manner based on input from key stakeholders. The record evidence shows properly composed ARD committee meetings that included Student's Guardian, special and regular education teachers, District staff, special education advocates for Student, and other necessary participants. Several ARD meetings took place spanning numerous sessions. The ARD committees created detailed goals and objections for Student's IEPs, as well as numerous and evolving accommodations for Student to help Student achieve Student's goals.

Student's Guardian disagreed with many of the District's IEP decisions, significantly the most recently proposed IEP for Student that would have placed Student in a Resource setting for both ***. But the right of a parent or guardian to meaningful input in this process does not amount to "veto power" over the school district's decisions. *White v. Ascension Parish Sch. Bd* 343 F.3d 373, 380 (5th Cir. 2003). And absent bad faith exclusion of a parent or guardian or refusal to listen to them in the IEP process—which is not the case here—a school district must be deemed to have met the IDEA's requirements of a coordinated and collaborative process. *Id.*

4. Academic and nonacademic benefit

The last *Michael F.* factor for reviewing the sufficiency of FAPE –i.e., whether the student received academic and nonacademic benefit –is one of the most critical in the overall analysis. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist* 703 F.3d 801, 813-814 (5th Cir. 2012). It is not necessary for a student to improve in every area of Student's IEP

1. Petitioner Student is eligible for a

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