

STUDENT	§	BEFORE A SPECIAL
BNF PARENT	§	EDUCATION
Petitioners	§	
v.	§	HEARING OFFICER FOR THE
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

FINAL DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Petitioners, ***, Student, and Student’s next friend and parent, *** (hereinafter referred to collectively as Petitioners and individually as Student or Mother/Parent), bring this action against Respondent Houston Independent School District (hereinafter referred to as Respondent, the District, or HISD) under the Individuals With Disabilities Education Improvement Act, as amended, 20 U.S.C. §1401 et. seq. (IDEA) and its implementing state and federal regulations. This action was filed on March 17, 2015.

At the pre-hearing conference held on April 16, 2015, Petitioners reviewed the issues set forth in the First Amended Request for Due Process filed on March 26, 2015 and confirmed that the request accurately and completely sets forth all of the issues asserted and relief requested by Petitioners in this cause. Accordingly, Petitioner’s First Amended Request for Due Process and Request for Due Process are incorporated herein by reference as a complete statement of the issues raised.

By way of further detail, the issues raised by Petitioners include the following:

1. Whether Respondent failed to provide Student with a free appropriate public during the 2014-2015 and 2015-2016 school years? Petitioners allege numerous specific procedural and substantive violations of IDEA, which include: failure to timely provide an IEP at the start of the school year; failure to develop an appropriate IEP and BIP; failure to implement the IEP and BIP that were developed; unilateral change in placement and change in the IEP; a failure to provide prior written notice at the time that change was made; failure to identify OHI and to address the needs associated with that disability category; failure to provide the least restrictive environment; failure to implement the Autism Supplement; retaliation toward the student; and withholding of information from the parent.¹
2. Whether Petitioners are entitled to reimbursement for private tutoring obtained during the 2014-2015 school year and reimbursement for private placement at ***,

¹ Petitioners subsequently withdrew the claim alleging that Respondent retaliated against Student in response to Parent’s attempt to enforce Student’s rights under the IDEA. (Transcript of Due Process Hearing, page 10; hereinafter cited as T. 10).

with transportation, from the time of Student's placement there in March 2015 through the end of the 2014-2015 school year?

3. Whether Petitioners are entitled to reimbursement for private placement at ***, with transportation, for the 2015-2016 school year due to Respondent's failure to provide Student with an appropriate offer of FAPE for the 2015-2016 school year?
4. Whether Petitioners are entitled to an award of compensatory education for denial of FAPE during the 2014-2015 school year prior to Student's placement at *** in March 2015; and whether prospective placement at ***, with transportation, for the 2016-2017 school years is an appropriate remedy for such compensatory relief?
5. Whether Petitioners are entitled to reimbursement for private evaluations obtained in connection with enrolling at ***?
6. Whether Student is entitled to prospective private speech services as recommended by the private speech evaluation obtained by Petitioners?

PROCEDURAL HISTORY

Petitioners filed the instant request for due process on March 17, 2015. Sharon Ramage, Attorney at Law, with assistance from Dorene Philpot, Attorney at Law, represents Petitioners in this proceeding. Hans Graff, Attorney at Law, represents Respondent HISD.

The parties met in a resolution session on March 26, 2015, but did not reach resolution of the issues in dispute. Also on March 26, 2015, Petitioners filed their First Amended Request for Due Process.

A pre-hearing conference was held on April 16, 2015. An Order Following Pre-Hearing Conference was entered on April 16, 2015, outlining the issues in dispute and extending the decision due date to July 10, 2015 for good cause at the request of Petitioners.

Following several additional requests for extension, all granted for good cause, the hearing took place on October 26-28, 2015 at the *** at *** (hereinafter referred to as ***). At the conclusion of the due process hearing, by joint request of the parties, I granted leave to file closing briefs and entered an Order Granting Joint Request to Extend Decision Due Date for Filing Post-Hearing Briefs, setting the due date for briefs as December 9, 2015 and the decision due date as January 14, 2016.

On December 7, 2015, Petitioner requested an extension of the decision due date to allow additional time to file post-hearing briefs. Respondent did not object. I found good cause to grant Petitioner's request and extended the due date for briefs to December 23, 2015, with the decision due on January 29, 2016. The decision due date was again extended for cause for three additional days at Respondent's request due to an unanticipated event that impacted the Hearing Officer's availability. The decision is due to the parties on or before February 3, 2016.

This decision is timely issued and forwarded to the parties on February 3, 2016.

TIME FRAME FOR CLAIMS ASSERTED BY PETITIONER

A dispute arose at the due process hearing about the statute of limitations and whether Petitioners are entitled to assert claims arising prior to March 17, 2014. The parties argued their respective positions to the Hearing Officer and were then instructed to brief those positions in their written closing argument. Petitioners did not brief the issues related to the statute of limitations and made it clear that Petitioners no longer seek relief for violations arising prior to March 17, 2014. (*See, Petitioners' Closing Brief, Requested Relief, page 30, Paragraph 1*). Petitioners still request a finding that Respondent did not provide Student with a FAPE during the 2013-2014 school year, and seeks compensatory services for that portion of the school year that falls within the one-year statute of limitations, March 17, 2014 to the end of the 2014-2015 school year.

Respondent argues that Petitioners' First Amended Request for Due Process failed to provide notice of any claims asserted beyond the one-year statute of limitations, and thus for claims involving Student's education during the 2013-2014 school year.

IDEA's notice provision mandates that "a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section. 34 C.F.R. § 300.508 (c). Paragraph (b) specifies that a due process complaint must include a description of the nature of the problem, including facts related to the problem. 34 C.F.R. § 300.508 (b).

Respondent is correct that Petitioners' Request for Due Process and First Amended Request for Due Process fail to provide notice of any claims arising prior to the 2014-2015 school year; all facts described by Petitioners describe claims pertaining solely to Student's education at ***. The contention that HISD denied Student a FAPE during Student's *** grade year at *** was raised for the first time at the due process hearing, thus depriving Respondent of notice of that claim.

Accordingly, Petitioners' claims will be limited to the alleged denials of FAPE occurring during the 2014-2015 and 2015-2016 school years.

FINDINGS OF FACT

Based on a review of the testimonial and documentary evidence submitted in this cause, I find the following facts to be established based on the weight of the credible evidence.

1. At the time of this proceeding, and at all relevant times to this action, Student has been a resident of HISD, a political subdivision of the State of Texas and a duly incorporated school district.
2. Student is currently *** (***) years old and enrolled in the *** grade at the *** (hereinafter ***). Since the 2010-2011 school year, Student's *** grade year, Student has been designated as eligible for special education services under IDEA based on the eligibility category of Autism. (Joint Exhibits 5, 6; hereinafter JX 5, 6). (Several of the exhibits were submitted in duplicate as Joint Exhibits and as Petitioners' exhibit; I will cite to the Joint Exhibit where one exists).

3. Respondent HISD is Student's resident district and is responsible for providing Student with a free appropriate public education under the IDEA.

Student's Initial Full and Individual Evaluation (FIE)

4. In October 2010, Student's *** grade year, HISD completed an FIE of Student following referral by Student's mother, teacher, and the Intervention Assistance Team (hereinafter referred to as the IAT) team at Student's school, ***. The FIE documents Student's difficulty focusing, need for frequent redirection, constant movement, and inability to complete open-ended tasks. Both teacher observation and testing results indicated academic weaknesses in ***. Special education services were recommended in the areas of Math and Writing, along with structure, simple instructions, modifications, and a behavior support plan. (JX 5). The FIE found Student to meet IDEA eligibility criteria for Autism.

Student's IEP and Progress During * Grade²**

5. During the 2010-2011 school year (*** grade), Student received *** hours of special education instruction per week in the Resource setting in the areas of Reading, Language Arts, and Math and was coded a "42," signifying Student attended special education classes between 21 and 49% of Student's day. (JX 11, pp, 142, 147). Student had annual goals in the areas of Reading, Language Arts, Math, and Social Skills, but not Writing. (JX 11, pp. 126-129).
6. At the conclusion of *** grade, Student scored a *** grade equivalent in Total Reading on the Stanford Test, *** on Total Math, and *** on the Complete Battery³. (Respondent Exhibit 2, p. 14; hereinafter RX 2, p. 14). Student did not master Student's Math or Reading annual goals on Student's IEP. (JX 11, p. 158).

Student's IEP and Progress During * Grade**

7. At the beginning of the 2011-2012 year (*** grade), the Admission, Review, and Dismissal Committee (hereinafter referred to as the ARDC) increased Student's special education services to *** hours per week, evenly divided between Reading and Math, in the Resource Setting. (JX 12, p. 182). In February of Student's *** grade year, the ARDC met again due to Student's poor performance on the District's Math and Reading benchmarks to implement testing accommodations for state standards testing and the Stanford Achievement Test. (JX 13, p. 203, 206).

² The record contains no IEP progress reports for Student for *** through *** grades. The evidence definitively indicates that no progress reports were provided to Mother for *** grade. (T. 103, 216).

³ Stanford scores contained in RX 2 are difficult to read; however, these scores are also reported in Respondent's Closing Argument, p. 12. The scores are reported in various ways, i.e. national percentage, grade equivalent, etc.; I will utilize the grade equivalencies argued by Respondent in its closing argument.

8. At the conclusion of *** grade, Student scored a *** grade equivalent in Total Reading on the Stanford Test, *** on Total Math, and *** on the Complete Battery. Student passed the STARR *** test, Level 1, but not the STARR *** test. (RX 2, p. 14). Student did not master Student's Math or Reading annual goals on Student's IEP during *** grade. (JX 15, pp. 263-266).

Student's IEP and Progress During * Grade**

9. At the beginning of the 2012-2013 school year (*** grade), the ARDC met on September ***, 2012 and documented that Student had not received benefit from full inclusion because of Student's need for "direct intensive instruction in a small group setting with opportunities for reteach, drill and practice," but that Student had made significant progress with a "combination of general education and resource classes" along with behavior and social skills support. The ARDC then recommended full inclusion for Student. (JX 14, pp. 225-226).
10. The ARDC met again two months later for Student's annual ARD, on November ***, 2012. (JX 15). Student's IEP reflects that five of Student's six annual goals from *** grade were repeated in the *** grade because Student had not mastered them. Comparing progress baselines from November 2011 (*** grade) to November 2012 (***) indicates that Student went from a baseline score of 20-25% to a score of 40% on each of the five repeated goals, except for the behavior goal of responding to redirection. On the redirection goal, Student had improved from a baseline of 40% in November 2011 to 70 % in November 2012; the ARDC set the annual mastery expectation for the redirection goal for November 2013 at 80%. The ARDC continued its recommendation of full inclusion for Student's *** grade year. (JX 15, pp. 256-257, 263-267).
11. At the conclusion of *** grade, Student scored a *** grade equivalent in Total Reading on the Stanford Test, *** on Total Math, and *** on the Complete Battery. Student failed STARR testing in all areas, ***. (RX 2, p. 14).
12. Student failed to make meaningful educational progress in *** grade while being served in a full inclusion setting.

Student's Re-Evaluation at the Beginning of * Grade**

13. HISD conducted a three-year reevaluation of Student at the beginning of the 2013-2014 school year, finding continued eligibility under the category of Autism. (JX 6, T. 774). The FIE again documents Student's difficulty focusing, need for frequent redirection, constant movement, and inability to complete open-ended tasks. (JX 6, p. 54). The evaluator also concluded that Student met the behavioral criteria for Attention Deficit Hyperactivity Disorder (ADHD) and made recommendations to address ADHD, but Student was identified as eligible only under the category of Autism. (JX 6, pp. 61-62, JX 16, Transcript, p. 782, hereinafter cited as T. 782).

14. The evaluator reviewed Student's school performance and reported that Student had struggled in both Math and Reading since *** grade. Student's general education teacher indicated that Student struggled to learn new concepts and follow directions and that Student's progress was not satisfactory due to poor test performance and inattentiveness. Student's special education teacher reported that Student had made progress on Student's IEP goals, but had difficulty managing the demands of *** grade without resource support. (JX 6, p. 57).
15. The evaluator reported results on the Stanford testing, characterizing them as falling in the low percentages of performance, with overall decline in percentage scores from *** to *** grade in all areas- Reading, Math, Language, and Spelling. (JX 6, p. 57).
16. Cognitive and achievement testing on the FIE was commensurate with Student's performance in school and on state testing (STARR and Stanford), with findings of average to low average cognitive ability and academic skills, but low average to low in Student's ability to apply academic skills and in academic fluency. (JX 6, p. 64). Student demonstrated the most significant deficits in the areas of Math and Written Language, with Student's area of greatest need in Written Expression. (JX 6, pp. 57-58, T. 776-777).

Student's IEP and Progress During * Grade**

17. Student's ARDC met on October ***, 2013, during Student's *** grade year, to review the results of the reevaluation and conduct Student's annual ARD. (JX 16). The ARDC noted that Student continued to be IDEA-eligible as a student with Autism, and who had been diagnosed with ADHD. The ARDC continued IDEA eligibility under the category of Autism. (JX 16, p. 306).
18. The ARDC reviewed Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP) and documented performance in the general curriculum at *** grade level or below in Reading, *** grade level or below in Math, and *** grade level or below in Written Expression. (JX 16, p. 284). The ARDC determined that Student needed specialized instruction in Written Expression, Math Calculation, Math Problem Solving, and to address deficits in Attention, Executive Functioning, and Emotional/Behavioral. (JX 16, p. 285).
19. Student's IEP contained six annual goals in the areas of Math, Behavior Support, and Social Skills, but did not address Student's needs in the area of Written expression. (JX 16, pp. 287-289). Both HISD's Special Education Program Specialist and the diagnostician who completed a portion of Student's reevaluation testified that Student should have had goals in all areas where specialized instruction was required. (T. 480, 915).
20. The ARDC decided that specified staff-to-student ratios were needed as part of Student's IEP and designated those as:

Acquisition- learning new information: from 1:1 to 1:5

Fluency- information learned, increase speed/ accuracy: from 1:5 to 1:10
Maintenance- preserving what's been learned: from 1:10-1:20
Generalization-using information in a broader sense: from 1:20-1:25
(JX 16, p. 293)⁴.

21. The Resource teacher informed the ARDC that Student had been served in full inclusion in *** grade, but that Student was struggling with the demands of *** grade. As a result, the ARDC determined that Student would receive Resource Math for *** hours per week (*** minutes, *** times per week) and *** minutes per week of in-class support. (JX 16, p. 302). Student's placement was coded as a "41." (JX 16, p. 304).
22. The ARDC reconvened in the spring of Student's *** grade year, on March ***, 2014, to review Student's progress and placement. Teachers reported that Student had struggled to keep up throughout the school year, with a corresponding impact on Student's motivation and self-esteem. Student continued to exhibit difficulties in Math and Reading. In addition, Mother discussed with staff at *** the pattern that Student did well when Student received increased special education support and declined when support was withdrawn; as a result, Mother asked the school to provide additional support to Student. (T. 629-620).
23. The ARDC added a Reading goal to Student's IEP, increased Student's Resource support from *** hours per week by adding Reading Resource support for *** hours per week. (JX17, pp. 334, 341).
24. Student's initial IEP providing for Resource support in Math only did not provide sufficient support to enable Student to make educational progress.
25. During the spring of Student's *** grade year, Mother ***; Mother never intended for Student to attend Student's home *** school campus, ***, as she did not believe it to be appropriate for Student. (T. 637). Student was *** at *** (hereinafter ***) because of its small population, Student's ***. (T. 630-632). Mother accepted admission to *** on April ***, 2014 and notified the principal and Special Education Chair at *** that Student would attend *** during the 2014-2015 school year. (T. 635-636).
26. *** *** did not inquire about Student's need for special education services. The information provided to Mother about *** on the HISD website or during the application process did not inform her of any particular limitation on ***'s ability to provide special education services. (T. 79, 631-633). ***. (T. 79, 633).
27. The ARDC met on May ***, 2014, at the end of Student's *** grade year, to plan for Student's ***. The ARCD met at *** with representatives from *** and ***, but without attendees from ***, even though Mother had already selected *** and

⁴ These ratios remained constant in each of Student's proposed IEPs from HISD, including the IEP proposed in July 2015 for Student's *** grade year. (JX 21, pp. 486-487).

- the Special Education Chair at *** had made several invitations to the *** special education staff to attend. (T. 636-637; JX 18).
28. The ARDC reviewed Student's progress on Student's IEP. Progress data showed minimal to no progress on any of Student's 7 annual goals. (Compare JX 16, pp. 287-288, JX 17, pp. 320-322, and JX 18, pp. 362-364). As a result, the ARDC repeated all 7 of Student's *** grade goals. (JX 18, pp. 362-364).
 29. The ARDC reduced Student's Resource time from the *** hours per week that the March 2014 ARDC had just added, by eliminating Resource Reading. The ARDC provided Resource Math for *** hours per week. The ARDC continued in-class support for *** minutes per week. (JX18, pp. 376-377). The deliberations provide no explanation for removing the Resource Reading support, but state that resource support should be revisited during the 2014-2015 school year if the larger setting became a challenge for Student. Student's IEP was to be transferred from *** to Student's receiving *** campus. (JX 18, p. 382; T. 639).
 30. The IEP proposed by the ARDC for the 2014-2015 school year without Resource support in Reading was not individualized to Student based on assessment and performance data, which all indicated that Student could not be reasonably calculated to make meaningful educational progress without special education support. The IEP went back to the service levels provided in the October 2013 IEP that were not successful.
 31. Without support in Reading in *** grade, Student struggled throughout the year and was failing at the time Student left *** in March 2015. (T. 98-99).
 32. At the end of *** grade, Student passed STARR-Modified in ***, STARR-Accommodated in *** on the second administration, and did not pass STARR-Accommodated in ***. Student scored a *** grade equivalent in Total Reading on the Stanford Test, *** on Total Math, and *** on the Complete Battery. (RX 2, 3).
 33. Between the end of *** grade and the end of *** grade, Student progressed approximately *** years on the Stanford Complete Battery. Student's rate of progress correlates with the level of special education support Student receives. At the end of the *** grade, after being in full inclusion for the school year, Student progressed only two months on the Total Reading, Total Math, and Complete Battery of the Stanford. (RX 2, 3).

***** Grade at *** (2014-2015 School Year)**

34. Beginning in late July 2015, HISD staff began emailing about the need to schedule an ARDC meeting for Student at ***. HISD special education administration noted the importance of having an ARDC meeting before school started in case Student's needs could not be met at ***; in that way, Student could enroll elsewhere and avoid a "jarring transition." (PX 21, pp. 458-459).
35. The Special Education Coordinator for *** for the 2014-2015 school year (referred to as ***) was responsible for facilitating the special education population at ***

- and one other campus, including conducting their ARDC meeting and providing instructional support as needed. (T. 70-72). *** worked at *** for a portion of two days per week and was responsible for five students. (T. 509).
36. Despite requests from the *** principal and HISD special education administrative staff to schedule an ARDC for Student before school started, *** did not schedule one until October 2014, after the end of the first grading period. (PX 21, pp. 454-459). Although *** testified that he attempted to contact Mother before school started, but she did not return his calls, his call logs indicate he did not make these attempts. (T. 183-184; PX 19).
 37. Mother did not hear from *** until he called her in October 2014 about attending the ARDC meeting even though she had attempted to contact him several times, beginning around the fourth week of school, because she noticed a decline in Student's academic performance. (T. 644-645).
 38. Student began at *** at the start of the 2014-2015 school year. During the 2014-2015 school year, it is undisputed that *** did not offer modified curriculum or instruction in a Resource setting, or any other pull-out setting, to any students enrolled there. (T. 78, 646). As such, *** was not capable of implementing Student's IEP. It is undisputed that Student did not receive the services provided for in Student's May 2014 IEP. (T. 80).
 39. Student's ARDC convened on October ***, 2014, *** weeks into the school year. (JX 19; T. 82-83). The ARDC reviewed Student's PLAAFP, with teachers reporting that Student could not maintain focus and engagement, required constant reminders, and had difficulty with the work. (JX 19, p. 393). The ARDC continued Student's *** grade goals in their entirety and noted no progress on any goal since May 2014. (JX 19, pp. 395-397, T. 110-111, 147). No changes were made in required staff-to-student ratios and it was documented that Student would not be able to receive an educational benefit from full inclusion "due to behavioral factors and an academic need for direct intensive instruction in a small group setting with opportunities for reteach, drill and practice." (JX 19, p. 411).
 40. The ARDC changed Student's schedule of services to full inclusion, a code of "40," to accurately reflect how *** had been serving Student from the beginning of the school year. (T. 83-84). *** and other ARDC members knew that Student had not benefitted from full inclusion in the past, but made the change anyway because *** did not offer any other special education services. (T. 85-86).
 41. It is not clear exactly what services the ARDC intended Student to receive following the October 2014 meeting. Student's IEP provided that Student would receive *** minutes, *** times per week, or *** minutes per week, of Math support in a general education setting, which *** described as in-class support and facilitation; however, the total special education time per week was denoted as zero and *** testified he did not provide Student with *** minutes per week of support in Math. (JX 19, p. 409, T. 132-133). Student also received *** minutes per week

- of Time Limited Services, which was a general education service provided for students who did not pass STARR. (T. 89).
42. Evidence indicates that *** provided in-class support to Student during Student's classes approximately *** minutes per week for all classes combined, and went to Student's Math class a little more than one time per month. (T. 121-122; PX 18).
 43. The record is clear that Student received no specialized instruction in Math, Reading, Written Expression, Behavioral Support, or Social Skills during the 2014-2015 school year at ***. (T. 91-95). Student also did not receive small group instruction. (T. 126). Student had 20-25 students in Student's classes, with approximately *** students in Math. (T. 126).
 44. *** believes that Student was unsuccessful at *** because Student requires repeated instruction, frequent redirection, a lot of 1:1 assistance, some 1:1 instruction, and a small staff-to-student ratio in all subjects, all of which were not provided at ***. *** testified that it was difficult for Student to attend and focus in a setting with more than 8 students. (T. 126-129).
 45. Mother was unaware that Student was not receiving the Resource support provided by Student's IEP until the October 2014 ARDC meeting. *** told Mother at the ARDC that Student did not belong at *** because Student could not receive the pull-out instruction, modified curriculum, or resource support that Student needed. (T.92-93, 646). Even so, the ARDC did not recommend another placement for Student. (T. 155, 649).
 46. Following the ARD in October, Mother met with the *** principal in November 2014 to express her concern over the lack of special education support for Student, i.e. ***'s unavailability and the failure to implement Student's IEP from May 2014. Mother expressed that had she known before school started that *** could not serve Student, Student would have attended one of the other schools Student'd been accepted to. (T. 647-648).
 47. Between the start of the school year and January 2015, Student continued to decline and regress, exhibiting increased anxiety (***), *** (***, ***), and failing grades in most classes. (T. 651-652). Although *** was supposed to assess the effectiveness of Student's educational plan every three weeks and propose revisions or additional support if necessary, he did not see any need to propose revisions at any time prior to February 2015. (T. 183).
 48. Student required additional assistance with school work and attempted to use after-school tutorials, but they were not effective for Student because of their large size and timing. (T. 659-660). As a result, Mother hired a private homework tutor beginning December ***, 2014 until Student left ***, to help Student complete both class work and homework. Student's teachers relied on Student's private tutor to assist Student with assignments in Student's core classes. (T. 652, 654, 660-661). Mother incurred costs of *** for the private tutor. (PX 25).

49. In December 2015, *** placed Student on a growth plan with the identified problems of sub-standard grades and test scores, struggling with concepts and content, incomplete and missing assignments, and inattention and lack of focus. (PX 17). *** required Student to attend Saturday tutorials; however, Student could not successfully access the tutorials because there were approximately 100 students who attended, making it unworkable for Student to pay attention or follow directions. (T. 661).
50. Following a failed attempt to allow Student to make up work over winter break, Mother emailed the *** principal on January ***, 2015 documenting her upset that Student had not received adequate services at *** and was failing as a result. (PX 24, p. 490).
51. Ultimately, *** convened a “failure ARD” that met initially on January ***, 2015 and again on February ***, 2015 to review Student’s program in light of failing grades in Reading, ***, ***, Science, and Math for two consecutive grading periods. (JX 20, p. 446, T. 170). At the time of the February ARDC, Student was failing ***, ***, Math, English, Reading, ***, and STARR ***. (RX 1, p. 12).
52. Student’s PLAAFP as of January ***, 2015 included the following performance descriptors: Student is capable of doing some assignments if teacher is in close proximity and can continually redirect Student, struggles academically, has difficulty maintaining focus and engagement, would benefit from a class that offers close supervision to help maintain focus. (JX 20, p. 424; *See also*, PX 39). Updated progress information on Student’s IEP goals was not provided to the ARDC. (JX 20, pp. 426-428). Mother reported that Student’s anxiety was very high and that Student was experiencing a lack of appetite, intense frustration, withdrawal from family and friends, and ***. (T. 689).
53. School staff reported that Student had been given specific instructions about how to improve Student’s grades. *** stated he had increased the number of times he checks on Student to offer support from two to three times per week between January *** and February ***, 2015. Mother expressed her frustration about Student’s lack of support at *** and gave notice of her intent to withdraw Student and seek private education at public expense. (JX 20, pp, 447, 450, 686).
54. Instead of providing additional supports to Student, the ARDC actually reduced Student’s support to reflect the level of services Student was actually receiving. Student’s IEP was revised to reflect reduced in-class support in Math from *** minutes per week to *** minutes per week, and in-class support and facilitation for *** minutes per week to help Student stay focused. Student was still designated Student as having zero special education support. (JX 20, p. 441).
55. On March ***, 2015, Mother withdrew Student and enrolled Student at ***. Student’s progress report dated March ***, 2015 reflects failing grades in ***, ***, Math, English (borderline with a ***), and ***. (RX 1, p. 13).

56. *** is a private school that serves students with learning differences, ADHD, and/or Autism. Although all students have a disability, not all students have autism or a language based disability. *** serves *** students of which *** are in *** school. Maximum class size is 9 students. (T. 357, 418, 444).
57. Upon enrollment at ***, Students are given diagnostic assessments and observed so the school can place students on the appropriate level within the domains of Texas curriculum and get to know the whole student. The process typically takes about one month; because Student arrived so late in the school year, it took most of the remainder of the school year to acclimate Student to ***. (T. 387-388, 419-420).
58. Student's assessments indicated that Student is at approximately a *** grade level in Math; at ***, Student is exposed to *** grade level curriculum and working on areas of remediation. (T. 390-303). In general, at ***, instruction is provided on grade level curriculum utilizing the Texas Essential Knowledge and Skills (TEKS) to the extent possible, with simultaneous attention to areas of remediation. (T. 420, 427).
59. *** staff reports that Student requires intensive instruction in every core subject in order to access Student's education. *** staff concurred with *** from *** that Student can stay on task in a group of 8 or less students. (T. 393, 424-425, 429). In addition to small group instruction, Student receives 1:1 instruction for a portion of the class period. (T. 394). Services are provided in a collaborative manner among staff at ***, with organizational, study skills, and social skills instruction provided on a daily basis. (T. 404-405, 425, 431-434).
60. Student has demonstrated academic progress at *** in the areas of Math, Reading, Science and Written Expression. (T. 395-396, 405, 422). Student has also demonstrated progress in nonacademic areas, exhibiting reduced anxiety and ***, greater focus, and improved organizational skills and study skills. (T. 400-401, 404, 422-424, 689-691, 694).
61. Student's placement at *** provides Student with appropriate individualized services based on assessment and performance. Student's access to grade level TEKS along with direct instruction to remediate is appropriate. (T. 953-954). Student has made meaningful progress while enrolled at ***.
62. During the 2014-2015 school year, Mother incurred *** for ***, plus transportation costs. (PX 26, p. 525-527; T. 696-697, 700).
63. On July ***, 2015, Mother committed to enrolling Student at *** for the 2015-2016 school year, incurring costs for the year of ***, plus transportation. (PX 25, p. 511, T. 698).

***** Independent Evaluation**

64. Mother requested an independent educational evaluation (IEE) from Dr. *** in spring 2015, after withdrawing Student from HISD. Mother testified that *** required a more current evaluation than HISD's 2013 re-evaluation, *** staff did not confirm this requirement or mention Dr. ***'s evaluation as a basis for planning Student's instruction. Dr. *** testified that she knew of Mother's dispute with HISD and the pending due process hearing while the evaluation was in process. (T. 308-309).
65. Mother did not request an IEE from HISD and seeks reimbursement for the evaluation on the grounds that it was required as part of Student's private placement.
66. Dr. ***'s evaluation, completed on September ***, 2015, found that Student demonstrates characteristics of Autism (moderate range) and ADHD beyond what would be expected with only an autism spectrum disorder. (T. 240-241, JX 9).
67. Dr. *** observed Student in Student's classroom at *** on two separate days, first in Student's Math classroom with a ratio of 1:5 and then in an Art class with a 1:10 ratio. Student remained notably more focused and able to engage in the Math class. (JX 9, pp. 107-108, T. 223-225). During testing, Dr. *** observed that it was difficult to keep Student focused and that Student's inattention increases when Student becomes frustrated by the difficulty of the task. (T. 227-228).
68. Dr. *** found Student to have a full scale IQ of *** (very low range), a lower score than on the HISD re-evaluation or a neuropsychological evaluation obtained by Mother in June 2015. Dr. *** believes her evaluation underestimates Student's intelligence. (T. 246, JX 9, p. 112). Dr. *** confirmed that Student's most significant deficits are in the areas of Math and Written Language. (T. 228,246, 257-258; JX 9, p. 113).
69. Based on observation and performance data, Dr. *** recommended staff-to-student ratios, emphasizing Student should not have ratios over 1:12 in an academic setting due to increased anxiety, inattention, and behaviors associated with Autism:
 - Acquisition- learning new information: from 1:1 to 1:5
 - Fluency- information learned, increase speed/ accuracy: from 1:3 to 1:7
 - Maintenance- preserving what's been learned: from 1:7-1:10
 - Generalization-using information in a broader sense: from 1:10-1:12(JX 9, p. 115, T. 262-263, 265, 267).
70. Dr. *** made the following recommendations for Student in an educational environment: more substantial support than previously provided, fewer distractions, frequent breaks and opportunities for motor movement, visual supports, appropriately paced instruction, social skills training for a minimum of 45 minutes per week, specialized instruction in math and Written Expression, access to a computer for longer writing assignments, and completion of a speech evaluation to look at pragmatic language skills. (JX 9, pp. 115-116). She additionally found that

*** was an appropriate placement for Student as it provided better support for Student's behaviors and Student was able to make academic progress. (T. 294, 300, 304-306).

71. Dr. *** testified that HISD's inconsistency in the levels of support provided Student from IEP to IEP results in negative self-esteem and increased anxiety. (T. 293).
72. Dr. *** testified that Student would require two full years (2015-2016 and 2016-2017) as compensatory education to remedy Student's failure to make progress at HISD for two years. (T. 301). She also recommended that any transition back to HISD be gradual and supported by collaboration between *** and HISD. (T. 302).

Speech Evaluation

73. Dr. *** recommended that Student obtain a speech evaluation to address possible pragmatic language weaknesses. (JX 9, p. 115). Mother obtained a speech evaluation on September ***, 2015, which recommended one hour of speech services per week for a period of 6-12 months. (JX 41). Mother had not previously requested a speech evaluation from HISD.
74. The evaluator administered the Clinical Evaluation of Language Fundamentals-4 (CELF-4), on which Student scored in the average range on all subtests, leading to the conclusion that Student's semantic and syntactic comprehension and expressive language skills are within the average range. On the Pragmatics Profile section of the assessment, Student scored one point below Student's age range, placing Student at an age equivalency of ***. The evaluator informally assessed Student in the areas of Voice, Fluency, Articulation, and Oral motor skills and found all areas to be adequate. (JX 41).
75. The speech evaluator did not testify at the hearing and the evaluation results reported do not support Petitioner's claim that speech therapy is required for Student to obtain a FAPE.

July 2015 Proposed IEP and Offer of FAPE for * Grade**

76. On July ***, 2015, HISD convened an ARDC to develop and propose an IEP for Student for the 2015-2016 school year without Mother in attendance. (JX 21). Prior to the July 2015 ARDC meeting, Mother had always attended Student's ARDC meetings. (T. 758).
77. HISD initially scheduled the ARDC meeting for May ***, 2015, but cancelled it due to inclement weather. (T. 702, 757; JX 21, p. 515). HISD then contacted Mother by phone to propose June ***, 2015 for the ARDC, but Mother indicated she would be out of town. (T. 704, 742-743, 757). HISD subsequently sent an ARDC meeting notice to Mother, scheduling the ARDC meeting for July ***, 2016. (JX 21, p. 505). Mother did not receive the notice, as she was out of town ***. (T. 704, 756-758).

78. Mother had no notice of the ARDC until she received the paperwork following the ARDC when she checked her mailbox in early August. (T. 706, 743). The ARD documents were sent to Mother following the ARDC on or about July ***, 2015. (PX 37, p. 818).
79. The July 2015 ARDC was comprised of a special education administrator who had never worked with Student, a general education teacher from ***, who had also never worked with Student, and an administrator. (T. 468-470). No one attending the meeting had direct knowledge of Student. Personnel from *** were not invited to attend the ARDC meeting although it would have been helpful because HISD had no information about Student after March 2015. (T. 485-486).
80. The ARDC reviewed Student's prior evaluation and IEP from *** grade, noting that Student's progress was not satisfactory at that time. (T. 475-476). The ARDC adopted Student's annual goals from Student's *** grade IEP, which had been carried forward from Student's *** grade IEP. Student continued to have no proposed goals in Written Expression. (JX 18, 19, 21; T. 477-484, 581, 961).
81. The proposed schedule of services for *** grade provided for *** minutes per week of in-class support and facilitation in English, and *** minutes per week of Resource Math. More simply, Student was to receive *** hours per week or *** minutes per day of special education service in a resource setting, with the remainder of the day in the general education classroom with support and facilitation in English. Student's placement was coded a "41." (JX 21, p. 492, 495).
82. Student's IEP was to be implemented at ***, where Student would attend the *** (***) for social skills (though this is not reflected in the IEP). (JX 21, p. 492; T. 499). Representatives from *** did not attend the ARDC meeting. (T. 520). At the time of the proposed placement, the *** at *** had not yet been created; as implemented during 2015-2016, the *** actually did not provide pull-out support to students, but only push in support in the general education classroom. (T. 520, 572, 576, 581-582, 601, 615). As such, Student's proposed IEP could not actually be implemented at *** as written.
83. In acknowledgement of Mother's concerns that Student had not received proper support while at ***, the ARDC agreed to provide: 1) Reimbursement to Mother for *** up to *** plus round trip mileage for the 2014-2015 school year; 2) Reimbursement to Mother for the private homework tutor up to the amount of ***; 3) Transfer to *** for *** and *** grades; 4) Provide social skills support from the Autism teacher at the new *** class opening at *** for the 2015-2016 school year; 5) Autism training for *** and *** staff; and 6) Counseling evaluation to determine need for counseling services.
84. The services offered by HISD to address Mother's concerns about the 2014-2015 school year had been offered to her previously at the resolution meeting and she had declined. (T. 732). Mother believed the amount of support offered to Student for the 2015-2016 school year had proven insufficient in the past and was not going to enable Student to make academic progress. The HISD program specialist

concurrent with Mother. (T. 527). In addition, Mother believed that Student has been without FAPE for the entirety of the 2014-2015 school year; as such reimbursement for the last six weeks of the year was not adequate. (T. 730-732). HISD staff concurred that Student's services at *** were inappropriate for the entire school year. (T. 515, 532, 868-869).

85. The services offered by HISD at the July 2015 ARDC meeting are not sufficient to remedy the denial of FAPE during the 2014-2015 school year.

DISCUSSION

Petitioners allege a denial of Student's right to a free appropriate public education (FAPE) by HISD on numerous specific grounds during Student's *** and *** grades. To remedy the alleged denial of FAPE, Petitioners seek reimbursement for private tutoring and private placement during Student's *** grade year, reimbursement for private placement during Student's *** grade year, and compensatory education in the form of prospective private placement to remedy the denial of FAPE during *** grade prior to Student's private placement in March 2015. In addition, Petitioners seek reimbursement for private evaluations obtained after Student's withdrawal from HISD and private speech services.

Reimbursement for Private School Placement Under IDEA

Under IDEA, a parent is entitled to reimbursement for the unilateral placement of a child with a disability at a private school if the public school did not make a free appropriate public education available to the student in a timely manner and the private school's program is appropriate. *School Committee of Burlington v. Department of Education of Massachusetts*, 471 U.S.359 (1985); 34 C.F.R. § 300.148(c). In addition, courts and hearing officers must consider equitable factors that may impact a parent's entitlement to some or all of the reimbursement sought.

The threshold question in a reimbursement action is whether the district made FAPE or a timely offer of FAPE available to the student. If the student's IEP is substantively and procedurally appropriate, reimbursement is not proper. If FAPE or a timely offer of FAPE was not made available to the Student, reimbursement is proper only if the student's private placement is appropriate.

What Is a FAPE

The purpose of IDEA is to ensure that all children with disabilities have available to them a free, appropriate public education that provides special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C. § 1400 (d). Under IDEA, HISD has a duty to provide a free appropriate public education to all children with disabilities residing within its jurisdictional boundaries between the ages of 3 and 21. 34 C.F.R. § 300.101 (a). As a resident of HISD, Student was entitled to receive FAPE from HISD.

The definition of FAPE is special education, related services, and specially designed personalized instruction with sufficient support services to meet the unique needs of the

child in order to receive a meaningful educational benefit. *20 U.S.C. § 1401(9); Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).

The vehicle for provision of FAPE is a Student's IEP; an appropriate IEP details an educational plan that addresses all of a student's identified needs in accordance with the requirements of IDEA and is reasonably calculated to provide a meaningful education benefit. *34 C.F.R. § 300.320*. An IEP is more than a written statement of annual goals and objectives and how they will be measured. An IEP also must include a description of a student's related services, supplementary supports and services, instructional arrangement, program modifications, supports for school personnel, designated staff to provide services, and the duration and frequency of the services, as well as the location where the services will be provided. *34 C.F.R. §§ 300.22, 300.323*. An appropriate IEP that is reasonably calculated to provide FAPE must address all of these components of a student's educational plan, although minor technical violations may be excused. *Klein Independent School District v. Hovem*, 690 F. 3d 390 (5th Cir. 2012).

In *Rowley*, the Court developed a two prong analysis to determine if a school district has met its obligation to provide a free appropriate public education: 1) whether the district complied with the procedural requirements of IDEA, and 2) whether the district offered a program to the student that was reasonably calculated to provide educational benefit, i.e. a substantive determination. *Id. at 206-207*.

It is well settled that procedural violations constitute a denial of FAPE only if the procedural inadequacies impeded the child's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education, or caused a deprivation of educational benefit. *34 C.F.R. 300.513(a); Adam J. v. Keller ISD*; *328 F. 3d 804 (5th Circ. 2003)*.

The essence of determining whether a substantive violation of IDEA has occurred is whether the school's proposed program will provide the student with the requisite educational benefit. IDEA does not require an education that maximizes a student's potential; rather, the school must provide an education that is reasonably calculated to enable the child to achieve some benefit. Some benefit means an educational program that is meaningful and offers more than a *de minimis* educational benefit; it must be "likely to produce progress, not regression or trivial educational advancement." *Cypress Fairbanks Independent School District v. Michael F.*, *118 F. 3d 245 (5th Cir. 1997)*.

Although courts have not adopted a specific substantive standard to determine when a free appropriate public education has been provided or offered, the Fifth Circuit has identified four factors to consider in analyzing a school's program: 1) is the program individualized and based on the student's assessment and performance; 2) is the program administered in the least restrictive environment; 3) are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) are there demonstrated positive benefits both academically and non-academically to the student. *Id.*; *Klein v. Hovem, supra*; *Wood v. Katy Independent School District*, *2015 U. S. Dist. LEXIS 134297 (S.D. TX 2015)*. These factors are intended to guide the inquiry of evaluating whether a student's IEP provided a FAPE; they need not be considered or

weighed in any particular way. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

Case law dictates that the educational program offered by Respondent is presumed to be appropriate. Petitioners bear the burden of proof to show that FAPE was not provided. *Tatro v. State of Texas*, 703 F.2nd 823 (5th Cir. 1983), *aff'd* 468 U.S. 883 (1984); *Schaffer v. Weast*, 546 U.S. 49 (2005).

Alleged Denial of FAPE During * Grade**

Petitioners allege a denial of FAPE during Student's *** grade year at *** on the grounds that Student's IEP did not provide adequate special education support, Student's IEP goals did not address all areas of need, i.e. Written Expression, and Student did not make adequate progress during the school year. Petitioners do not allege procedural defects related to Student's *** grade year. Petitioners seek recovery for this denial of FAPE from March 17, 2014 to the conclusion of the school year based on the one-year statute of limitations.

Respondent counters that Petitioners did not provide proper notice of claims concerning Student's educational services at ***, and that Student made adequate progress as measured by STARR and Stanford testing.

As previously indicated, I concur with Respondent that Petitioners failed to provide proper notice of claims for an alleged denial of FAPE during Student's *** grade year. Facts pertaining to *** grade do, however, have relevance to Petitioners' claims concerning Student's proposed IEP for *** grade, as Respondent has argued that the IEP is appropriate because it essentially provides the same educational program Student received in *** grade, which was appropriate. The appropriateness of Student's *** grade program will thus be considered in connection with those claims.

Alleged Denial of FAPE for * Grade**

Petitioners allege a denial of FAPE to Student in *** grade based on numerous procedural and substantive deficiencies with Student's IEP. Petitioners argue Student's IEP was inappropriate and that HISD failed to implement the IEP during Student's *** grade year.

HISD acknowledges that Student's educational program at *** did not meet Student's needs and does not dispute reimbursement for Student's placement at *** during the 2014-2015 school or for the private tutoring Mother obtained. (T. 58-60). HISD offered to provide these remedies at an ARDC meeting for Student in July 2015. (JX21). Rather, HISD argues that the remedies offered are sufficient to compensate Petitioners for any deprivations sustained, and that continued private placement at *** beyond the 2014-2015 school year is not warranted or appropriate. (T. 62).

Although HISD essentially concedes that Student's program at *** was not appropriate, analysis of the evidence is relevant to determining whether the remedies offered by HISD for deprivations sustained in *** grade are sufficient.

Procedural Sufficiency of Student's Program

As previously discussed, procedural violations constitute a denial of FAPE only if the procedural inadequacies impeded the child's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education, or caused a deprivation of educational benefit. *34 C.F.R. 300.513(a)*. In this case, the evidence demonstrates several procedural irregularities that ultimately impeded Student's right to a free appropriate public education.

First, the ARDC met in May 2013 and made a placement decision for Student that was not based on Student's IEP, failed to consider whether the placement was appropriate for Student, and was made without the input of HISD staff who were actually knowledgeable about the placement options under consideration, in violation of *34 C.F.R. § 300.116*. The ARDC developed an IEP for Student that provided for *** hours per week of Resource Math, along with in-class support, modifications and accommodations. Before the ARDC met, Mother informed *** staff that Student planned to attend *** for *** grade, but no one attended who had any information about ***. Mother had no way of knowing what services would be available at ***, as HISD did not provide any information as part of the application or admission process that would have alerted Mother to any concerns with appropriately serving Student at ***. The ARDC then inappropriately placed Student at *** without determining whether the curriculum and services offered were appropriate for Student or whether Student's IEP could be implemented there. *See, Little Rock School District, 352 IDELR 214 (OCR 1986); Milwaukee Public Schools, 352 IDELR 526 (OCR 1987); Student v. HISD, Docket No. 074-SE-1112 (TEA 2013)*.

The procedural error of the May 2014 ARDC was made worse by HISD's failure to convene an ARDC prior to the start of the school year to determine if Student's needs could be met at ***. The evidence indicates that HISD staff were aware of the importance of making this determination to ensure that Student could avoid a "jarring transition."

HISD's failure to comply with the process of making placement decisions directly impeded Student's right to a FAPE, as well as Mother's opportunity to participate in decision-making, by causing Student to enroll at ***, a campus that could not possibly provide Student with a FAPE, without considering any alternatives. The evidence is clear that had Mother known that *** could not implement Student's IEP, she would have attended one of the other *** campuses where Student had been accepted. In short, HISD's procedural error in placing Student at *** for Student's *** grade year resulted in a substantive denial of FAPE to Petitioners. *34 C.F.R. 300.513(a); Adam J. v. Keller ISD; 328 F. 3d 804 (5th Circ. 2003)*.

Substantive Sufficiency of Student's Program

Petitioners argue that Respondent's program for Student's *** grade year failed to provide Student with FAPE because Student's IEP was inappropriate, HISD wholly failed to implement Student's IEP, and Student received no educational benefit from HISD's program.

Was Program Individualized and Based on Performance and Assessment

Student's initial IEP for 2014-2015 provided for *** hours in Resource Math and *** minutes of in-class support per week. The IEP removed the Resource Reading that Student received in March 2014, ostensibly because Student passed STARR Reading-Accommodated on the second administration and showed progress on Student's Stanford scores, although no explanation was actually given in the ARDC deliberation. The IEP again failed to provide any goals in Written Expression.

The IEP was not individualized to Student's needs because data from *** grade conclusively demonstrate Student's need for Resource support in Reading. In February of *** grade, the ARDC convened mid-year to add that support because Student was struggling. The fact that Student made some progress in Reading for the first time after receiving additional support does not reasonably justify removing that support when years of data and teacher reports indicate it was necessary. In addition, the IEP again failed to address Student's deficits in Written Expression, which had been repeatedly documented as Student's most significant area of need. In short, even if HISD had implemented Student's IEP as originally drafted, it was still not appropriate to address Student's needs.

In October, the ARDC convened for Student's annual ARD. Teachers reported that Student could not maintain focus and engagement, required constant reminders to stay on task, and could not keep up with the academic demands. Despite the conclusive data that Student's performance was not satisfactory, the ARDC revised Student's IEP to provide for full inclusion with *** minutes of in-class support per week in Math, even though they knew Student would not benefit from the placement. Although Student's IEP provided for this in-class support, it also said Student had zero hours per week special education support. It is uncontroverted that the ARDC's decisions were based on the services available at ***, and not on Student's individualized needs.

Regardless of what Student was supposed to receive in the way of special education support following the October ARDC meeting, the weight of the credible evidence is clear that *** did not provide any meaningful support to Student- and certainly nothing close to *** minutes per week.

In February 2015 the ARDC convened again because Student had failed five of Student's core courses for two consecutive grading periods. Although the purpose of the ARDC was to consider support for Student in light of Student's clear failure at ***, the ARDC revised Student's IEP to *reduce* Student's in-class support in Math from *** minutes per week to *** minutes per week, with *** additional minutes of in-class support per week to help Student remain focused. Although Student's performance indicated an overwhelming need for more support in all areas, the ARDC instead reduced the support, again so that Student's IEP would reflect the reality of the services Student was receiving regardless of Student's individualized needs.

In sum, Student's educational program during *** grade, whether the initial IEP, the October IEP, or the February IEP was not individualized to Student and was not based on performance or assessment.

Was Program Administered in the Least Restrictive Environment

Student's IEP documents that Student cannot receive an educational benefit from full inclusion. As such, Student's IEP for *** grade, which provided full inclusion, did not provide for education in the least restrictive environment in which Student can obtain an educational benefit.

Were Student's Services Provided in a Coordinated and Collaborative Manner by Key Stakeholders

Student's IEP was not provided in a coordinated or collaborative manner. As discussed previously, HISD staff failed to communicate with each other or with Mother in advance of Student's *** grade year to determine if the services could be provided at all. The evidence conclusively demonstrated that ***, the staff member responsible for coordinating and providing Student's services, failed to communicate with other staff members, including the *** principal and Mother, and failed to ensure that the services were being provided at all.

Did Student Demonstrate Academic and Non-Academic Benefits

The evidence demonstrates conclusively that Student obtained no academic or non-academic benefits during Student's *** grade year. In addition to receiving failing or borderline grades in all of Student's core subjects throughout the school year, Student exhibited an emotional and behavioral decline, exhibited increased anxiety, withdrawal, ***, and overall distress.

Did HISD Implement Student's IEP

The Fifth Circuit instructs that to prevail on a claim of failure to implement an IEP, a party must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. *Houston Independent School District v. Bobby R.*, 200 F.3d 341(5th Cir. 2000). Throughout Student's tenure at ***, HISD failed to implement substantial or significant provisions of Student's IEP. From the beginning of school until October 2014, HISD wholly failed to implement any of the provisions of Student's IEP. From October 2014 until February 2015, Student's IEP indicated that Student was to receive *** minutes per week of in-class support in Math, while the evidence demonstrates that *** provided support in Math a little more than one time per month. In short, HISD failed to implement the most significant provisions of Student's IEP, Student's special education support services. As a direct result of the failure to implement, Student failed or received borderline grades in all of Student's core classes.

Conclusion on FAPE Claim Pertaining to *** Grade

I find that HISD failed to provide Student with a FAPE during the entirety of the 2014-2015 school year. Student's IEP was not appropriate, and it was not capable of implementation at ***. Rather than propose an alternate placement for Student or provide proper services at ***, HISD revised Student's IEP to reflect what Student was getting rather than what Student needed.

Alleged Denial of FAPE for * Grade: Whether HISD Failed to Make a Timely Offer of FAPE for Student's *** Grade Year**

Petitioners allege that Respondent's proposed program for *** grade, the IEP developed in July 2015, failed to comply with both the procedural and substantive requirements of IDEA. Procedurally, Petitioners argue that HISD's failure to include Mother when developing the IEP constituted a procedural violation of IDEA. Substantively, Petitioners argue that the proposed IEP is not reasonably calculated to provide Student with an educational benefit as indicated by the evidence.⁵

Procedural Sufficiency of the Proposed IEP

Petitioners complain that HISD committed several procedural violations of IDEA by convening an ARDC meeting in July 2015 when Mother was out of town and had no notice of the meeting, and by not including any persons with knowledge of the Student. Respondent counters that it made reasonable efforts to provide Mother with notice of the ARDC meeting, but needed to move forward and propose a plan for the 2015-2016 school year in lieu of continued placement at ***.

The evidence indicates that while HISD attempted to contact Mother to schedule the July ARDC meeting, staff also knew she was out of town and could not attend. Mother has attended every one of Student's ARDC meetings and there is no evidence to suggest that she was resistant to or avoiding participation. In fact, she planned to attend the ARDC when it was originally scheduled for May ***, 2015, but cancelled due to weather. HISD also did not invite any staff from *** to attend the July 2015 ARD in order to provide updated information about Student, or include any HISD staff who had ever directly worked with Student. These actions fail to satisfy IDEA's procedural requirements that an IEP Team include the parent(s) of a child, at least one regular education teacher of the child, at least one special education teacher of the child, a special education representative, and, at the discretion of the parent or the district, other individuals who have knowledge or expertise regarding the child. *34 C.F.R. § 300.321*. I concur with Respondent that absence of the personnel described in *34 C.F.R. § 300.321* does not automatically rise to the level of a procedural violation. (*See*, Respondent's Closing Argument pp. 21). In this instance,

⁵ Petitioners claim that the proposed IEP developed in July 2015 is an after-the-fact attempt by HISD to rehabilitate the inappropriate February 2015 IEP. Petitioners rely on *R.E. v. New York City Department of Education*, 694 F. 3d 167 (2nd Cir. 2012) to argue that because the IEP was offered after Student withdrew from school, it is impermissible retrospective evidence of what the District would have done had Student remained at HISD that I should not consider. I find that the *R.E.* case is not controlling. Respondent developed the proposed IEP for the 2015-2016 school year to address concerns with Student's 2014-2015 program. Respondent provided it to Petitioners by mail in mid July 2015, before Mother committed to enroll Student at *** for the 2015-2016 school year. The fact that Mother did not check her mail prior to committing to *** on July ***, 2015 cannot defeat Respondent's right to make an offer of FAPE to Petitioners for the 2015-2016 school year. As such, I decline Petitioner's invitation to ignore the July 2015 IEP and instead analyze Respondent's proposed offer of FAPE to determine if it complies with the standards of IDEA.

however, the net result of the whole of HISD's actions was the development of an IEP without any current or direct information concerning the Student. This process violated 43 C.F.R. § 300.324.

Given the importance of the ARDC's task of developing an IEP for Student's return to the District following a year that all parties agreed had not met Student's needs, I find that HISD should have made greater efforts to convene the meeting at a time when Mother, or others with actual information about Student's performance, could attend.

Under these circumstances, HISD's failure to include persons with knowledge of Student, and in particular Mother, in the ARDC that developed Student's proposed IEP for *** grade impermissibly impeded Mother's opportunity to participate in the decision-making process regarding the provision of FAPE, and ultimately impeded Student's right to FAPE.

Substantive Sufficiency of Student's Program

Petitioners argue that Respondent's proposed educational plan for Student's *** grade year was not reasonably calculated to provide Student with an educational benefit, thereby allowing Mother to continue Student's education at *** at public expense. Respondent counters that the proposed IEP was very similar to what was successful with Student at *** in *** grade and Student could reasonably be expected to benefit from the IEP.

Was the Proposed Program Individualized and Based on Performance and Assessment

Student's proposed IEP for *** grade repeats verbatim the annual goals from Student's *** grade IEP, which were not successfully mastered in *** or *** grade. The ARDC did not develop additional goals to address Student's significant deficits in Written Expression. With regard to special education support services, the ARDC proposed *** minutes per day or *** hours per week of pull-out Math in the *** classroom⁶ and *** hours per week of in-class support and facilitation in the general education English classroom. The IEP was to be implemented at *** where Student would also receive support for social skills from the *** teacher. The staff-to-student ratios proposed in Student's IEP are the same as proposed in prior IEPs and are not consistent with Student's needs.

The proposed IEP is similar to the October 2013 IEP from the beginning of *** grade in that it provides *** hours per week of special education intensive instruction in Math outside the general education classroom, with the remainder of Student's day in general education. The proposed IEP does provide more in-class support and facilitation. Like the *** grade IEP, the proposed IEP for *** grade does not address Student's need for specialized instruction in Written Expression or small-group instruction in Reading and other core subjects.

The October 2013 IEP that Respondent relies on to establish the appropriateness of the proposed *** grade IEP did not, however, provide Student with an appropriate educational

⁶ The evidence indicates that the services actually offered at *** for the 2015-2016 school year do not include pull-out instruction in a Resource or *** setting. Rather, all students are served in the general education classroom with in-class support.

plan, as it was not individualized and based on Student's performance and assessment. Student's performance in *** grade and the beginning of *** grade, as reported by Student's teachers to the October 2013 ARDC, made it clear that Student struggled to meet the demands of the curriculum in both Reading and Math while in a general education classroom, due to both academic deficits and behavioral issues. At the conclusion of *** grade, after a year in full inclusion, Student failed all areas of the STARR and made only trivial progress as measured by the Stanford. Assessment data also supported Student's need for greater support than provided by the October 2013 IEP. The 2013 FIE documented Student's need for specialized instruction in both Math and Written Expression, as well as Student's significant attentional challenges. Despite this performance and assessment data, the October 2013 IEP provided intensive instruction only in the area of Math, but did not address any of Student's other academic needs. Not surprisingly, Student continued to struggle academically, and the ARDC had to revise the IEP in February 2014 to add additional services. Thus, Respondent's argument that the *** grade IEP proposes an appropriate program for Student because it is similar to Student's successful *** grade IEP is not supported by the evidence.

The ARDC, in developing Student's proposed IEP for *** grade, failed to account for the data concerning Student's performance pre-***, which conclusively demonstrates that Student requires more intensive instruction in a smaller group for core academic subjects than can be provided in a general education classroom, due to Student's inattentiveness, inability to focus, need for constant redirection, and appropriate pacing of instruction.⁷ Each time Student's ARDC failed to provide the more intensive, small-group instruction of a resource setting, Student struggled and failed to progress, causing the ARDC to then add greater levels of support. Student's IEP for *** grade again proposes to serve Student in a general education setting for all but *** minutes per day; the evidence is clear that this is not based on Student's identified needs.

Was the Proposed Program to be Administered in the Least Restrictive Environment

As previously discussed, like Student's 5th and 6th IEPs, the proposed IEP for *** grade does not educate Student in the least restrictive environment because it does not provide adequate specialized instruction in a small group setting.

Were Student's Proposed Services to be Provided in a Coordinated and Collaborative Manner by Key Stakeholders

Student's proposed IEP was not developed in a collaborative manner by key stakeholders, in that neither Mother, nor other staff with knowledge of Student's needs, were present. In addition, the witnesses who testified about Student's proposed IEP were not from *** and

⁷ HISD has repeatedly recognized that Student meets criteria for ADHD, but has failed to designate Student as IDEA-eligible under the category of OHI. Regardless of Student's eligibility classifications, HISD is obligated to address all of Student's areas of need in Student's IEP. HISD's repeated failure to provide small-group instruction for Student in core academic areas neglects to address Student's significant deficits in the areas of attention and focus, and ultimately impedes Student's ability to make meaningful academic progress.

were themselves unclear about what services are actually being provided at *** during the 2015-2016 school year. The record does not provide adequate information to conclude that the proposed services would be provided in a coordinated and collaborative manner.

Is the Proposed IEP Reasonably Calculated to Provide Student with Meaningful Academic and Non-Academic Benefits

In light of the IEP's limited special education support for Student, combined with the increasing difficulty of the academic curriculum, the evidence indicates that the proposed IEP is not reasonably calculated to provide Student with a meaningful academic benefit. The size of the *** campus and classrooms, similar to ***, without the provision of a smaller staff-to-student ratio in Student's IEP does not provide Student with services that will enable Student to progress. From *** grade, the evidence conclusively demonstrates that Student simply cannot focus, engage, and adequately progress in a general education environment with only support and facilitation services. As evidenced by Student's experience in *** grade, Resource support in Math only is not sufficient. Student's progress data on the Stanford test over the years in which HISD provided IEPs similar to the proposed IEP indicates growth of approximately *** years over a 3-year period. In addition, progress data on Student's IEP goals supports Student's lack of progress, with the proposed IEP repeating goals Student has had since the beginning of *** grade. In sum, the weight of the evidence indicates that the proposed IEP will not yield different results than similar IEPs provided before; as such, it is not reasonably calculated to provide Student with a meaningful academic benefit.

With regard to non-academic benefits, the evidence demonstrates that Student's self-esteem and emotional well-being are impacted by insufficient support in the classroom. Teachers report that when Student struggles academically, Student exhibits greater anxiety, autism-related behaviors, and increased lack of motivation.

The testimony of Dr. ***, based on her 2015 evaluation of Student and her observations at ***, is also probative of whether Student's proposed IEP is reasonably calculated to provide Student with benefit. Dr. *** testified unequivocally that Student cannot tolerate staff-to-student ratios over 1:12 in an academic setting without experiencing increased anxiety, inattention, and *** and other autism-related behaviors. At ***, where ratios are typically 1:9 at most, Student did not exhibit the anxious and inattentive behaviors repeatedly reported by Student's teachers at HISD. In addition, Student demonstrated academic progress in all areas, including becoming more organized and able to benefit from Student's instruction. Dr. *** cautioned that transition back to HISD with substantially less support could trigger increased anxiety and regression for Student.

*Conclusion on Proposed Offer of FAPE for *** Grade*

In sum, the weight of the evidence indicates that Student's proposed IEP for *** grade did not provide Student with appropriate goals to drive specialized instruction or with sufficient special education support to reasonably result in meaningful academic or non-academic progress. The IEP failed to account for what Student's needs might be in transitioning back to HISD, particularly after Student's *** grade year when Student received essentially no services at all. For all of the reasons discussed herein, I find that

the IEP proposed by HISD for the 2015-2016 was not an appropriate offer of FAPE to Petitioners.

Whether Student's Private Placement at * Was Appropriate**

Having found that HISD did not provide a FAPE or an appropriate offer of FAPE to Student during the *** and *** grades, I now consider the second prong of the reimbursement analysis: whether the educational program provided by the private school was appropriate. *Burlington, supra*, 471 U.S. at 370. The private school program need not necessarily meet every specific requirement of the IDEA, but it must be "otherwise proper." *Florence County School District Four v. Carter*, 510 U.S. 7 (1993). The evidence demonstrates that *** meets the *Burlington/Carter* test.

Student's program at *** contains all of the essential elements documented to effectively educate Student. *** provides small class size and a staff-to-student ratio that is appropriate for Student, and allows Student to receive individual and small group instruction when needed. Social skills and study skills instruction are provided and close collaboration occurs on an ongoing basis so that all staff members are aware of Student's needs. The evidence indicates that Student has made documented progress in Math and Written Expression, as well as in Student's behavioral and emotional challenges. Dr. *** testified that *** is an appropriate placement for Student and that Student is doing very well.

Respondent challenges the appropriateness of *** on the grounds that it educates only students with disabilities and cannot provide Student with the benefits of exposure to students without disabilities. Factually, Petitioners point out that Students at *** have a variety of disabilities, such that Student receives the benefits of exposure to neurotypical peers who do not have autism or other communication-based disorders. Legally, case law is clear that the failure of a parentally selected private placement to comply with the least restrictive environment provision of IDEA will not bar reimbursement under *Burlington* and *Carter*. Recognizing that parents who withdraw their children from public school frequently turn to private schools who specialize in teaching children with disabilities, courts have recognized that such private schools need not meet the standards of IDEA; the test for the parent's private placement is simply whether it is appropriate. *Cleveland Heights-University Heights School District v. Boss*, 144 F. 3d 391 (6th Cir. 1998); *T.K. v. New York City Department of Education*, 32 F. Supp. 3d 405 (E.D.N.Y. 2014); *I.S. v. School Town of Munster*, 2014 U.S. Dist. LEXIS 126242 (N.D.IN 2014).

The evidence conclusively demonstrates that *** is an appropriate placement for Student. Petitioners have satisfied the second prong of the *Burlington/Carter* test.

Whether Equitable Considerations Should Reduce Petitioner's Claim for Tuition Reimbursement for Student's Placement at * in *** and *** Grades**

Based on Petitioners' proof that Respondent failed to provide Student with a FAPE and appropriate offer of FAPE during *** and *** grades, and Petitioners' further proof that Student's private placement at *** in *** and *** grade was appropriate, Petitioners are

entitled to reimbursement for Student's tuition and transportation costs incurred for the 2014-2015 and 2015-2016 school year.

Respondent urges that Petitioners' claim for tuition reimbursement should be denied or reduced by equitable considerations of how Mother's actions impacted the District's provision of FAPE. Specifically, Respondent argues that Mother elected for Student to attend ***, so HISD should not be penalized for being responsive to her wishes. HISD argues that Mother definitively knew of ***'s limited special education services as of the October ARDC, if not before, and she declined to transfer Student to another campus in order to try additional supports at ***. HISD objects to being penalized for accommodating Mother's requests, both to attend *** and to remain there as of October.

Respondent cited several cases to support its contention that parents cannot use a district's compliance with their wishes as a later sword in an IDEA action. (*See*, Respondent's Closing argument, pp. 18-19). Each of the cases cited by Respondent is distinguishable from this case because the parents in those cases *knowingly* made the request at issue. Here, the evidence is uncontroverted that Mother had no knowledge before the October 2014 ARD that *** could not meet Student's special education needs. Nothing on the website or in the application process put Mother, or any parent on notice, of ***'s specialized program that could not be modified or accommodated for students with disabilities. Further, Respondent failed to convene an ARD meeting prior to the start of the school to evaluate the appropriateness of the placement for Student, even though HISD staff clearly knew such a meeting was necessary. Under these circumstances, I decline to hold Mother responsible for Student's inappropriate placement at ***, either initially or following the October 2014. Mother's concern about transitioning Student to a new campus in October reasonably caused her to try and remain at ***, as agreed to and understood by HISD staff.

Once a district places a student with disabilities into a ***, it has a responsibility to provide that student with a FAPE or propose an alternate placement where the student's IEP can be properly implemented. *Student v. Houston ISD, Docket No. 074-SE-1112 (TEA 2013)*. In the instant case, HISD did neither. Mother cannot be held responsible for HISD's failure to provide a placement where Student could obtain a FAPE.

Based on the foregoing, I find that equitable considerations do not require a reduction or denial of tuition reimbursement for *** from March ***, 2015 through the end of the 2014-2015 school year, and for the 2015-2016 school year. Accordingly, Petitioners' claim for tuition reimbursement in the amount of *** for 2014-2015 and *** for 2015-2016 is granted.

Petitioners' Claim for Reimbursement for Private Tutoring Obtained in * Grade**

As discussed herein, the evidence conclusively demonstrates that HISD denied Student a FAPE during *** grade and that the private tutoring services obtained by Mother were appropriate for Student. Indeed, teachers at *** relied on the private tutor to assist Student with assigned classwork and homework. Accordingly, reimbursement for these private services is appropriate relief under IDEA. *School Committee of Burlington v. Department of Education of Massachusetts, 471 U.S.359 (1985)*. Further, HISD does not contest the appropriateness of these services or Petitioner's claim for their reimbursement.

Accordingly, Petitioners' claim for reimbursement for private tutoring in the amount of *** is granted.

Petitioners' Claim for Compensatory Education for the Denial of FAPE in *
Grade Prior to Student's Placement at *****

In addition to reimbursement for private services obtained due to a denial of FAPE (tuition and tutoring reimbursement), Petitioners seek an award of compensatory education to account for Respondent's failure to provide FAPE during Student's *** grade year prior to Student's withdrawal from HISD and enrollment at ***. Petitioners argue that their claim for reimbursement for tuition and private tutoring remedies only a portion of the deprivation sustained in the 2014-2015 school year. Respondent argues that tuition and tutoring reimbursement, along with the services offered at the July 2015 ARD, adequately remedies any deprivations sustained by Student, such that Student is not entitled to additional relief. Essentially, HISD argues that two months of tuition reimbursement at ***, plus reimbursement for tutoring, adequately compensates Student for the denial of FAPE during the 2014-2015 school year.

Compensatory education is available under IDEA as an equitable device designed to remedy educational deficits created by the failure to provide FAPE. As an equitable remedy, "the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005). As the courts have explained, "there is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994).

Applying these standards to the facts of this case, it is clear that an additional award of compensatory education beyond reimbursement for tuition and tutoring is warranted for the 2014-2015 school year. First, the private tutoring Mother obtained in *** grade, while appropriate for reimbursement, does not constitute specialized instruction in Student's areas of deficit that substituted for the special education services the District was required to provide. Even with private tutoring, Student was failing Student's core classes when Student withdrew from *** and suffering from the emotional consequences occasioned by Student's lack of an appropriate education.

Second, with regard to the tuition at ***, reimbursement for 2014-2015 covers only two months of the school year, as Student did not enroll there until the end of March 2015. The evidence establishes that the short time remaining in the school year allowed *** to complete their initial assessment process, but not to begin implementing Student's educational program. Student did not begin to demonstrate educational progress at *** until the start of the 2015-2016 school year. As such, two months at *** at the end of the school year, plus reimbursement for private tutoring, is not sufficient to remedy the full year of deprivation that Student suffered in *** grade.

Because reimbursement for two months' tuition, plus tutoring, does not fully remedy the denial of FAPE in *** grade, an additional award of compensatory education is required.

Student requests prospective placement at *** for the 2016-2017 school year as compensatory education for the denial of FAPE in 2014-2015. As instructed by the court in *Reid*, supra, I must consider the services required to provide Student with the educational benefit Student would likely have received, had Student been provided with FAPE during Student's *** grade year.⁸

Because the evidence demonstrates that Respondent failed to provide Student with any meaningful special education support at all during Student's *** grade year, resulting in no educational progress and in emotional and behavioral regression, I find that a full year of private educational services is required to provide Student with the educational benefit Student would have received. I am persuaded that the brief period that Student attended *** at the end of *** grade did not allow Student adequate time to benefit from the educational services they offer; as such, Student is entitled to a full year of services to remedy the significant deprivation sustained in *** grade. An award of compensatory education at ***, to be provided in the 2016-2017 school year is an award of educational services to be "provided prospectively to compensate for a past deficient program." *G. ex rel. RG v. Fort Bragg Dependent Schools*, 343 F.3d 295, 308 (4th Cir. 2003).

This award of compensatory education is supported by the record in this case. Dr. *** testified that Student would require two full years of appropriate educational services to remedy HISD's failure to provide Student with a FAPE for the whole of *** and *** grades. Without an award of compensatory educational services to be provided Student during the 2016-2017 school year, Student would have received only one year and two months (at the end of a school year) at ***, which is clearly not adequate to remedy HISD's denial of FAPE for the two-year period. Accordingly, Petitioner's request for an award of one year of compensatory private educational services, to be provided prospectively at *** during the 2016-2017 school year, is granted.

Petitioners' Claim for Reimbursement for Privately Obtain Evaluations and Speech Therapy

Respondent correctly asserts that Petitioners have never requested independent educational evaluations at public expense. Instead, Petitioners argue they are entitled to reimbursement for privately obtained evaluations, a full evaluation by Dr. *** and a speech evaluation, because they were required in order to attend ***. The weight of the evidence does not support Petitioners' assertion. Witnesses from *** did not testify to the need for additional evaluations in order to serve Student and, in fact, relied on their own benchmark testing to develop Student's program, not the private evaluation completed by Dr. ***. The private speech evaluation, though recommended by Dr. ***, does not support Student's claim that speech services are required to provide Student with a FAPE. Petitioners' request for reimbursement for two privately obtained evaluations and for speech therapy is denied.

⁸ The denial of FAPE during *** grade is fully remedied by the award of tuition reimbursement for placement at *** during 2015-2016.

CONCLUSIONS OF LAW

1. Respondent Houston ISD is an independent school district duly constituted in and by the state of Texas, and subject to the requirements of the IDEA and its implementing federal and state regulations. Houston ISD is Student's resident district under IDEA for all time periods relevant to this action and is responsible to provide Student with a free appropriate public education under the IDEA as a student eligible for services under IDEA.
2. Petitioners bear the burden of proof on all issues raised in this proceeding. *Schaffer ex. rel. Schaffer v. Weast*, 546 U.S. 49 (2005).
3. Petitioners met their burden of proof to establish a denial of a free appropriate public education to Student during the 2014-2015 school year. 34 C.F.R. §§ 300.101, 300.116.
4. Petitioners met their burden of proof to establish that Respondent failed to offer an appropriate educational program to Student that was reasonably calculated to provide Student with a free appropriate public education for the 2015-2016 school year. 34 C.F.R. §§ 300.101, 300.323.
5. *** is an appropriate private placement for Student. 34 C.F.R. § 300.148(c).
6. Petitioners are entitled to reimbursement for costs incurred for tuition at ***, plus transportation, for the 2014-2015 and 2015-2016 school years because Respondent failed to make FAPE or an appropriate offer of FAPE available to Student, and the private school placement at *** was appropriate. 34 C.F.R. § 300.148.
7. Petitioners' claims for tuition reimbursement for the 2014-2015 and 2015-2016 school years are not reduced or denied based equitable considerations. 34 C.F.R. § 300.148.
8. Petitioners are entitled to reimbursement for costs incurred for private tutoring obtained during the 2014-2015 school year because Respondent failed to provide a free appropriate public education to Student and the private tutoring services obtained were appropriate. *School Committee of Burlington v. Department of Education of Massachusetts*, 471 U.S.359 (1985).
9. Petitioners' claims for a denial of a free appropriate public education in the 2013-2014 school year are are barred by the one-year statute of limitations applicable to IDEA claims in Texas and the notice provisions of IDEA. 34 C.F.R. §§ 300.507, 508; 19 T.A.C. § 89.1151.
10. Petitioners are not entitled to reimbursement for independent educational evaluations completed by Dr. *** and ***. 34 C.F.R. § 300.502.
11. Petitioners are entitled to an award of compensatory education, in the form of prospective placement at *** for the 2016-2017 school year, to remedy the denial of a free appropriate public education during the 2014-2015 school year, because

reimbursement for *** tuition for a two-month period and private tutoring service does not adequately remedy the deprivation sustained. *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

ORDER

After due consideration of the record, and the foregoing Findings of Fact and Conclusions of Law, this Hearing Officer hereby **ORDERS** that the relief sought by Petitioner is **GRANTED IN PART** as follows:

1. Respondent shall reimburse Petitioners for the tuition expenses incurred at *** for the 2014-2015 and 2015-2016 school years, plus transportation upon presentation of mileage logs, in the total amount of ***.
2. Respondent shall reimburse Petitioners for the cost of private tutoring obtained during the 2014-2015 school year in the total amount of ***
3. Respondent shall provide Petitioners with prospective placement at *** during the 2016-2017 school year as compensatory education to remedy the denial of a free appropriate public education during the 2014-2015 school year.
4. In the event Petitioners choose not to attend *** during the 2016-2017 school year, or in the event that *** is unable or unwilling to educate Student during the 2016-2017 school year, Respondent is ordered to develop a transition plan for Student's return to HISD in collaboration with Mother, and to provide Student with a program at HISD during the 2016-2017 school year that provides Student with intensive instruction in the core academic subjects of Reading/English Language Arts and Math, in a small group setting of no greater than 1:12.
5. The total amount owed Petitioners of *** shall be paid to Petitioners within thirty (30) business days of the date of this decision.

It is further **ORDERED** that all other items of relief requested by Petitioners that are not specifically awarded herein are **HEREBY DENIED**.

SIGNED and **ENTERED** this 3rd day of February 2016.

Lynn E. Rubinett

Lynn E. Rubinett

Attorney at Law

Special Education Hearing Officer for the State of Texas

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of

competent jurisdiction or in a district court of the United States. *20 U.S.C. §1415; 34 C.F.R. § 300.516; 19 Tex. Admin. Code Sec. 89.1185 (n).*

TEA DOCKET NO. 201-SE-0315

STUDENT	§	BEFORE A SPECIAL
BNF PARENT	§	EDUCATION
Petitioners	§	
v.	§	HEARING OFFICER FOR THE
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether Respondent failed to provide Student with a free appropriate public education during the 2014-2015 and 2015-2016 school years?

Held: For the Student. Petitioners met their burden of establishing that Respondent failed to provide a free appropriate public education to Student during the 2014-2015 school year, and failed to offer an appropriate educational program to Student that was reasonably calculated to provide her with a free appropriate public education for the 2015-2016 school year.

Cite: 34 C.F.R. §§ 300.101, 300.323

Issue: Whether Petitioners are entitled to tuition reimbursement for private placement and mileage expenses incurred for the 2014-2015 and 2015-2016 school years?

Held: For the Student. Petitioners met their burden of establishing that Respondent failed to offer Student an appropriate educational program for the 2014-2015 and 2015-2016 school years and that Student's private placement is appropriate.

Cite: 34 C.F.R. § 300.148

Issue: Whether Petitioners are entitled to reimbursement for private tutoring services obtained during the 2014-2015 school year?

Held: For the Student. Petitioners met their burden of establishing that Respondent failed to provide a free appropriate public education to Student during the 2014-2015 school year and that the private tutoring services obtained were appropriate.

Cite: School Committee of Burlington v. Department of Education of Massachusetts, 471 U.S.359 (1985)

Issue: Whether Petitioners are entitled to an award of prospective private educational services as compensatory education for the denial of a free appropriate public education during the 2014-2015 school year?

Held: For the Student. Petitioners are entitled to an additional award of compensatory education for the 2014-2015 school year because the tuition and tutoring reimbursement for the 2014-2015 school year do not adequately remedy the denial of FAPE sustained by Student.

Cite: Reid v. District of Columbia, 401 F.3d 516, 524 (D.C. Cir. 2005)