

**BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION**

PARENT,¹ ON BEHALF OF HER CHILD

COMPLAINANT

v.

Case No. D04282020-25

SCHOOL DISTRICT

RESPONDENT

DECISION AND ORDER

1. This matter having come before the undersigned upon the Complaint for Due Process of the Complainant herein, the undersigned, having considered the pleadings and the evidence submitted at the hearing of this matter, the arguments and statements of counsel, and the applicable law, finds as follows:

2. This is a proceeding pursuant to the Mississippi "State Policies Regarding Children with Disabilities Under 'The Individuals with Disabilities Education Act Amendments of 2004'"² (collectively referred to as the Policies or the IDEA, herein), and involving a former

¹Because the Student was a minor at the beginning of this matter and because the Student remains under the care of a Guardian/Conservator, the Parent's name and the name of the Student on whose behalf the Parent filed the Complaint for Due Process are set forth on a cover sheet to this Order that is to be a part of the original of this Order maintained in the administrative record for this case by the Mississippi Department of Education but is not to be reproduced or disseminated outside that administrative record.

²Which Policies were adopted under the authority of "The Individuals with Disabilities Education Act (IDEA)," Public Law 101476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)," Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300, and the Mississippi Standards and Procedures for the Education of Exceptional Children, Mississippi Code §§ 37-23-133 through -150. The hearing officer and the Mississippi Department of Education have jurisdiction over these proceeding pursuant to the statutes and code sections cited. The record, left open at the conclusion of the presentation by the parties of their respective cases, is now closed.

Student (referred to as the Student or Child, herein) of a public school district of the State of Mississippi.

PARTIES

3. The Complainant, the Parent of the Student, instituted these proceedings by filing a Complaint for Due Process with the Mississippi Department of Education on or about April 28, 2020, in the interest of Complainant's child, then a [REDACTED] minor. Upon reaching the age of majority, the Parent's rights under the IDEA passed to the Student. Because the Student lacked the capacity to take over the claims stated in the Complaint for Due Process, the Parent, through counsel, subsequently instituted proceedings to be named legal guardian/conservator for the Student. The Chancery Court of the Second Judicial District of Harrison County entered an order on October 19, 2023, naming the Parent as Guardian and Conservator for the Student, and the Parent continues to represent the Student's interests in this matter. The Respondent is a public school district organized under the laws of the State of Mississippi (see footnote 2).

4. The Parent previously filed on August 12, 2019, a complaint for due process on behalf of the Student. The parties resolved that complaint, the terms of such settlement being set out in an October 17, 2019, decision and order of the hearing officer presiding in that matter. Those terms were as follows: (1) the Student would receive 16 hours of homebound compensatory services in reading and math and one per week of reading intervention for twelve weeks; (2) Huntington Learning Center would evaluate the Student at the expense of the District; (3) the IEP Committee would convene not later than 30 days following the assessment to reconsider the Student's placement and least restrictive environment (LRE); and (4) the Parties would deal with each other in good faith in meeting the terms of the settlement. At the hearing at which the terms of the settlement were announced the Parent stated that the terms of

the agreement satisfied the Parent's concerns regarding the provision of FAPE, the child's placement, child find, and procedural safeguards.

5. On March 17, 2020, the Parent filed a federal lawsuit in the Southern District of Mississippi, alleging non-compliance with the terms of the October 16, 2019, settlement agreement and seeking declaratory relief, alleging, inter alia, that the District failed to provide the full amount of compensatory services. The lawsuit was dismissed September 9, 2020, pursuant to a "Stipulation of Dismissal."

6. This Due Process matter was continued numerous times at the requests of the parties who asked for the additional time largely due to, according to the parties, their ongoing settlement efforts and the need for Complainant's then counsel to establish a conservatorship/guardianship for the Student. The matter ultimately was set for hearing on April 2, 2024. On Tuesday, March 26, 2024, six calendar days before the hearing, with Holy Week and Easter holidays intervening, the District filed a motion to dismiss or alternatively to limit the scope of the hearing. Because the motion requested relief that would have been dispositive of the Complaint in whole or in part, and because it was filed a week before the hearing was to begin giving neither the Complainant nor the hearing officer sufficient time to consider the motion and Respondent's arguments and to prepare for the scheduled hearing, I declined to rule on that motion and took it under advisement to be ruled on "subsequently as may be necessary or appropriate." A hearing in this matter was held in seven sessions over a period of weeks beginning April 2, 2024, with the last session held June 14, 2024.

7. Other than the District's pending motions, the issues presented at the hearing were these nine issues raised in the Complaint:

1. whether the District violated procedural safeguards by removing Social Studies and Science from the Student's Individualized Education Program (IEP)

without prior written notice (the complaint alleged that the District had not provided Social Studies or Science since March 2019);

2. whether the District denied FAPE to the Student by removing speech goals from the Student's IEP as a result of the private entity's inability to address the matter;

3. whether the private entity was the Student's Least Restrictive Environment (LRE), due to the fact that it could not fully address Student's disabilities or provide the required curriculum;

4. whether the district denied FAPE by failing to provide instruction in the home as Student's LRE;

5. whether the district failed to comply with the IDEA's implementing regulations by failing to provide the Student with a transition plan;

6. whether the district denied FAPE by failing to list a goal for occupational therapy (O. T.) within Student's current IEP;

7. whether the Student's Behavior Intervention Plan (BIP) and Functional Behavior Assessment (FBA) were adequate due to the lack of parental input;

8. whether the Student's BIP was adequate due to the District's failure to add safety goals that address Student's problem behavior (eloping); and

9. whether the District violated IDEA by failing to provide progress reports in a timely manner, with data on how Student's progress toward goals was measured.³

8. The prayer for relief in the Complaint requested the following: (1)

“[c]ompensatory services to address the Student's lack of progress academically and behaviorally”; (2) “reevaluation of [the Student's] LRE and revision of [the Student's] IEP to put [the Student] in the proper setting”; (3) revision of the Student's “IEP to provide goals, services, and a transition plant that allow [the Student] the opportunity to make use of the instruction she is receiving”; (4) the reconducting of an FBA and development “of a BIP with parental input

³ A tenth issue in the Due Process Complaint sought an independent educational evaluation. That issue resolved with Dr. Dannell Roberts' evaluation.

from [the Parent]”; and (5) the provision to the Parent of “timely and data driven progress reports that allow her to accurately assess [the Student’s] progress toward goals.”

FACTS

9. The Student was born on [REDACTED], and resides in the District, with the Parent and a younger sibling. The Student began talking at two years old but suddenly stopped. The Student was diagnosed with speech and language impairment and Autism Spectrum Disorder when five years of age. The family moved into the District when the Student was ten years old. The Student attended the schools of that District and was homeschooled for a year before starting at a District High School (High School, herein; the School is identified in a footnote on the coversheet hereto) in the fall of the 2018-2019 school year.

10. The Student has a special education eligibility ruling of Autism Spectrum Disorder with a secondary eligibility category of Language/Speech Impaired, subcategory Articulation. The Student also is described as having a significant cognitive disability (“SCD”). The Student performs academically at a pre-kindergarten level. The Student’s language and communication skills and use of language are very limited, typically involving only one or two words, but sometimes three or four. The Student rarely makes eye contact. The Student has poor social awareness and will run up to someone the Student finds interesting or attractive. The Student is able to perform basic life skills such as dressing, bathing, toileting, microwaving food, and self-feeding. The student demonstrates little or no safety awareness and will run across a parking lot or street without paying attention to possible oncoming traffic. The Student also exhibits elopement behaviors. Elopement is the term used to describe a student’s leaving of a designated area without permission.

11. The Student started at the High School in the 2018-2019 school year. Because of the Parent's concerns for the Student's safety due to the Student's elopement tendency the Parent in February 2019 requested a Behavior Intervention Plan (BIP) and homebound services for the remainder of the school year. Although the District employees on the IEP team did not believe the Student's elopement tendency posed a danger to self or to others in the school setting, the IEP team agreed to homebound services due to the Parent's request. The Student began homebound services as of February 27, 2019, and the District began the process of preparing a BIP. The Student continued receiving homebound services during the 2019-2020 school year.

12. The IEP team met on August 7, 2019. The resulting IEP specified 260 minutes of instruction for the Student five times per week in a self-contained classroom at the High School. The IEP team also discussed occupational therapist Jackson-Harris's evaluation of the Student and the proposed implementation of the BIP. The Parent requested an independent OT valuation of the Student and did not want to implement the BIP at that time due to the Parent's preference that the team meet again to discuss the Student's sensory issues. The IEP team also decided the Student's LRE would be a self-contained classroom at the High School with a one-to-one assistant assigned to the Student. The Student, a [REDACTED] year high schooler at that point, did not return to school at that time, however, because the Parent had filed a complaint for due process on August 12, 2019, and invoked the stay-put provisions of the IDEA regulations. See State Policies, § 300.518 (a).

13. Pursuant to the resolution of the Parent's August 12, 2019, due process complaint, Huntington Learning Center [HLC] evaluated the Student in October 2019. An IEP team meeting was held November 18, 2019, with the Parent present via the Zoom computer platform. The IEP committee determined that the Student would attend HLC two days a week for two

hours each day (not including the Student's occupational therapy and speech language therapy times) and that the previously developed BIP would be implemented. The Student began receiving services at HLC in December 2019. The student received 60 minutes per week of speech/language therapy (SLT) at the Orange Grove Library during the 2019-2020 school year. At the beginning of that year the services were provided first by Ms. Billi Sumrall and next by Ms. Debbie Brand. District speech language pathologist Holly Davis provided services from February until the COVID-19 District Schools closures around March 18, 2020, the services (except for one session canceled by therapist Johnson) were provided at the Orange Grove Library.

14. Because of COVID-19 the District Schools closed in March 2020, and occupational therapist Jackson-Harris's OT services stopped temporarily at that time. The District provided no services to any students during the COVID-19 closure period. The Student was determined to be eligible for extended school year services (ESY). Occupational Therapist Jackson-Harris provided OT services to the Student via Zoom beginning May 12, 2020, until ESY services ended June 30, 2020. From May 2020 and through the summer Presence Learning (a computer based service) provided the Student's SLT services.

15. When the 2020-2021 school year began the Student remained on homebound services. Ms. Holly Davis resumed Speech services to the Student by means of computer in August 2020 and continued to do so until January 2021 when services again were provided through Presence Learning until the student finished school in July 2021. Ms. Jackson-Harris provided OT services one half hour per week throughout the 2020-2021 school year until the student finished at the District in July 2021.

16. The following persons testified during the course of the hearing: (1) Ms. Lana Clayton, a Board Certified Behavior Analyst (BCBA), who evaluated the Student May 18, 2021; (2) Dr. Dannell Roberts, a licensed psychologist and BCBA, who conducted an independent educational evaluation (IEE) of the Student in August 2020; (3) Dr. James Smith, who evaluated the Student on November 30, 2021, for Mississippi Rehabilitative Services; (4) Ms. Akeba Jackson-Harris, District occupational therapist who evaluated the Student on February 8th, 2019, and provided OT services to the Student; (5) Ms. Katie Walton, an employee of HLC who worked with the Student at HLC; (6) the Mother of the Student; (7) Ms. Caitlyn Burgess an occupational therapist previously employed by Merit Health in Biloxi who evaluated and provided services to the Student at Merit Health; (8) Ms. Crystal Flickinger, who has served as a school case manager for the District for the last three years and, before that, as a District case manager for seven years; (9) Retired District Special Education Director Sheila Curtis; (10) Ms. Hannah Oliver, a speech-language pathologist who has worked for the District since 2006 and assessed the Student in August 2017; (11) Ms. Erin Gibson, who owned HLC during the time the Student received services through HLC; (12) Ms. Holly Davis, a District speech language pathologist who worked with the Student; and (13) Ms. Missy Yates, who held the position of Assistant Special Education Director for the District during the 2021-2022 school year and for the four years prior to that.

DISCUSSION

17. The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living ... [and] that the rights of children with disabilities and

parents of such children are protected.” 20 U.S.C.A. § 1400(d)(1)(A)-(B). States receiving federal funds must make a FAPE available to all children with disabilities living within the state. *Forest Grove Sch. Dist. v. T.A.*, 129 S. Ct. 2484, 2487 (2009). Each child with a disability must be evaluated by the local or state educational authority in order to develop a written “individualized education program” (IEP) including special education and related services. 20 U.S.C.A. § 1414(d).

18. In Mississippi, an IEP committee (sometimes called an IEP team) at the local education agency [LEA], in this case, the District, develops the student’s IEP. Policies, §§ 300.320-300.321. IEP committees are composed of various teachers and related service providers from institution in which the student is placed at the time. The student’s parents also are members of the IEP committee. Policies, § 300.321. If the parents disagree with an IEP committee decision, they may file a due process complaint specifying the grounds of their disagreement. Policies, § 300.507.

19. A hearing officer’s role in considering a due process complaint is not to second guess state and local policy decisions but to determine whether school officials have complied with applicable law, and if not, what the proper remedy should be. *Flour Bluff Independent School. Dist. v. Katherine M.*, 91 F.3d 689, 693 (5th Cir. 1996). The law does not require that a school district provide the best education possible. Rather, the law requires only that a district provide access to public education “sufficient to confer some educational benefit upon the handicapped child.” *Houston Independent School District v. Bobby R.*, 200 F. 3rd 341, ¶ 28, 31 IDELR 185 (5th Cir. 2000). That benefit must not be of a mere *de minimis* nature, but likely to result in progress, rather than “regression or trivial educational advancement.” *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, ¶ 4 (5th Cir. 1997). The

education offered must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F., Endrew F., v. Douglas County School District*, 580 U.S. ____, 137 S. Ct. 988; 197 L. Ed. 2d (2017).

20. The Parent, as challenger of the District’s actions in this case, has the burden of proof as to all issues presented in this matter. *See, Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 808 (5th Cir. 2003).

21. In deciding whether the requirements of the IDEA have been met and FAPE provided, the first question to consider is whether the school district complied with the procedures of the IDEA. *Buser v. Corpus Christi Independent School District*, 51 F.3d 490, 492 (5th Cir. 1995). Procedural violations, in and of themselves, do not amount to a denial of a free appropriate public education [FAPE] unless the violations result in the loss of educational opportunity to the student or seriously infringe upon the parents’ opportunity to participate in the provision of FAPE to the student. *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); State Policies, § 300.513;

22. Second, the hearing officer asks a substantive question: was the IEP “reasonably calculated to enable the child to receive educational benefits.” *Buser v. Corpus Christi Independent School District*, 51 F.3d 490, 492 (5th Cir. 1995), citing *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982).

DID PROCEDURAL VIOLATIONS, IF ANY, RESULT IN A DENIAL OF FAPE?

23. The Complaint raised four issues that fall into the category of procedural violations: (1) that the District removed Social Studies and Science from [REDACTED] IEP without prior written notice (the complaint alleged that the District had not provided Social Studies or Science since March 2019); (2) that the District created inadequate FBA and BIP because the same

lacked parental input; (3) that the District failed to provide progress reports in a timely manner, with data on how Student's progress toward goals is measured; and (4) whether the district failed to comply with the idea's implementing regulations by failing to provide Student with a transition plan; .

Removal of Social Studies and Science from the Student's Individualized Education Program (IEP)

24. The Parent testified that the Student's science and social studies goals were removed from the IEP without the Parent's knowledge or consent and that the Parent was not informed of the removal of the same. The documentary evidence demonstrates that the Parent was present in person or virtually for all but one of the 2019-2020 IEP meetings and approved the Student's 2019-2020 IEP. The evidence likewise shows that the Parent was much involved in the Student's education and sometimes requested and was granted changes to the Student's IEP. There is no record of the Parent having requested that the science and/or social studies goals be added back to the IEP. I do not find that the evidence supports a finding that the IEP team's removal of the social and science study goals constituted a procedural violation amounting to a failure to provide FAPE. See *Buser v. Corpus Christi Independent. School District*, 51 F.3d 490, 493-494 (5th Cir. 1995).

Parental Input and the FBA and BIP

25. At the Parent's request the District began the process of preparing a Behavior Intervention Plan for the Student in the spring semester of 2019. District Special Education Director Sheila Curtis testified that before a BIP is developed a Functional Behavior Assessment (FBA) is conducted to determine the functions of a behavior so that that the behavior can be properly addressed. The then District Assistant Special Education Director Missy Yates, who holds a Master's degree in special education with emphases in learning and cognitive disabilities,

conducted a Functional Behavior Assessment (FBA). Ms. Yates testified that the process she followed in undertaking the FBA of the Student included obtaining a parent interview. Ms. Johnson testified that she was not interviewed. The documentary evidence conflicts with the Parent's testimony. The FBA/BIP contains a record of Ms. Yates's interview of the Parent on March 15, 2019. Ms. Yates testified at the hearing that Ms. Sheila Curtis interviewed the Parent and Ms. Curtis, although having no specific recollection of the interview, identified the interview document as being in her handwriting. The evidence also shows that the BIP was discussed at the August 7, 2019, IEP team meeting and was implemented at the November 18, 2019, IEP meeting. The Parent was present at both of those meetings. Again, applying the principles of *Buser*, I find the District did not cause a deprivation of FAPE by any procedural error or omission in the matter of parental input regarding the FBA/BIP.

Providing of Progress Reports

26. The IDEA requires progress reporting in the form of "a description of how the child's progress toward meeting the annual goals . . . will be measured and when periodic reports on the progress the child is making toward meeting the annual goals . . . will be provided." State Policies, § 300.320 (a) (3). The Parent testified that the District provided her with progress reports irregularly prior to the filing of the instant complaint in April 2020. The Parent did receive information from time to time from the District. According to her testimony, she received a copy of the August 7, 2019, IEP, on August 8, 2019, as well as copies of the procedural safeguards, and a progress report. Regarding the November 18, 2019, IEP meeting, the Parent also received the prior written notice for that meeting and the 2019-2020 IEP revised at that time, including the BIP as implemented that date. The Parent also received information regarding the February 20, 2020 IEP meeting. The Parent attended almost every IEP meeting,

either virtually or in person and, from both the testimony and exhibits, appears to have been very informed about the Student's education. I do not find that any failures in reporting by the District regarding the provision of progress reports amounted to or caused a denial of FAPE. Cf. *Buser*, supra.

Did the District Fail to Comply with the Idea's Implementing Regulations by Failing to Provide Student with a Transition Plan?

27. According to § 300.320 (b) of the State Policies, an IEP must include (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. Ms. Flickinger testified that the transition plan in ■■■'s 2019-2020 IEP satisfied the Mississippi Department of Education's minimum requirements for a transition plan because it had an educational training goal, an employment goal, age-appropriate transition assessments,⁴ and at least one transition service for each transition goal.

28. The transition planning sections of the Student's IEP are minimal at best. There is no evidence, however, of any lost educational opportunity because of any insufficiencies in the transition planning portion of the Student's IEP. Neither do I find that any insufficiencies in the plan interfered with the Parent's ability to participate in the IEP process. Accordingly I find FAPE was not denied the Student because of any errors or omissions in the transition planning portions of the IDEA. *See Klein Independent School District v. Hovem*, 690 F.3d 390 (5th Cir. 2012) (finding that deficiencies in a transition plan, being procedural, do not constitute a

⁴ The sole transition assessment was a Parent Interview. The means of assessing a student for purposes of determining "appropriate measurable postsecondary goals," the U. S. Department of Education has said, "will depend on the individual needs of the child" and "are, therefore, best left to the States and districts to determine on an individual basis." Federal Register Vol. 71, NO. 156, August 24, 2006, 46667.

violation of the right to a FAPE unless they result in the loss of an educational opportunity or infringe parents' opportunity to participate in the IEP process).

SUBSTANTIVE ISSUES

29. The complaint sets out five issues falling in whole or in part within the substantive category: 1. whether the District has denied FAPE to the Student by removing speech goals from the Student's IEP as a result of the private entity's inability to address the matter; 2. whether the district has denied FAPE by failing to list a goal for occupational therapy (O. T.) within Student's current IEP; 3. whether the Student's BIP is adequate due to the District's failure to add safety goals that address Student's problem; 4. whether the private entity is the Student's Least Restrictive Environment (LRE), due to the fact (alleged) that it cannot fully address Student's disabilities or provide the required curriculum; and 5. whether the district has denied FAPE by failing to provide instruction in the home as Student's LRE; behavior (eloping).

30. *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997) designates four criteria to be considered in determining whether a District has met the substantive requirements of the IDEA:

- (1) Was the IEP individualized on the basis of the student's assessment and performance;
- (2) whether the program were administered in the least restrictive environment;
- (3) whether the services were provided in a coordinated and collaborative manner by the key stakeholders; and
- (4) whether positive academic and non-academic benefits were demonstrated?

Were the IEPs individualized on the basis of the student's assessment and performance?

31. Because two of the five substantive issues raised in the Complaint involve the question of least restrictive environment, I am reviewing only the first three substantive issues listed above under this factor.

Removal of Speech Goals

32. The Complaint alleged that the District denied FAPE to the Student by removing speech goals from the Student's IEP as a result of HLC's inability to address the matter. At the hearing the Parent testified that the District removed the Student's speech goals for "wh" and asking five-word phrases without her consent.

33. The testimony of speech-language pathologist Holly Davis and the Student's IEP establish that the Student had speech goals as a part of the Student's IEP and received speech-language therapy services at all times relevant to this proceeding. When asked how she monitored and assessed the Student, Ms. Davis testified that she charted every session with the Student and tracked her performance as to the Student's goals and progress. While noting that the Student did better in person, Ms. Davis testified that the Student did benefit from both virtual and in person services.

34. In reviewing the goals set out in the Student's 2019-2020 IEP Davis testified that the student improved on the first communication goal [goal #4 in the IEP], which was to independently produce five to six word phrases at 50% accuracy, beginning at a base level of two to three word sentences with 37% accuracy. By March the Student was able to independently speak a three to four word phrase at 30% accuracy. The Student also at that point could repeat a full five- to six- word sentence . . . at 50 percent accuracy, which was beneficial [for the Student] not only because it expanded [the Student's] sentence length but also raised [the

Student's] vocabulary. By July 2020, testified Davis, the Student could "repeat a three- to five-word sentence, given a model, allowing for word approximations and multiple models, as needed, with 85 percent accuracy, which was a pretty good jump from that 50 percent."

35. Davis also testified as to the Student's progress on Communications Goal #2, which was increasing social communication skills by verbalizing to request help or have basic needs met at 90 percent accuracy given visual and verbal stimuli. The Student's target was 80 percent and was met at 100 percent prior to moving to computer instruction under Ms. Schultz, at which point the IEP does not reflect progress.

36. Ms. Davis testified that the Student made progress on goal six (which was to produce "simple pronouns and three- to four-word responses, with modeling, at 100 percent accuracy) by attaining 90 percent accuracy while Davis was seeing the Student but regressed in May and June. The goal called for the Student, given visual and verbal stimuli, to be able to ask and answer WH questions words at 90 percent accuracy. The Student progressed on that goal from a baseline of 20 percent until able in July 2020 to "imitate and read a sentence [of from three to five words] version of the answer with 88 percent accuracy.

37. Davis further testified that goal number ten called for the Student to be produce certain consonant vowel words and phrases at 90 percent accuracy. The Student reached 82 percent accuracy with the phrase component of the goal and 88 percent with the word level.

38. The evidence establishes that the student had IEP speech and language goals and progressed and demonstrated growth in speech and language. Removing, adding, and modifying those goals falls within the IEP teams duties. It is not a hearing officer's job to second guess the IEP committee regarding the goals of the IEP or the services provided by it,

absent proof by a preponderance of the evidence that the committee did not follow the law.

Accordingly, I find the Complainant did not meet the burden of proof as to this allegation.

Occupational Therapy Goal

39. District Occupational Therapist Akeba Jackson-Harris evaluated the Student to determine whether the Student qualified for Occupational Therapy [OT] after the Parent expressed concerns about the Student's handwriting. Jackson-Harris, using evaluation methods designed to assess handwriting, determined that the Student did not require OT support because the Student could write and copy and imitate and the assessment data indicated that the Student's "handwriting skills correlate[ed] with [the Student's] current cognitive levels in the educational setting." The IEP team, however, added occupational therapy to the IEP at the Parent's request. A handwriting goal was added but no specific OT goal was included in the Student's IEP.

40. Ms. Jackson-Harris began providing direct OT services to the Student 30 minutes weekly in January of 2020 and continued until the COVID shutdown in March, then she resumed the services via Zoom on May 12, 2020, and provided ESY (extended school year) services through the end of June 2020. She also continued providing OT services throughout the 2020-2021 school year until the student finished at the District in July 2021. According to the evaluation method used by Jackson-Harris, the Student improved from a score of 19 out of 40 points at the beginning of the services to 33 points out of 40.

41. Another occupational therapist, Caitlyn Burgess testified that she evaluated and worked with the Student while Burgess was employed at Merit Health in Biloxi, Mississippi. Ms. Burgess agreed that she could not form an opinion as to whether the services provided by the District were tailored to meet the Student's needs. For that reason I do not find Ms. Burgess's

testimony helpful in this determination. I also find that the Complainant did not meet the burden of proof as to this allegation.

The FBA and BIP

42. The Complaint alleges that the Student's Behavior Intervention Plan (BIP) and Functional Behavior Assessment (FBA) were inadequate due to the lack of parental input and the District's failure to add safety goals that address the Student's problem behavior (eloping). District Assistant Special Education Director Missy Yates, who conducted the FBA and prepared the BIP, testified concerning the process she followed in undertaking the FBA of the Student. She included a parent interview, a teacher interview, a data review to determine the behavior "we're looking at" and "what's happening before and after that behavior." After that information was gathered she made recommendations as to ways to change or improve the target behavior: elopement.

43. Ms. Yates testified that she considered the Student's school records, homelife, peer interaction, strengths, her teacher (who had directly observed the Student's eloping) and parent interviews, and her observations of the student. Ms. Yates determined that the setting for the Student's elopement episodes was unstructured time in physical education or in the cafeteria and during transitions around the school, and that the antecedent, or precipitating conditions were when the Student was distracted by a "desired item" or person, and, and that the function of the behavior was to "gain the item" or have contact with the person. The BIP Ms. Yates produced stated as its goal that the Student would remain in the assigned area with 100% accuracy. The plan proposed the following behavior interventions: "opportunities to interests/to have access to desired items/persons in her environment" and "to transition at less busy times."

44. Licensed psychologist and licensed behavior analyst Dr. Dannell Roberts testified that the FBA appeared to be “pretty standard” but that it “direct observation.” When asked about the BIP, she said that the proposed intervention that called for providing “opportunities to interests/to have access to desired items/persons in her environment” was not one she would include in a BIP because it was “not specific enough”; that it should include “when and how often” instructions. She agreed that “transition at less busy times” would be “a great intervention” for elopement occurring during times of transition.

45. While Dr. Roberts, from her testimony, would have crafted a BIP differently, I find it significant that she called it “pretty standard” except for the lack of direct observation. Ms. Yates testified that she did consult teachers who had observed the problematic behavior – elopement – in the drafting of the BIP. Ms. Yates also noted that the Student was receiving homebound services at the time the BIP was drafted which precluded Ms. Yates’s direct observation of the Student. Although Dr. Roberts found at least one intervention not specific enough, she didn’t disagree with the intervention itself. She also approved as “great” the BIP’s other proposed intervention.

46. The Parent contends the BIP (implemented at the November 17, 2019, IEP meeting) was inadequate because it failed to contain safety goals to address the student’s elopement tendencies. While the BIP may not have included the goal or goals the Parent would have liked, it did state that the goal of the BIP was for the Student to remain in the assigned area with 100% accuracy. Toward that end, the plan included, as interventions, the provision to the Student of opportunities to “have access to desired items/persons in [the student's] environment” and transitioning “at less busy times.” Moreover, HLC employee Katie Walton, Occupational Therapist Jackson-Harris, and Speech Language Pathologist Holly Davis testified to

improvements in the Student's elopement behavior. I also find it significant that Licensed psychologist and licensed behavior analyst Dr. Dannell Roberts, who evaluated the student on August 24, 2020; Board Certified Behavior Analyst Lana Clayton, who assessed the Student in May 2021, and Licensed clinical psychologist Dr. James Smith, who evaluated the Student on November 30, 2021, all testified that the Student was cooperative and did not exhibit elopement or problematic behaviors during the courses of their respective evaluations. The Complainant, I find, did not meet the burden of proof as to this allegation.

47. In view of the foregoing, I find that the Student's IEP was individualized on the basis of the student's assessment and performance and that the District meets this factor of the *Cypress Fairbanks* analysis.

Was The Program Were Administered In The Least Restrictive Environment?

48. The complaint raised two issues concerning the Student's Least Restrictive Environment, or LRE: (1) whether the private entity (HLC) was the Student's Least Restrictive Environment (LRE) due to the fact that it could fully address Student's disabilities or provide the required curriculum, and (2) whether the district has denied FAPE by failing to provide instruction in the home as Student's LRE.

49. One of the goals of the IDEA is "mainstreaming" – educating the special needs child in regular education classes to the greatest extent possible – and a student's IEP is administered in the least restrictive environment (LRE) when that is done. State Policies, § 300.114; *Klein v. Independent School District v. Hovem*, 690 F.3d 390, 399 (5th Cir. 2012). The Student is nonverbal with a significant cognitive disability. No party or witness has suggested the Student's LRE would have been a regular classroom.

50. The Student began the 2018-2019 school year at ██████ High and was there until February 2019 when the Parent requested homebound services. The Student's IEP team met on August 7, 2019, and determined at that time that the Student's LRE was a self-contained classroom at ██████ High School with a one-to-one aid and 260 minutes of instruction five times per week. (I find it significant that psychologist and behavior analyst Dr. Dannel Roberts, who evaluated the student one year later, testified that the Student's least restrictive environment would be to receive education services with peers, exactly what the District recommended). The Parent, though, had filed a complaint for due process on August 12, 2019, and invoked the stay-put provisions of the IDEA regulations, see State Policies, § 300.518 (a). The Student remained on homebound services until the Student began receiving services (including OT) at HLC in December 2019 and SLT at the Orange Grove Library. HLC's services were interrupted for a month and then resumed online. Once in person services were again available at HLC the Parent chose to keep the Student home to receive services online. By offering at school services and then offering services at HLC the District made efforts to mainstream the Student as much as possible in the spirit of the *IDEA* and *Klein*. Accordingly, I find that the District met the LRE factor of *Cypress Fairbanks*.

Were the Services Provided In a Coordinated and Collaborative Manner By the Key Stakeholders?

51. The record reflects that District personnel, including teachers and therapists, and, when the Student attended HLC, HLC personnel, and the parent all were involved in the development of the IEP and its execution. The testimony and the documentary evidence established that suggestions of the parent were considered and when the IEP team agreed they were appropriate, accepted. For example, the IEP team added occupational therapy by a District therapist when the Parent requested it even though the therapist's evaluation did not prescribe it.

The District also conducted an FBA and produced and implemented a BIP when requested by the Parent. The District also delayed the implementation of the BIP from August 2019 until November 2019 when the parent requested that. There obviously were disagreements, but the disagreements, the evidence indicates, were the results of differences of opinion rather than a lack of cooperation or collaboration. The fact that the parent disagrees with a decision of the IEP team does not mean that the services were not provided in a collaborative and coordinated manner. *R.C. ex rel S.K. D.H. v. Keller Independent School District*, 958 F. Supp. 2d 718, 736–737 (N.D. Tex. 2013). I find the District satisfied the requirements of this factor.

Were Positive Academic and Non-Academic Benefits Demonstrated?

52. Reviewing the Complaint’s substantive issues in the light of this factor I find that positive academic and non-academic benefits were realized. District Occupational Therapist Akeba Jackson-Harris, who provided OT services to the Student from December 2019 until the Student completed school testified that the Student showed improvement in letter formation, legibility, spacing, sizing and letter placement and, according to the rubric Ms. Jackson-Harris used, improved from a score of 19 out of 40 points at the beginning of the services to 33 points out of 40.

53. Speech Language Therapist Holly Davis also testified that the Student made progress in speech. Her testimony in that regard is discussed above and need not be repeated here.

54. Also, the Student benefitted from the BIP put in place by the District. Neither psychologist and behavior analyst Dr. Dannell Roberts, Behavior Analyst Ms. Lana Clayton, or psychologist Dr. James Smith, all of whom evaluated the student after the BIP was implemented, observed elopement or problematic behaviors during the times the Student was with them.

Moreover, HLC employee Katie Walton, Occupational Therapist Jackson-Harris, and Speech Language Pathologist Holly Davis all testified to improvements in the Student's elopement behavior.

55. I also find it probative of this factor that Dr. Dannel Roberts, who assessed the Student in August 2020 pursuant to an order of this hearing officer requested by the Parties, testified that the Student at that time was functioning at a level commensurate with the Student's abilities, and that Dr. Clayton and Dr. Smith, who evaluated the Student in May and November 2021, respectively, did not attribute any of the Student's deficits to any error or omission on the part of the District.

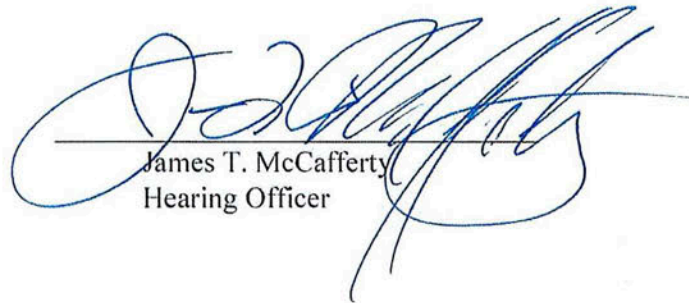
56. Viewing the foregoing through the lens of *Andrew F., v. Douglas County School District*, 580 U.S. ___, 137 S. Ct. 988; 197 L. Ed. 2d (2017), I further find that a preponderance of the evidence establishes that the educational benefits conferred by the Student's IEP⁵ were greater than "merely more than de minimis"; the education offered was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," those circumstance being described previously in this Decision and Order; and that the Student did in fact make progress. Accordingly, I find that a preponderance of the evidence establishes that sufficient positive academic and non-academic benefits were demonstrated, *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997), and that neither the IEP as developed and written nor the implementation thereof caused any deprivation of FAPE to the Student for the times relevant to the underlying complaint, that the District did in fact provide FAPE during such times and until the Student left the District in 2021, and that the Complainant has not met the burden of proof to establish otherwise.

⁵The issues presented in this matter pertained to the Student's 2019-2020 IEP. Although the Student's 2020-2021 IEP was admitted into evidence over the objection of the District during the rebuttal phase of Complainant's case, it was not at issue since it postdates the issues presented by the Complaint.

57. The foregoing considered, the relief requested by the Complainant is denied, the Complaint for Due Process in this matter is dismissed, and any and all pending motions are denied as moot.⁶

58. A party aggrieved by this Decision and Order has the right to file a civil action in a court of competent jurisdiction as set forth in the State Policies, § 300.516.

59. So ordered, this the 6th day of September, 2024.



James T. McCafferty
Hearing Officer

⁶Respondent's motion to dismiss or alternatively to limit the scope of the hearing requested relief that was dispositive of this matter in whole or in part. While the issues raised in that motion certainly were appropriate matters to interpose as affirmative defenses, I do not find a hearing officer, under the circumstances of this case, has authority under the State Policies to grant dispositive motions. In any event, given the decision reached in this case, it is not necessary to rule on any pending motion(s).