

DOCKET NO. 024-SE-1016

STUDENT B/N/F PARENT AND PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
NORTHSIDE INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF HEARING OFFICER

*** (Student), by next friends *** and *** (Parents) (collectively, Petitioner) requested an impartial due process hearing (Complaint), pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* The Northside Independent School District (Respondent or the District) is the respondent to the Complaint. Petitioner alleges that the District violated the IDEA by failing to provide Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE); by failing to provide Student with an appropriate individualized education program (IEP); by failing to properly implement Student’s IEP; by failing to conduct timely and appropriate assessments to address Student’s educational needs; by failing to address Student’s behavioral needs; and by violating procedural requirements. The District denies Petitioner’s allegations.¹ The hearing officer finds that Petitioner provided insufficient evidence to prove the District violated the IDEA as alleged. Therefore, Petitioner’s claim for relief is denied.

I. COMPLAINT, ISSUES, REMEDIES, AND BURDEN OF PROOF

A. Complaint

Petitioner filed the Complaint on October 7, 2016.

¹ Respondent’s Plea to the Jurisdiction and Response to Petitioner’s Request for Due Process, at 2, filed on October 17, 2016.

B. Issues

At a prehearing telephone conference held on November 8, 2016, the issues for this proceeding were narrowed and simplified, as listed below.²

1. Has Student made meaningful educational progress in the District?
2. Did Student regress while attending school in the District?³
3. Did the District fail to place Student in the LRE?
4. Did the District fail to implement Student's May ***, 2015 IEP; August ***, 2015 IEP; September ***, 2015 IEP; October ***, 2015 IEP; and/or May ***, 2016 IEP?⁴
5. Did the District fail to provide Student with a continuum of alternative placements?
6. Did the District fail to provide Student with an appropriate IEP?
7. Were the speech services stated in Student's IEP and those delivered by the District inappropriate and did they fail to provide Student with the requisite educational benefit under the IDEA?
8. Did the District fail to address Student's behavioral needs by failing to conduct a timely and appropriate Functional Behavioral Assessment (FBA) and by failing to devise and implement an appropriate Behavior Intervention Plan (BIP)?
9. Did the District fail to conduct timely and appropriate assessments to address Student's individual special education needs, as requested by Parents, in the areas of Educational Impact of Combined Medical Diagnoses, Assistive Technology (AT), and Extended School Year (ESY) services?
10. Did the District fail to give prior notice of changes to the provisions of a FAPE to Student?

² Complaint, at 203; *see* Order No.4, issued November 9, 2016.

³ Petitioner did not explain whether Issue 2 relates to Student's alleged lack of educational progress (Issue 1) or the District's refusal to assess Student for Extended School Year (ESY) services (Issue 9). A review of the underlying facts contained in the Complaint indicates that Issue 2 relates to Issue 1. Complaint at 24-35, 47. The issues are addressed together in the Discussion section of this Decision.

⁴ Because the accrual date for this proceeding is October ***, 2015, the implementation of the May ***, 2015, and August ***, 2015 IEPs will not be considered. The implementation of the September ***, 2015 IEP from October ***, 2015, until adoption of the October ***, 2015 IEP, will be considered.

11. Did the District subjectively determine Student was not receiving a FAPE and intentionally misrepresent those facts to Parents and withhold information about Student through the academic year and beyond?

C. Requested Relief

At the prehearing telephone conference held on November 8, 2016, Petitioner's proposed remedies were identified as listed below:⁵

1. The District should be ordered to provide reimbursement and prospective tuition for Student's special education needs.
2. The District should be ordered to provide tuition reimbursement to ensure Student receives 2 years of special education instruction and services at a private school for children with Autism and communication disorders during the 2016-2017 and 2017-2018 school years, including ESY services.
3. While Student is enrolled in the private school, Student should receive 2 hours per week of speech therapy services either at the private school or the location where the private school students receive speech therapy services.
4. Student is to receive AT devices, equipment, training, and maintenance, as well as any support services necessary to deliver effective and proper use of the AT. The equipment and devices are to remain with Student throughout Student's special education.
5. The District is to reimburse all tuition paid by Parents for Student's enrollment at ***, beginning with ESY services that began June ***, 2016, through the date the hearing officer's decision is rendered.

D. Burden of Proof

The IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.⁶ A party attacking the appropriateness of an IEP established by a school district bears the

⁵ See Order No. 4, issued November 9, 2016.

⁶ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d. 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

burden of showing why the IEP and resulting placement were inappropriate under the IDEA.⁷ Therefore, Petitioner must prove by a preponderance of the evidence that the District violated the IDEA in order to prevail on the delineated issues.

II. DENYING PETITIONER'S MOTION FOR "STAY PUT" ORDER

On November 18, 2016, Petitioner filed a Motion for Stay Put Order. Petitioner sought a ruling that ***, where Student was parentally-placed on June ***, 2016, should be designated as Student's "stay put" placement for the duration of the due process proceeding. But the unilateral parental choice of a private school is not the "stay put" placement during the pendency of a due process hearing unless the ARDC agrees the student cannot be served in the public school district and reaches a consensus that the student needs a private placement.⁸ The last agreed-upon placement for Student, as reflected in the May ***, 2016 ARDC meeting documents, was at a District *** school. The placement was to continue through October ***, 2016. At the May 2016 meeting, Mother expressed dissatisfaction with the placement but did not disagree with it.⁹ Petitioner's request that Student's "stay put" placement be at *** is denied.

III. HEARING

The hearing was held November 28-29, 2016, before Sharon Cloninger, hearing officer, at the District's Teicher Student Services building, 5651 Grissom Road, San Antonio, Texas 78238. Petitioner was represented by ***, Student's mother (Mother). The District was represented by Elvin W. Houston, attorney. ***, Director of Special Education, appeared as the District's representative.

⁷ *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011 (5th Cir. 2010).

⁸ *Sch. Committee of Town of Burlington v. Dept. of Educ. Mass.*, 471 U.S. 359 (1985); *Stacy G. v. Pasadena Ind. Sch. Dist.*, 695 F. 2d 949, 953-954 (5th Cir. 1983).

⁹ District Ex. G at 1, 16, 29. Mother's handwritten note states in relevant part, "I am agreeing to this only for the effort of implementing some form of education for my ***." District Ex. G at 29.

Both parties filed their written closing arguments by the December 23, 2016 deadline.¹⁰ This decision was timely issued by the December 30, 2016 decision due date.

IV. EVIDENCE

The hearing officer sustained the District's objection that none of Petitioner's proffered exhibits were timely produced, and the exhibits were not admitted.¹¹ An offer of proof was not made. The District offered exhibits 1, 2, and A-U, which were admitted with no objection. The District called no witnesses.

Petitioner called the following five witnesses, who referred to the District's exhibits when testifying:

1. Mother
2. ***, Student's special education teacher in 2014-2015, in ***
3. ***, Principal, ***
4. ***, M.A., BCBA, *** (Student's current school)
5. ***, Student's special education teacher in 2015-2016, in the District

V. FINDINGS OF FACT

Background

1. Student, now age ***, resided with Parents within the boundaries of the District from ***, 2015, until ***, 2016, when Mother and Student moved out of the District.¹²

¹⁰ See Order No. 4, issued November 9, 2016.

¹¹ Tr. at 87-91, 97, 99-100, 124; District Exs. 1 and 2; see Order No. 8, issued November 29, 2016. A hearing officer is expected to ensure that the due process hearing serves as an effective mechanism for resolving disputes between parents and school districts over issues raised in a due process hearing request made under the IDEA. Apart from the hearing rights set out in 34 C.F.R. § 300.508, decisions regarding the conduct of due process hearings are left to the discretion of the hearing officer. *Letter to Anonymous*, 23 IDELR 1073 (OSEP 1995).

¹² Complaint at 6; see also letter attached to Petitioner's Plea to Respondent's Claims of Petitioner's Residency and Issues of Standing and Jurisdiction Raised by Respondent, filed November 18, 2016.

2. Student and Mother moved back into the District on ***, 2016.¹³
3. Student is eligible for special education and related services as a Student with Autism and a Speech Impairment.¹⁴
4. In November ***, shortly after Student's ***, Student was diagnosed with Autism Spectrum Disorder.¹⁵
5. Student also has been diagnosed with Expressive/Receptive Language Disorder and ***.¹⁶
6. Student's inability to communicate is one of Student's most significant disabilities, and this disorder affects every aspect of Student's education and ability to function.¹⁷
7. Until age ***, Student participated in *** and received medically prescribed physical therapy, occupational therapy, and speech therapy.¹⁸
8. At age ***, Student enrolled in a public school special education *** program.¹⁹
9. In August 2015, at age ***, Student transferred into the District from Student's *** school.²⁰
10. On August ***, 2015, the District received Student's transfer IEP for the 2015-2016 school year from Student's previous school.²¹
11. Mother provided the District with documentation related to Student's history, diagnoses, prescribed plans for appropriate services and support for Student's educational needs from Student's medical evaluations (doctors and therapists), and letters from Student's previous teachers and therapists, that provided an overview of Student's 2014-2015

¹³ The hearing officer takes official notice of the letter from Petitioner to the hearing officer and District's counsel, dated ***, 2016.

¹⁴ District Ex. A at 1. The IDEA defines Autism as "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance." Other characteristics often associated with Autism are "engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences." 34 C.F.R. § 300.8(c)(1)(i).

¹⁵ Tr. at 343 (Mother); District Ex. U at 2 (the pages are out of order; page 2 precedes page 1).

¹⁶ District Ex. U at 2. The definition of "****" is not in evidence.

¹⁷ District Ex. U at 2.

¹⁸ District Ex. U at 2.

¹⁹ District Ex. U at 2.

²⁰ District Ex. A at 1; District Ex. H at 4; District Ex. T at 1.

²¹ District Ex. A at 1.

- school year experience. She also gave the District Student's IEP from Student's previous school.²²
12. On August ***, 2015, the District faxed a request for records to Student's previous school.²³
 13. On August ***, 2015, the District provided Mother with a "Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities."²⁴
 14. On August ***, 2015, the District reviewed and accepted Student's former IEP to use during Student's 30 days of temporary placement pending permanent placement.²⁵
 - a. At Student's previous school, Student had a full-day placement in a special education self-contained classroom that by the end of the year had *** students, including Student.²⁶
 - b. The District did not have a full-day special education self-contained classroom in place for ***.²⁷
 - c. For *** who transfer into the District with an IEP, the District normally does not offer only self-contained educational placement until there has been an opportunity to assess the child's needs.²⁸
 - d. At Student's prior school, Student received *** segments or hours per week of instruction outside of the general education setting to provide specialized instruction, physical assistance, and verbal cues needed in the areas of communication, adaptive, and social emotional skills.²⁹
 - e. At Student's prior school, Student received *** segments or hours per week of instruction outside of Student's educational setting to address Student's language deficits.³⁰

²² District Ex. U at 1.

²³ District Ex. A at 2.

²⁴ District Ex. A at 6.

²⁵ Tr. at 301 (***) ; District Ex. A at 2. An ARDC meeting must be held to develop the child's initial IEP within 30 days of determining that the child needs special education and related services. 34 C.F.R. § 300.323(c)(1).

²⁶ Tr. at 176, 178, 212-213 (***) ; Tr. at 257-258, 288 (***) ; Tr. at 302 (***) .

²⁷ Tr. at 268-271 (***) .

²⁸ Tr. at 268-270 (***) .

²⁹ Tr. at 176, 211-212 (***) ; Tr. at 255-256 (***) ; District Ex. A at 1.

³⁰ Tr. at 176 (***) ; District Ex. A at 1.

- f. Student's transfer IEP required *** hours of service per week; the District provided *** hours of service to Student, including speech therapy, and followed the goals from the transfer IEP.³¹ Student was supported by a special education staff member during all of Student's instructional time.³²
- g. Under the August ***, 2015 IEP, Student participated in an inclusive *** (***)/*** *** program *** hours each *** in general and special education settings. The ***/*** included students eligible for *** with non-disabled *** students. The *** was staffed with a Certified Special Education Teacher, a Certified *** Teacher, a Special Education Instructional Assistant, and *** Instructional Assistant. The Special Education staff and *** staff provided services during the entire instructional time through class support.³³ During the *** session only, Student was in class with non-disabled peers.³⁴
- h. Under the August ***, 2015 IEP, Student also participated in the self-contained *** program *** hours daily, in the ***. The *** classroom was staffed with a Certified Special Education Teacher and a Special Education Instructional Assistant. The Special Education staff provided services during the entire instructional time.³⁵
- i. In the ***, the children were divided into two groups, each with half of the general education students and half of the special education students. Each class was taught different parts of the curriculum by either the special education teacher or the general education teacher, and both special education and general education employees were with the children at all times.³⁶
- j. During the *** between the *** and *** sessions, Student was in the *** classroom with other special needs children and with Student's special education teacher the majority of the time, or another District employee.³⁷
- k. The *** class was spent entirely in the special education teacher's classroom.³⁸ For an unspecified period of time, Student was having difficulties in the general education classroom in the *** so spent Student's *** in the special education classroom.³⁹

³¹ Tr. at 267-268, 271 (***)

³² Tr. at 284, 286 (***)

³³ Tr. at 257-258, 288 (***); Tr. at 305 (***); Tr. at 330-331 (Mother); District Ex. A at 3.

³⁴ Tr. at 285 (***); District Ex. A at 3.

³⁵ Tr. at 257-258, 288 (***); Tr. at 305 (***); Tr. at 330-331 (Mother); District Ex. A at 3.

³⁶ Tr. at 292-294 (***); Tr. at 302-303, 310 (***)

³⁷ Tr. at 259 (***); Tr. at 303-305 (***)

³⁸ Tr. at 294 (***); Tr. at 310 (***)

³⁹ Tr. at 295 (***)

15. For *** hours on ***, 2015, Mother observed Student in the classroom. She concluded that Student had not made a connection with the adults charged with Student's education and care, resulting in the deterioration of Student's education and well-being. But she also determined that Student was able to do all of the tasks set before Student and participate in the curriculum in the general education setting with the support services and also to benefit from the smaller *** class.⁴⁰
16. The transfer IEP services were provided on a temporary basis from the first day of school on August ***, 2015, through September ***, 2015, when the Admission, Review, and Dismissal committee (ARDC) convened to determine Student's permanent placement. Under Student's permanent placement, Student continued to receive services in the *** ***/*** classroom in the *** and in the *** classroom in the ***.⁴¹

Issue 1:**Did Student make meaningful educational progress in the District?**

17. On September ***, 2015, Student's special education teacher prepared Student's developmental profile using Child Observation Record (COR) Advantage.⁴² She updated Student's COR Advantage developmental profile on May ***, 2016.⁴³
18. Between the September ***, 2015, and May ***, 2016 COR Advantage evaluations, Student made progress in Student's approach to learning; social and emotional development; physical development and health; language, literacy, and communication; mathematics; creative arts; science and technology; and social studies.⁴⁴
19. By the end of the 2015-2016 school year, Student's behavior had improved. Student had begun to interact more with Student's peers, and had made progress in Student's communication skills.⁴⁵
20. By the end of the 2015-2016 school year, Student had made academic progress. Student was able to ***, ***, and *** from Student's teacher.⁴⁶
21. By June ***, 2016, Student had met most of the objectives and several of the goals in Student's IEP.⁴⁷

⁴⁰ Tr. at 348 (Mother); District Ex. U at 1, 3-4, 7-8.

⁴¹ District Ex. S.

⁴² District Exs. D and E.

⁴³ District Exs. N and O.

⁴⁴ District Exs. D, E, N, and O.

⁴⁵ Tr. at 311 (***) ; *see also* Findings of Fact under Issues 4 and 6.

⁴⁶ Tr. at 312 (***) .

⁴⁷ *See* Findings of Fact under Issue 4.

22. Student might have experienced even more academic and nonacademic progress had Student spent Student's entire instructional day in the *** classroom with more one-on-one assistance.⁴⁸

Issue 2:

Did Student regress while attending school in the District?

23. At the end of the 2014-2015 school year in ***, Student:
- a. could ***;
 - b. progressed from ***;
 - c. could ***;
 - d. ***,⁴⁹ and
 - e. was ***.⁵⁰
24. As of September ***, 2015, after *** in the District, Student reacted to conflict by ***, ***, ***, *** or ***, behavior Student did not exhibit the previous school year.⁵¹
25. As of September ***, 2015, Student could ***. But Student could *** when Student left Student's previous school.⁵²
26. When Student ended the previous school year in ***, Student had achieved more than what was indicated by the Present Level of Academic Achievement and Functional Performance (PLAAFP) findings presented at the October ***, 2015 ARDC meeting.⁵³
27. The ARDC that met on October ***, 2015, noted no regression of Student's skills.⁵⁴
28. Some of Student's behaviors as reported in the March ***, 2016 Communication Skills Checklist prepared by Student's special education teacher are different than what Student exhibited at Student's previous school, particularly in the areas of *** ***, following

⁴⁸ Tr. at 176, 215 (***) ; Tr. at 243-246 (***) ; *but see* Tr. at 230-241, 249, 252-253 (***) (in spite of being *** children in a classroom at ***, Student made little progress between June 2016 and September 2016); District Ex. A at 1.

⁴⁹ Tr. at 183, 185-188, 191 (***) .

⁵⁰ Tr. at 340 (Mother).

⁵¹ Tr. at 196-197 (***) ; Tr. at 340 (Mother); District Ex. D.

⁵² Tr. at 196-197 (***) ; District Ex. D.

⁵³ Tr. at 200-201 (***) ; District Ex. F at 2-4; *see also* Findings of Fact at Issue 6.

⁵⁴ District Ex. F at 20, 25, 32.

- visual/oral directions, and following a visual schedule. At Student's previous school, Student exhibited more advanced communication skills and did not ***, ***, ***, ***.⁵⁵
29. Although Student was *** when Student ended the 2014-2015 school year in ***, the District kept Student *** all year.⁵⁶
30. The May ***, 2016 revision ARD meeting addressed Mother's claims that Student had regressed in the areas of ***, ***, communication, peer interaction, ***, ***, ***, ***, ***, as compared to Student's levels of achievement at Student's previous school.⁵⁷
31. The May ***, 2016 ARDC determined Student was making progress toward all of Student's IEP goals and objectives.⁵⁸
32. The May ***, 2016 revision ARDC reviewed the most recent ARD from Student's previous school and determined Student had not regressed since beginning school in the District.⁵⁹
33. Student exhibited changes in behavior upon attending school in the District, but overall, Student made academic and nonacademic progress under Student's IEP.⁶⁰
34. The October ***, 2016 revision ARDC did not consider ESY services because no regression of Student's skills during the school year was noted.⁶¹

Issue 3:

Did the District fail to place Student in the LRE?

35. As determined at the October ***, 2015 annual ARDC meeting, Student was to remain in the *** ***/*** *** classroom and the *** *** self-contained classroom through the remainder of the 2015-2016 school year.⁶²
36. For the 2016-2017 school year, until the October 2016 annual ARDC meeting, the only changes in Student's course curriculum would be attending physical education, music, and art class in a general education setting with special education support, as tolerated, and receiving daily in-class support, related to Student's goals and socialization needs,

⁵⁵ Tr. at 203-210 (***) ; District Ex. L at 1.

⁵⁶ Tr. at 340 (Mother). The record is silent as to whether Student nevertheless was *** at school.

⁵⁷ District Ex. G at 1.

⁵⁸ District Ex. G at 1.

⁵⁹ District Ex. G at 1, 18.

⁶⁰ See Findings of Fact under Issues 1, 4, 7, and 8.

⁶¹ District Ex. Q at 17.

⁶² District Ex. F at 18.

for a total of *** hours per week (***) minutes daily) in a general education setting, as tolerated.⁶³

37. In considering LRE service alternatives, the October ***, 2015 ARDC determined Student had received academic and nonacademic benefit from efforts to modify or supplement Student's participation in the general education setting but decided Student requires more intensive, specialized instruction than can be provided solely in a general education setting.⁶⁴
38. Placement in the general education classroom would have prevented Student from achieving all of the goals in Student's IEP because Student needs access to small group instruction with specialized instruction, methodology, or content.⁶⁵
39. The ARDC recommended that Student receive part or all of Student's instruction in a special education setting. The option of exclusively educating Student in a general education setting with supplementary aids and services was rejected for the following reasons:
 - a. The modifications required for Student to achieve the IEP goals and objectives cannot be implemented in the general education classroom without eliminating essential components of the general curriculum/activity.
 - b. Student's behavior/needs are such that Student requires a structured/specialized environment for implementation of the IEP and BIP and/or Student and/or other students would not benefit satisfactorily from instruction in the general education classroom.
 - c. Speech Therapy/Instructional Related Services goals and objectives contained in the IEP require a small group/individual setting with trained, licensed, or certified staff in a less distracting environment than the general education classroom.⁶⁶
40. The ARDC anticipated the harmful effect of stigmatization from Student's proposed placement, but determined the benefits would outweigh anticipated harmful effects.⁶⁷
41. Student's 2015-2016 IEP was to be implemented in the ***/*** classroom with the use of appropriate aids and supports.⁶⁸

⁶³ District Ex. F at 18-19.

⁶⁴ District Ex. F at 15.

⁶⁵ District Ex. F at 15.

⁶⁶ District Ex. F at 15-16.

⁶⁷ District Ex. F at 16-17.

⁶⁸ Tr. at 310-311, 317-318 (***) ; District Ex. F at 13.

42. Student's placement for 2015-2016 was at ***, the same campus Student would attend if Student were not disabled and the campus that is as close as possible to Student's home.⁶⁹
43. The October ***, 2016 reconvene ARDC recommended that Student should receive services and implementation of Student's 2016-2017 IEP in the LRE as identified by the October ***, 2015 ARDC.⁷⁰

Issue 4:

Did the District fail to implement Student's September ***, 2015 IEP; October ***, 2015 IEP; and/or May *** 2016 IEP?

44. Student's special education teacher worked with Student throughout the 2015-2016 school year and implemented Student's IEP goals and objectives.⁷¹
45. Between the annual ARD dates of October ***, 2015, and October ***, 2016, Student was to learn to use a total communication approach to communicate wants and needs 80% of the time in 4/5 trials.⁷² By June ***, 2016, Student had completed the goal with 73% accuracy and was expected to master it by the annual ARDC meeting.⁷³
46. One of Student's annual goals was to learn to *** and to use ***. As of June ***, 2016, the annual goal had been met.⁷⁴
47. From October 2015 to October 2016, in various classroom situations, Student was to learn to *** 4/5 days per week in 8/9 anecdotes. Student met two out of the three objectives towards this goal, but was not expected to master the goal by the next annual ARDC meeting.⁷⁵
48. From October 2015 to October 2016, when given opportunities to interact throughout the daily routine, Student was to learn to ***. By June ***, 2016, Student had successfully met the goal.⁷⁶
49. From October 2015 to October 2016, when given opportunities to interact throughout the daily routine, Student, with one-on-one help from the teacher, was to learn to *** for a 15-minute period in 8/9 trials. Student met two of the three objectives by and reached

⁶⁹ District Ex. F at 21.

⁷⁰ District Ex. R at 2-3.

⁷¹ Tr. at 310-311, 317-318 (***).

⁷² District Ex. M at 1, 10, 31. This goal was implemented by the speech language pathologist. District Ex. G at 6.

⁷³ District Ex. M at 11, 21, 31-32.

⁷⁴ District Ex. K at 1, 7, 13, 25; District Ex. M at 2, 11-12, 21-22, 32-33.

⁷⁵ District Ex. K at 2, 8, 14, 26; District Ex. M at 3-4, 12-13, 22-23, 33-34.

⁷⁶ District Ex. K at 3, 9, 15, 27; District Ex. M at 4-5, 14-15, 24-25, 34-36.

85% mastery of the fourth grading period objective by the end of the school year. Student was expected to meet the goal by the annual ARDC meeting.⁷⁷

50. By the October 2016 annual ARDC meeting, with guided practice, Student was to be able to ***, with no more than two verbal/visual prompts in 8/9 anecdotes. By the end of the school year, Student met two of the three objectives and met the fourth grading period objective only 70% of the time. Student was expected to master the annual goal by October 2016.⁷⁸
51. One of Student's goals was to be able to engage in *** activities with an average of 80% accuracy in a minimum of 9 anecdotes.⁷⁹ By the end of the school year, Student reached two out of three objectives, reaching the fourth grading period objective with 80% accuracy. Student was expected to master the goal by the October 2016 annual ARDC meeting.⁸⁰
52. Three goals, added to Student's revised IEP on May ***, 2016, were implemented on May ***, 2016. Not enough time had elapsed by the last day of school on June ***, 2016, for the level of progress to be reported.⁸¹

Issue 5:

Did the District fail to provide Student with a continuum of alternative placement?

53. The September ***, 2015 permanent placement ARDC and the October ***, 2015 annual ARDC considered the full continuum of alternative placements.⁸²
54. At the May ***, 2016 revision ARD meeting, the ARDC agreed that until the next annual ARDC meeting in October 2016, Student would receive services in the general education classroom in the ***, with aids and support, and in the self-contained *** classroom in the ***.⁸³

Issue 6:

Did the District fail to provide Student with an appropriate IEP?

⁷⁷ District Ex. K at 4, 10, 16, 28; District Ex. M at 6-7, 15-16, 25-26, 36-37.

⁷⁸ District Ex. K at 5, 11, 17, 29; District Ex. M at 7-8, 16-17, 26-27, 37-38.

⁷⁹ District Ex. M at 8-9, 17, 28, 38.

⁸⁰ District Ex. K at 24, 30; District Ex. M at 9, 18, 28, 39.

⁸¹ District Ex. K at 31-33; District Ex. M at 29.

⁸² See Findings of Fact under Issue 3.

⁸³ District Ex. G at 1, 16, 29, 31. The meeting was held for reasons other than reconsidering Student's placement. The meeting did not end in agreement because Mother disagreed with the ARDC's refusal to provide ESY services for Student during the summer of 2016.

55. Student's IEPs as developed and revised at ARDC meetings held on September ***, 2015, October ***, 2015, May ***, 2016, October ***, 2016, and October ***, 2016, were reasonably calculated to enable Student to receive educational benefits.⁸⁴

September *, 2015 ARDC meeting**

56. On September ***, 2015, the ARDC met to consider Student's permanent placement, having relied on Student's transfer IEP since Student's August 2015 move into the District from ***.⁸⁵

57. Mother attended the ARDC meeting and again was provided with "Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities" and "A Guide to the Admission, Review and Dismissal Process."⁸⁶

58. The ARDC reviewed records from Student's previous school, Parents' concerns for enhancing Student's education, information from District personnel including PLAAFPs, records from other agencies or professionals, Student's FBA, BIP, and the Autism Supplement.⁸⁷

59. Mother expressed no concern about Student's academic advancement⁸⁸ and was supportive of Student's inclusion in the ***/*** ***/*** class.⁸⁹

60. The Licensed Specialist in School Psychology (LSSP) and the Speech Language Pathologist (SLP) reviewed Student's existing evaluation data with the ARDC.⁹⁰

61. Student's IEP goals and objectives were discussed and agreed upon, including modifications and accommodations, as were an Autism Supplement, *** Supplement, FBA, and BIP.⁹¹

62. After considering LRE alternatives, the ARDC decided Student should receive part or all of Student's instruction in a special education setting.⁹²

⁸⁴ The October ***, 2016 and October ***, 2016 meetings occurred after the Complaint was filed on October 7, 2016. Neither party objected to the hearing officer taking evidence regarding the meetings. The hearing officer determines that the issue as to those meeting was tried by consent.

⁸⁵ District Ex. S at 22.

⁸⁶ District Ex. S at 25, 35-36; *see* Tex. Educ. Code § 26.0081.

⁸⁷ District Ex. S at 1-4; Tr. at 319-320 (***). An FBA is completed to determine the cause of a child's behavior, what happens prior to and after the behavior at issue, what could be done to prevent the behavior, and how the child could be taught not to exhibit the behavior. Tr. at 281-282 (***).

⁸⁸ Tr. at 314, 326-327 (***).

⁸⁹ Tr. at 321 (***).

⁹⁰ District Ex. S at 22.

⁹¹ District Ex. S at 4-13, 22, 26-34.

⁹² District Ex. S at 15-17.

63. The ARDC developed a schedule of services for Student, including speech therapy.⁹³
64. The ARDC decided that updated speech and language testing was needed to determine Student's current levels of function in those areas.⁹⁴ Data also was to be collected to determine if Student had regressed in a skill area and had not been able to recoup the skill over an 8-week period.⁹⁵
65. The ARDC was to meet again by November ***, 2015, to review Student's test results.⁹⁶

October *, 2015 ARDC meeting**

66. On October ***, 2015, a Full Individual Evaluation (FIE) reconvene and annual ARDC meeting for Student was held.⁹⁷
67. Mother was in attendance and received prior written notice of the District's proposed and refused actions.⁹⁸
68. The LSSP and the SLP reviewed the September 2015 reevaluations with the ARDC. The reevaluations showed Student continued to meet eligibility criteria as a student with an Autism Spectrum Disorder and Speech Impairment in the areas of receptive, expressive, and pragmatic language, and articulation.⁹⁹
69. Mother did not express concern about Student's academic advancement.¹⁰⁰
70. Mother worked collaboratively with Student's special education teacher to develop Student's IEP academic goals.¹⁰¹
71. The ARD committee adopted seven measurable annual IEP goals for Student in academic, functional, and related services areas, with corresponding objectives, to be completed by October ***, 2016, the next annual ARDC meeting deadline. The IEP included goals for Communication, Adaptive Behavior, Language Arts, Science, and Social Studies.¹⁰²

⁹³ District Ex. S at 18-19.

⁹⁴ District Ex. S at 1, 3, 22; District Ex. T at 1-2.

⁹⁵ District Ex. S at 20.

⁹⁶ District Ex. S at 22.

⁹⁷ District Ex. F.

⁹⁸ District Ex. F at 23-25.

⁹⁹ District Ex. F at 22; District Ex. T at 5, 9, 14.

¹⁰⁰ Tr. at 315-316, 320, 326-327 (***)

¹⁰¹ Tr. at 315-316, 320, 326-327 (***)

¹⁰² District Ex. F at 6-12.

- a. Student's Communication goal, classified as a related service, was to be implemented by a speech language pathologist and methods of evaluation were to include informal testing, data collection, and observations. Student's progress on the goal was to be provided concurrent with the issuance of report cards.¹⁰³
 - b. Student's *** Adaptive Behavior goals, classified as functional, were to be implemented by Student's special education teacher. Methods of evaluation were to include data collection, informal testing, observations, and teacher-made tests. Student's progress was to be provided concurrent with the issuance of report cards.¹⁰⁴
 - c. Student's *** academic IEP goals for Language Arts were to be implemented by the special education teacher. The methods of evaluation were to include data collection, informal testing, observations, and teacher-made tests, with progress reports provided concurrent with the issuance of report cards.¹⁰⁵
72. Student's suitable staff-to-student ratio was determined to be 1:1, 1:2, or 1:3, depending on the activity.¹⁰⁶
 73. A number of modifications and accommodations were included in the IEP including ***, ***, ***, and ***.¹⁰⁷
 74. As a related service, Student was to receive *** speech therapy sessions over the course of the school year in *** sessions per week, most weeks but not every week.¹⁰⁸
 75. The IEP included a BIP with positive behavioral interventions, supports and other strategies to address Student's behavior that impeded Student's own learning or that of others.¹⁰⁹
 76. The Autism Supplement, *** Supplement, FBA, and BIP were discussed and agreed upon.¹¹⁰

¹⁰³ District Ex. F at 6.

¹⁰⁴ District Ex. F at 7-10; *see also* Findings of Fact under Issue 8.

¹⁰⁵ District Ex. F at 11-12.

¹⁰⁶ District Ex. F at 33.

¹⁰⁷ District Ex. F at 13.

¹⁰⁸ District Ex. F at 19.

¹⁰⁹ District Ex. F at 4, 13, 27-28.

¹¹⁰ District Ex. F at 4, 13, 22, 27-28, 34-35.

77. The ARD committee determined that Student did not exhibit a need for AT services, because Student's communication needs were being met through speech therapy and classroom goals.¹¹¹
78. In developing the IEP, the ARDC considered Student's FIE, teachers' information, Parents' information, school records, and classroom observations.¹¹²
79. In developing the IEP, the ARDC considered Student's PLAAFPs in Speech/Related Services; approaches to learning; social and emotional development; physical development and health; language, literacy, and communication; mathematics; creative arts; science and technology; and social studies.¹¹³
80. The ARDC considered LRE alternatives.¹¹⁴

May *, 2016 Revision to Annual ARD**

81. By May 2016, Mother was concerned about Student's academics, behavior, and communication skills, and requested an ARDC meeting.¹¹⁵ On May ***, 2016, the ARDC met to consider changes to Student's IEP.¹¹⁶
82. Mother was in attendance, participated in the meeting, and received prior written notice of the District's proposed and refused actions.¹¹⁷
83. Mother claimed Student had regressed in the areas of ***, ***, communication, peer interaction, ***, ***, ***, ***, ***, as compared to Student's levels of achievement at Student's previous school.¹¹⁸
84. On May 20, 2016, before the ARDC meeting, the District contacted Student's previous school, and the previous school responded. After considering the former school's recommendations, the ARDC made changes to Student's BIP.¹¹⁹

¹¹¹ District Ex. F at 5.

¹¹² Tr. at 319-320 (***) ; District Ex. F at 1.

¹¹³ District Ex. D; District Ex. F at 2-4.

¹¹⁴ See Issue 3 for more details.

¹¹⁵ Tr. at 333 (***) ; see also District Ex. G at 29.

¹¹⁶ District Ex. G. A revision ARD usually is called at the request of a parent to revise something in the annual ARD. Tr. at 280-281 (***) .

¹¹⁷ Tr. at 312-313 (***) ; District Ex. G at 26-28, 30-32.

¹¹⁸ District Ex. G at 1.

¹¹⁹ District Ex. G at 1-2, 14.

85. Student was making progress toward all of Student's IEP goals and objectives. The ARDC reviewed the most recent ARD from Student's previous school and determined Student had not regressed since beginning school in the District.¹²⁰
86. Student's IEP was changed as set out below:¹²¹
- a. A pragmatic goal related to *** and *** was drafted and accepted.
 - b. In addition to direct speech instruction, Student was to receive speech services in a small group of *** students, including Student.
 - c. ***/***, already in use in Student's classroom,¹²² was added to Student's accommodations as an instructional strategy.
 - d. Instructional accommodations were developed to address Student's Autism/***.¹²³
87. In developing the revisions to the IEP, the ARDC considered Student's FIE, teacher reports, Parent information, progress reports, information from Student's previous school, Student's previous FBA and BIP, and the FBA completed by the District Support Specialist.¹²⁴
88. The ARDC requested that another FBA be completed for consideration before the end of the first 9-weeks grading period in the 2016-2017 school year.¹²⁵ A BIP was created for one targeted behavior. Behavior goals were drafted but not agreed upon.¹²⁶
89. Before the ARDC meeting, information about ESY services was emailed to Parents. Because there had been no regression of goals, the ARDC determined Student did not need ESY services. The District did not accept Mother's request for ESY services to be provided to Student in the summer of 2016. However, the District asked Mother if she would like for Student to receive ESY services to maintain Student's progress on certain goals throughout the summer.¹²⁷

October *, 2016 Revision to Annual ARD**

¹²⁰ District Ex. G at 1, 18.

¹²¹ District Ex. G at 1-2, 14.

¹²² Tr. at 332-333 (***).

¹²³ District Ex. G at 2, 14.

¹²⁴ District Ex. G at 30-31.

¹²⁵ *See also* District Ex. G at 19-23.

¹²⁶ *See also* District Ex. G at 24-25.

¹²⁷ Tr. at 340 (Mother); District Ex. G at 2, 26-27, 30-31.

90. The ARD committee met on October ***, 2016, to consider changes to Student's IEP.¹²⁸
91. In October 2016, Student did not attend a District school. Student had attended ***, a private school, as a parentally-placed student since June 2016.¹²⁹
92. Mother attended the October ***, 2016 ARDC meeting and was given a copy of Procedural Safeguards.¹³⁰
93. Mother was concerned that the District was planning to keep Student in a general education classroom when, in Mother's opinion, Student does not belong in general education.¹³¹
94. In considering changes to Student's IEP, the ARDC reviewed Student's PLAAFPs, which were different than those considered at the October ***, 2015 annual ARDC meeting.¹³²
95. The ARDC considered changes to Student's IEP goals and objectives, accommodations, and schedule of services.¹³³
96. The AT evaluation results were presented and the ARDC agreed that AT services would be provided should Student re-enroll in the District. If Student were to re-enroll, Student would receive *** sessions of AT related services until the annual ARD on October ***, 2016.¹³⁴
97. Mother's proposal that the District deliver AT services to Student at *** was rejected by the ARDC.¹³⁵
98. The only change the ARDC made to Student's May 2016 revised IEP goals was to remove an Adaptive Behavior goal related to ***.¹³⁶

¹²⁸ District Ex. Q. This ARDC meeting took place after Petitioner's Complaint was filed on October 7, 2016. Neither party objected to including evidence about the ARDC meeting. The hearing officer deems the issue as tried by consent.

¹²⁹ District Ex. R at 3.

¹³⁰ District Ex. Q at 2, 18-19, 21.

¹³¹ Tr. at 342-343 (Mother). Although not expressly stated, it is apparent that Mother wishes for Student to spend all of Student's instructional time in a self-contained special education classroom, as Student did at Student's ***.

¹³² District Ex. Q at 1.

¹³³ District Ex. Q at 1.

¹³⁴ District Ex. Q at 2, 13, 16-17.

¹³⁵ District Ex. Q at 2.

¹³⁶ District Ex. G at 11; District Ex. Q at 4-12.

99. The ARDC added three modifications and accommodations to the existing 35 accommodations and modifications listed in the May 2016 revised IEP.¹³⁷
100. Student's revised IEP was to be in effect until the annual ARDC meeting deadline of October ***, 2016.
101. After deliberations, the ARDC did not reach mutual agreement. Mother wanted to reconvene to discuss and hear additional options from the District regarding the delivery of AT services for Student.¹³⁸

October *, 2016 Revision to Annual ARD**

102. The ARDC reconvened on October ***, 2016, to review Student's AT evaluation.¹³⁹
103. Mother attended the October ***, 2016 ARDC meeting and was given a copy of Procedural Safeguards.¹⁴⁰
104. Mother continued to request that AT related services be provided to Student at ***, and the ARDC denied her request.¹⁴¹
105. The ARDC determined that if Student were to re-enroll in the District, Student would receive *** AT visits per 9 weeks grading period. The AT related services would be provided through a collaborative/integrative approach incorporating Student observations, direct Student contact, consultation with educational staff, and the training on and provision and maintenance of AT equipment.¹⁴²
106. The ARDC recommended that Student receive services and implementation of Student's IEP in the LRE as identified by the ARDC, noting that *** is a more restrictive environment with no general education peers.¹⁴³
107. Mother was offered a change of location within the District to implement Student's IEP.¹⁴⁴
108. After deliberations, the ARDC did not reach consensus.¹⁴⁵

¹³⁷ District Ex. G at 14; District Ex. Q at 13.

¹³⁸ District Ex. Q at 18.

¹³⁹ District Ex. R at 2. This ARDC meeting took place after Petitioner's Complaint was filed on October 7, 2016. Neither party objected to including evidence about the ARDC meeting. The hearing officer deems the issue as tried by consent.

¹⁴⁰ District Ex. R at 2, 19-20, 24.

¹⁴¹ District Ex. R at 2-3.

¹⁴² District Ex. R at 17-18.

¹⁴³ District Ex. R at 2.

¹⁴⁴ District Ex. R at 2.

Issue 7:

Were the speech services stated in Student's IEP and those delivered by the District inappropriate and did they fail to provide Student with the requisite educational benefit under the IDEA?

109. Student's 2015-2016 IEP required Student to receive a total of *** sessions of speech therapy through the year during specific weeks of each 9-week grading period.¹⁴⁶ Student was to receive *** sessions per week :
110. The speech therapy was provided either by the SLP or the SLP intern.¹⁴⁷
111. Student received the required amount of speech therapy.¹⁴⁸
112. Student's speech improved during the 2015-2016 school year.¹⁴⁹
113. Student is not receiving speech therapy services at ***.¹⁵⁰

Issue 8:

Did the District fail to address Student's behavioral needs by failing to conduct a timely and appropriate FBA and by failing to devise and implement an appropriate BIP?

114. After reviewing Student's September ***, 2015 classroom behavior reports, Mother expressed concern to the school principal that the reports depicted Student as a child who is a danger to ***self and others, behaviors that Student had never before exhibited.¹⁵¹
115. One of Mother's greatest concerns, as expressed to Student's special education teacher, was that Student's behavior was a result of Student being ***.¹⁵²
116. On September ***, 2015, Student's special education teacher completed a Behavior Consultation Referral for Student.¹⁵³ Despite having preventative and proactive components in place, Student ***; ***; ***.

¹⁴⁵ District Ex. R at 19. Any disagreement about Student's placement at the October 2016 ARDC meetings does not affect the hearing officer's denial of Petitioner's Motion for Stay Put Order, because the meetings were held after the Complaint was filed.

¹⁴⁶ District Ex. F at 19.

¹⁴⁷ District Ex. I.

¹⁴⁸ District Ex. I. The exhibit is a record of speech therapy sessions from the second, third, and fourth grading periods, in that the IEP was adopted after the first grading period. Note that pages 9-14 are duplicates of preceding pages in the exhibit.

¹⁴⁹ See Findings of Fact under Issues 1 and 6.

¹⁵⁰ District Ex. Q at 2.

¹⁵¹ District Ex. U at 1.

¹⁵² Tr. at 328-329 (***).

- c. Copies of Student's BIP were distributed to Student's general education teacher, special education teacher, related services provider, and paraprofessionals who worked with Student.
- d. The BIP addressed Student's targeted behavior of ***, ***, ***, ***, ***.¹⁶⁰
124. The ARDC considered Student's FBA at its October ***, 2015 meeting.
- a. The undated FBA was based on classroom observations by Student's special education teacher and on written documentation/classroom-based assessments produced by teachers and/or administrators.
- b. Primary concerns, as observed both by District staff and Parents, were *** and ***.
- c. The FBA contained information from District staff and Parents about what typically happens before and after a behavior problem occurs.
- d. Reinforcers and consequences as used with Student were inconsistently effective.
- e. Student's behavioral strengths are attending to tasks when interested or when presented with *** reinforcer that Student wants. Student enjoys ***, ***, ***, ***.¹⁶¹
125. The ARDC determined that further assessment information was needed before completing the FBA or BIP and requested a reevaluation to be completed by November ***, 2015.¹⁶²
126. Student's behavior was tracked as "good" or "okay" on a daily chart for each week of the school year from August ***, 2015, through May ***, 2016. Student's teacher reported Student's behavior as "good" on *** days and as "okay" on *** days. Behavior was further described in a comments section for each day.¹⁶³
127. At the May ***, 2016 revision ARDC meeting, the ARDC revised Student's BIP according to recommendations received from Student's previous school.¹⁶⁴
128. Student's behavior improved over the school year.¹⁶⁵

¹⁶⁰ District Ex. F at 4, 27-28.

¹⁶¹ District Ex. F at 28-32.

¹⁶² District Ex. F at 31.

¹⁶³ District Ex. J.

¹⁶⁴ District Ex. G at 1-2, 14.

¹⁶⁵ See Findings of Fact under Issues 1 and 6.

129. Student continues to exhibit behavioral issues including *** at ***, where Student is *** children in the classroom.¹⁶⁶

Issue 9:

Did the District fail to conduct timely and appropriate assessments to address Student's individual special education needs, as requested by Parents, in the areas of the Educational Impact of Combined Medical Diagnoses, AT, and ESY services?

130. Parents did not request assessments in the areas of the Educational Impact of Combined Medical Diagnoses or the necessity for ESY services.

131. On May ***, 2016, Parents signed consent for an AT evaluation.¹⁶⁷

132. The AT evaluation was completed on May ***, 2016.¹⁶⁸

133. The educational impact of Student's combined medical diagnoses was addressed in the AT evaluation.¹⁶⁹

134. The AT evaluation was conducted utilizing informal assessment procedures and baseline measures, student observation, Parent and teacher input, and review of permanent records to determine the need for equipment and services in order for Student to benefit from Student's instructional program.¹⁷⁰

135. The AT evaluation stated:

- a. Student demonstrated delayed social-emotional, physical, and communication functioning for Student's age; below average functioning in adaptive behavior; and average cognitive functioning for Student's age.¹⁷¹
- b. Academically, Student ***, ***, ***, ***, ***, *** (***) , ***.¹⁷²
- c. In the speech and language area, Student was noncompliant through most of the three testing sessions. It is probable that Student's inattentiveness, disinterest in the presented tasks, and need for constant redirection, negatively affected Student's standardized test results.¹⁷³

¹⁶⁶ Tr. at 241-243 (***) .

¹⁶⁷ Tr. at 334 (***) ; District Ex. G at 2.

¹⁶⁸ District Ex. H.

¹⁶⁹ District Ex. H at 3.

¹⁷⁰ District Ex. H at 3.

¹⁷¹ District Ex. H at 1.

¹⁷² District Ex. H at 1.

¹⁷³ District Ex. H at 2.

- d. Student was making progress on Student's speech language goals. Student is good at using receptive language to identify target ***. Student's speech is fairly ***, but Student's verbal speech has some ***.¹⁷⁴
- e. Student observation revealed that Student can participate and be engaged in classroom activities.
- f. Informal assessment procedures and baseline measures were utilized.¹⁷⁵
- g. Student was provided with several opportunities to utilize different *** communication devices. Student was observed to access several educational websites independently with a standard mouse, using the desktop computer that is part of the standard classroom equipment.¹⁷⁶
- i. Student demonstrates stronger receptive language abilities and can understand ***, having access to *** may provide Student with additional opportunities to explore with language that Student may otherwise not be able to recall.¹⁷⁷
- j. Student needs AT related services to support Student's communication needs in order to benefit from Student's instructional program.¹⁷⁸
- k. The ARDC needs to explore the use of *** as an augmentative communication strategy for Student.¹⁷⁹

Issue 10:

Did the District fail to give prior notice of changes to the provisions of a FAPE to Student?

- 136. At the October ***, 2015 annual ARDC and the May ***, 2016 revision ARDC, Mother was provided with prior written notice of the District's proposed and refused actions.¹⁸⁰
- 137. Mother attended the October ***, 2016 revision ARDC meeting and the October ***, 2016 ARDC meeting and was given a copy of Procedural Safeguards, but there is no evidence as to whether she received prior written notice regarding proposed changes to Student's IEP.¹⁸¹

¹⁷⁴ District Ex. H at 5.

¹⁷⁵ District Ex. H at 6.

¹⁷⁶ District Ex. H at 6-8.

¹⁷⁷ District Ex. H at 9.

¹⁷⁸ District Ex. H at 9.

¹⁷⁹ District Ex. H at 10.

¹⁸⁰ Tr. at 312-313 (***); District Ex. F at 23-25; G at 26-28, 30-32.

¹⁸¹ District Ex. Q at 2, 18-19, 21; District Ex. R at 1, 19-20.

Issue 11:

Did the District subjectively determine Student was not receiving a FAPE and intentionally misrepresent those facts to Parents and withhold information about Student through the academic year and beyond?

138. There is no evidence to support this allegation.

VI. DISCUSSION

A. Statute of Limitations

A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a FAPE to the child within 2 years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint.¹⁸²

The 2-year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. In that case the state timelines apply.¹⁸³ Texas has an explicit statute of limitations rule. In Texas a parent must file a request for a due process hearing within 1 year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request.¹⁸⁴

The 1-year statute of limitations rule does not apply if the parent was prevented from requesting a due process hearing due either (1) to specific misrepresentations by the school district that it had resolved the problem that forms the basis of the complaint; or (2) if the school district withheld information from the parent that it was required to provide under IDEA.¹⁸⁵ Parents bear the burden to establish an exemption to the 1-year limitations period.¹⁸⁶

¹⁸² 20 U.S.C. § 1415(b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503(a)(1)(2); 300.507(a)(1)(2).

¹⁸³ 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2).

¹⁸⁴ 19 Tex. Admin. Code § 89.1151(c).

¹⁸⁵ 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f)(1), (2); 19 Texas Administrative Code § 89.1151(d).

¹⁸⁶ *G.I. v. Lewisville Ind. Sch. Dist.*, 2013 U.S. Dist. LEXIS 120156 (E.D. Tex. 2013).

To prove misrepresentation occurred, a petitioner must show that the school district intentionally misled the parents or knowingly deceived them regarding the student's progress.¹⁸⁷ As far as the exemption that applies for withholding information, the statute of limitations begins to run when the school district provides parents with a copy of the Notice of Procedural Safeguards.¹⁸⁸

But establishing one or both of the exemptions is not enough to overcome a statute of limitations challenge. Instead, a petitioner must also show the exemptions caused the parents to delay requesting a hearing.¹⁸⁹

In the instant case, Petitioner asserts both exemptions to the 1-year statute of limitations, seeking an accrual date of August 24, 2015.¹⁹⁰ The District avers that the 1-year statute of limitations should apply, resulting in an accrual date of October ***, 2015. Petitioner provided no evidence regarding the "misrepresentation" exemption and does not prevail on that assertion. Regarding the "withholding" exemption, the record shows that the District gave Petitioner a Notice of Procedural Safeguards on August ***, 2015.¹⁹¹ There is no evidence that either through "misrepresentation" or "withholding" by the District, Petitioner was prevented from filing a due process hearing request before October ***, 2016. Accordingly, the accrual date for this proceeding is October ***, 2015.

B. The IDEA and Its Implementing Regulations

Under the IDEA and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet state standards (including IDEA requirements); (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in

¹⁸⁷ *D.K. v. Abington Sch. Dist.*, 696 F. 3d 233, 245-246 (3d Cir. 2012).

¹⁸⁸ *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. 2008), *rev'd on o.g.* 591 F.3d 417(5th Cir. 2009); *C.P. v. Krum Ind. Sch. Dist.*, 2014 U.S. Dist. LEXIS 131098 (E.D. Tex. 2014)(1-year statute of limitations limited IDEA claims where school district gave parents copies of procedural safeguards on numerous occasions).

¹⁸⁹ *D.K.*, 696 F. 3d at 246; *C.H. v. Northwest Ind. Sch. Dist.*, 815 F. Supp. 2d 977, 984-985 (E.D. Tex. 2011).

¹⁹⁰ Tr. at 7 (Mother); Complaint at 7, 13; Petitioner's Plea and Response to Respondent's Plea of Jurisdiction at 3-6.

¹⁹¹ District Ex. A at 6.

accordance with a properly developed IEP that meets the requirements of 34 C.F.R. §§ 300.320 and 300.324.¹⁹²

C. Analyses

Petitioner's overarching issue is whether the District denied Student a FAPE by failing to place Student in a self-contained special education classroom for Student's entire instructional day. Petitioner asserts that, because Student spent *** Student's day in a general education setting, Student's behavior and academic skills regressed during the 2015-2016 school year. The evidence does not support Petitioner's contention.

Instead, the evidence shows Student received a FAPE in accordance with the IDEA requirements enumerated above and the two-prong test established by the U.S. Supreme Court: (1) the District complied with IDEA procedures and (2) Student's IEP was reasonably calculated to enable Student to receive educational benefits.¹⁹³ Under *Rowley*, when this two-part test is satisfied, a school district has complied with the obligation imposed by Congress, and the courts can require no more.

1. First Prong of *Rowley*: The District complied with IDEA procedures

Petitioner alleges the District failed to comply with IDEA procedures when it failed to conduct Parents' requested assessments of Student;¹⁹⁴ did not provide Parents with required prior written notice;¹⁹⁵ and intentionally misrepresented and withheld Student's educational information from Parents.¹⁹⁶ A procedural violation may amount to a denial of FAPE only if the violation: (1) impeded the student's right to a FAPE; (2) significantly impeded a parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to

¹⁹² 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

¹⁹³ *Board of Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181; 102 S.Ct. 3034, 3038 (1982).

¹⁹⁴ See Findings of Fact at Issue 9.

¹⁹⁵ See Findings of Fact at Issue 10.

¹⁹⁶ See Findings of Fact at Issue 11.

the student; or (3) caused a deprivation of educational benefit.¹⁹⁷ As discussed below, the evidence shows the District met the first prong of the *Rowley* test. Petitioner did not prevail on Issues 9, 10, and 11.

a. The District timely and appropriate conducted assessments

Petitioner complains that the District failed to conduct Parents' requested assessments of Student in the areas of the Educational Impact of Combined Medical Diagnoses, AT, and ESY services. There is no evidence that Parents requested assessments of Student in the areas of the Educational Impact of Combined Medical Diagnoses or ESY services. Further, the evidence shows that an AT evaluation was timely conducted and appropriate.

i. ESY services

In May 2016, the District emailed Parents information about ESY services. Further, ESY services were discussed at the ARDC meeting on May ***, 2016, at which Mother was present. At that meeting, the ARDC determined ESY services were not needed because there had been no regression of Student's skills over the 2015-2016 school year. There is no indication that Mother disagreed with the determination. There is no evidence that Parents ever requested an assessment to determine if Student needed ESY services.

ii. AT evaluation

Parents signed consent for the AT evaluation on May ***, 2016, and the AT evaluation was completed on May ***, 2016. Petitioner presented no evidence to challenge the appropriateness of the evaluation. In fact, Mother did not disagree with the AT evaluation when the ARDC discussed the results at the October ***, 2016 revision ARDC meeting. Rather, she disagreed with the District's refusal to provide Student with AT services at *** and its offer to instead provide AT services to Student upon Student's re-enrollment in the District.

¹⁹⁷ 34 C.F.R. § 300.513(a)(2).

b. The District provided the required prior written notice

The District provided Mother with procedural safeguards as required by law¹⁹⁸ and with the required prior written notice at the October ***, 2015 annual ARDC meeting and the May ***, 2016 revision ARDC meeting.¹⁹⁹

The ARD documents for the October ***, 2016 revision ARDC meeting, and the October ***, 2016 reconvene ARDC meeting, in which changes to Student's IEP were proposed, do not explicitly state Mother received prior written notice. The documents do contain all of the information necessary to fulfill the District's prior written notice obligation,²⁰⁰ but the record is silent as to whether the Mother received a copy of the ARD documents.²⁰¹

Assuming, *arguendo*, that the District failed to provide Mother with the required prior written notice at the October ***, 2016 revision ARDC meeting and the October ***, 2016 reconvene ARDC meeting, the failure is not a denial of FAPE in this instance. Even if there was a procedural error, Mother was not denied the opportunity for meaningful participation and Student did not suffer any loss of educational opportunity.²⁰² Mother fully participated in the October ***, 2016 and October ***, 2016 ARDC meetings.²⁰³ At that time, Student was attending a private school where Student had been enrolled since June 2016. Had Student been re-enrolled in the District, Student would have received speech therapy and AT related services, neither of which Student was receiving at Student's private school. Any loss of educational opportunity was the result of Mother's choice not to re-enroll Student in the District and not due to the District's failure to provide Mother with prior written notice.

¹⁹⁸ 34 C.F.R. § 300.504(a), (c).

¹⁹⁹ A district must provide parents with "prior written notice" whenever it proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a), (b).

²⁰⁰ District Exs. Q and R. The IDEA does not prohibit a school district from using the IEP as a component of prior written notice as long as the document the parent receives meets required regulatory elements. 34 C.F.R. § 300.503; *Letter to Leiberman*, 52 IDELR 18 (OSEP 2008).

²⁰¹ There is no receipt within the ARD documents and Mother offered no testimony regarding whether she received the ARD documents.

²⁰² 34 C.F.R. § 300.513(a)(2)(ii), (iii).

²⁰³ District Ex. Q at 2; District Ex. R at 2-3.

c. Misrepresentation and withholding of information from Parents

Petitioner offered no testimony or documentary evidence to prove the District made specific misrepresentations to Parents or withheld from them information that it was required to provide.

2. Second Prong of *Rowley*: Student's IEP was reasonably calculated for Student to receive educational benefits²⁰⁴

A FAPE requires tailoring an education to the unique needs of the child with a disability by means of an IEP that “is reasonably calculated to provide a meaningful educational benefit.”²⁰⁵ The Fifth Circuit summarized the *Rowley* standard:

[An IEP] need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him ‘to benefit’ from the instruction. In other words, the IDEA guarantees only a ‘basic floor of opportunity’ for every disabled child, consisting of ‘specialized instruction and related services which are individually designed to provide educational benefit.’ Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or *de minimis*; rather, an IEP must be ‘likely to produce progress, not regression or trivial educational advancement.’ In short, the educational benefit that an IEP is designed to achieve must be ‘meaningful.’ (internal citations omitted).²⁰⁶

The Fifth Circuit has set forth four factors that serve as an indication of whether an IEP confers the requisite educational benefit under the IDEA.²⁰⁷ These factors are whether (1) the program is individualized on the basis of the student's assessment and performance;²⁰⁸ (2) the program is administered in the LRE;²⁰⁹ (3) the services are provided in a coordinated and

²⁰⁴ See Findings of Fact at Issues 1-8.

²⁰⁵ *Rowley*, 458 U.S. at 206-207.

²⁰⁶ *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000), citing to *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), *cert. denied*, 522 U.S. 1047, 111 LRP 59224 (1998).

²⁰⁷ *Bobby R.*, 200 F.3d at 347-348, citing to *Michael F.*, 118 F.3d at 253; *see also R.P. v. Alamo Heights Indep. Sch. Dist.*, 709 F.2d 1153 (5th Cir. 2012).

²⁰⁸ See Findings of Fact at Issue 6.

²⁰⁹ See Findings of Fact at Issue 3.

collaborative manner by the key “stakeholders;”²¹⁰ and (4) positive academic and nonacademic benefits are demonstrated.²¹¹ The factors need not be applied in any particular way and need not be afforded equal weight.²¹²

a. Student’s IEP was individualized, based on Student’s assessments and performance

When developing Student’s IEP and revised IEP, the ARDC considered Student’s strengths, Parents’ concerns, the results of Student’s most recent evaluations, and Student’s academic, developmental, and functional needs.²¹³ The ARDC also considered Student’s need for related services and determined Student would be provided with speech therapy.²¹⁴

i. Speech Therapy

Related services are an array of supportive services, including speech-language pathology services, provided to children with disabilities to assist them in benefiting from special education.²¹⁵ Each student’s need for related services must be determined on an individual basis as part of the IEP process and must be based on an assessment of the student’s individual needs.²¹⁶ A statement of the anticipated frequency, location, and duration of related services that will be provided must be included in the IEP.²¹⁷

Petitioner complains that Student’s speech therapy services were inappropriate and did not provide Student with an educational benefit. However, Petitioner offered no evidence to prove the speech therapy services were inappropriate. In fact, the evidence showed that Student received educational benefit from the speech therapy services, as demonstrated by the progress

²¹⁰ See Findings of Fact at Issue 4.

²¹¹ See Findings of Fact at Issue 1.

²¹² *Richardson Independent School District v. Michael Z. and Carolyn Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

²¹³ 34 C.F.R. § 300.324(a)(1).

²¹⁴ 34 C.F.R. § 300.320(a)(4).

²¹⁵ 34 C.F.R. § 300.34(a).

²¹⁶ *Letter to Ackerhalt*, 60 IDELR 21(OSEP 2012); and *Letter to Rainforth*, 17 IDELR 222 (OSEP 1990).

²¹⁷ 34 C.F.R. § 300.320(a)(7).

Student made on the Communication goal in Student's IEP and the likelihood Student would master the goal by the October 2016 annual ARDC meeting.²¹⁸

ii. FBA and BIP

Petitioner asserts the District failed to address Student's behavioral needs by failing to conduct an FBA and by failing to devise and implement an appropriate BIP. However, the evidence shows that less than a month after school started, the District referred Student for a Behavior Consultation that was completed on September ***, 2015, by a District Support Specialist. By the end of October 2015, the ARDC had devised an IEP that included "positive behavioral interventions and supports" in the form of a BIP to address the behavior that impeded Student's ability to learn.²¹⁹ The behavioral interventions and supports were based in part on Student's FBA, which Student's special education teacher completed with input both from District personnel and Parents. The resulting BIP addressed Student's targeted behavior of ***, ***, ***, ***, ***. A copy of the BIP was distributed to Student's teachers, speech therapy pathologist, and to the paraprofessionals who worked with Student. Throughout the year, Student's behavior was tracked on a daily chart. Student's BIP was revised at the May ***, 2016 ARDC meeting according to recommendations received from Student's previous school.

The evidence shows the District conducted an FBA early in the school year and used the information to formulate a BIP that was in place as of October ***, 2015. Petitioner presented no evidence that the BIP was not implemented. Instead, the evidence shows that Student mastered two of Student's Adaptive Behavior goals by June ***, 2016; was making progress towards mastery of a third Adaptive Behavior goal before the next annual ARDC meeting; and had met second and third grading period objectives, although Student was not expected to master Student's fourth Adaptive Behavior goal.²²⁰ Overall, Student's behavior had improved by the end of the school year due in part to implementation of an appropriate BIP.

²¹⁸ See Findings of Fact at Issue 4.

²¹⁹ 34 C.F.R. § 300.324(a)(2)(i).

²²⁰ See Findings of Fact under Issue 4.

b. The IEP was administered in the LRE

The IDEA's LRE provision requires that students with disabilities receive their education in the regular classroom environment to the maximum extent appropriate or, to the extent such placement is not appropriate, in an environment with the least possible amount of segregation from the student's nondisabled peers and community.²²¹ To remove a child from a regular education environment, the ARDC must consider whether the nature and severity of the child's disability is such that education in a regular classroom setting cannot be satisfactorily achieved, regardless of the use of supplemental aids or services; whether placement in the regular classroom will potentially be harmful to the child; and whether the IEP must include positive behavioral interventions and supports in the case of a child whose behavior impedes the child's learning or that of others.²²² In making a placement decision, "first consideration" should be given to placement in a regular classroom before considering more restrictive placement options on the continuum of alternative placements, which includes special classes, special schools, home instruction, and instruction in hospitals and institutions.²²³

But the LRE mandate does not override the FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program.²²⁴ Conversely, if a student shows awareness and some positive reaction to being with peers without disabilities, then such interaction weighs in favor of inclusion (assuming the student can receive a meaningful educational benefit and is not unduly disruptive).²²⁵

Petitioner seems to complain that because the ARDC did not provide Student with services exclusively in a self-contained special education classroom, as Student had been provided in ***, the IEP was not appropriate. However, a new district does not have to provide

²²¹ 34 C.F.R. § 300.114(a).

²²² 34 C.F.R. §§ 300.116(b)(2), (d), 300.324(a)(2)(i)(ii); see also *Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993); and *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1048 (5th Cir. 1989).

²²³ *Letter to Cohen*, 25 IDELR 516 (OSEP 1996); 34 C.F.R. § 300.115(a), (b).

²²⁴ *P. v. Newington Bd. of Educ.*, 546 F.3d 111 (2d Cir. 2008); see also *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996 (4th Cir. 1997), cert. denied, 111 LRP 18076, 522 U.S. 1046 (1998).

²²⁵ *Daniel R. R.*, 874 F.2d at 1048.

a transfer student with services comparable to those in the transfer IEP once it convenes an IEP meeting and develops a new IEP, as long as the new IEP complies with IDEA regulations and provides the student a FAPE.²²⁶

The record shows that the October ***, 2015 ARDC appropriately considered placement options before arriving at its placement decision. The ARDC met all legal requirements in determining that the LRE for Student was the ***/*** ** class and the *** ** class.

c. Key stakeholders provided the services in a coordinated and collaborative manner

Parents are an integral part of the IEP development process and, as such, are key stakeholders in the provision of services to their child, as are a student's teachers and a school district's administrators.²²⁷ The evidence shows Mother fully participated in the ARDC meetings and her input was considered and sometimes adopted. Further, Student's services were provided in a coordinated and collaborative manner by Student's special education teacher, general education teacher, the speech therapy pathologist, and the speech therapist intern.

d. Positive academic and nonacademic benefits were demonstrated

By the end of the year, Student's skill levels had improved in both academic and nonacademic areas. Student either had achieved by the end of the school year, or was expected to achieve by the October 2016 annual ARDC meeting, all of Student's IEP goals and objectives, except for one Adaptive Behavior goal.²²⁸

There is some evidence that Student's behavior regressed from the time Student left Student's *** ** until after Student began school in the District.²²⁹ Mother asserts the behavior

²²⁶ See *Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11); and *Letter to Sims*, 103 LRP 22737 (OSEP 10/09/02).

²²⁷ 34 C.F.R. § 300.321(a).

²²⁸ The provision of FAPE does not necessarily require a student to achieve each IEP goal and objective. The IDEA only provides an entitlement to receive the services enumerated in the IEP, and makes no guarantees as to educational success or outcome. See *Gill v. Columbia 93 Sch. Dist.*, 31 IDELR 29 (W.D. Mo. 1999), *aff'd*, 217 F.3d 1027 (8th Cir. 2000) (stating that minimal educational gains and slow progress do not preclude a finding that the student received some educational benefit).

²²⁹ See Findings of Fact under Issue 2.

regression was the result of Student's placement in the *** ***/*** classroom for *** of Student's instructional day. No expert testimony was presented to establish why Student's behavior regressed and, therefore, the evidence is insufficient for the hearing officer to determine why Student's behavior changed. Overall, Student's behavior improved over the 2015-2016 school year, even though Student was *** when Student left *** and *** all year in the District.²³⁰

Also, the evidence shows Student might have made more progress had Student's *** been spent in the special education classroom, particularly if Student had more one-on-one instruction with fewer children present.²³¹ But school districts have no obligation under the IDEA to maximize a student's educational benefit.²³² Petitioner did not provide persuasive evidence that any regression in Student's behavior deprived Student of a positive academic or nonacademic benefit. The hearing officer finds that Student obtained a positive academic and nonacademic benefit from the education provided to Student by the District.²³³

D. Student's IEP Was Properly Implemented

After an IEP is written and an appropriate placement determined, the school district is obligated to provide the student with special education and related services as listed in the IEP.²³⁴ The school district must implement a student's IEP with all required components.²³⁵ To prevail on a claim that the District failed to implement Student's IEP, Petitioner must show that

²³⁰ See Findings of Fact under Issue 2.

²³¹ Tr. at 176, 215 (***); Tr. at 243-246 (***); *but see* Tr. at 230-241, 249, 252-253 (***)(in spite of being *** children in a classroom at ***, Student made little progress between June 2016 and September 2016); District Ex. A at 1; *see also* Findings of Fact under Issue 1.

²³² *Rowley*, at 207-208.; *see also Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012), *cert. denied*, 133 S. Ct. 1600, 113 LRP 10911 (2013) ("Nowhere in *Rowley* is the educational benefit defined exclusively or even primarily in terms of correcting the child's disability.")

²³³ 34 C.F.R. §§ 300.320 and 300.324; *Rowley*, 458 U.S. at 181; *Bobby R.*, 200 F.3d at 347-348, citing to *Michael F.*, 118 F.3d at 253.

²³⁴ 34 C.F.R. § 300.323(c).

²³⁵ 34 C.F.R. § 300.323(c).

the lack of implementation amounted to a substantial or significant failure to provide services under the IEP.²³⁶

The special education teacher's testimony that she implemented Student's IEP throughout the year is supported by evidence that Student achieved two IEP goals by the end of the school year; was expected to master four additional IEP goals by the annual ARDC meeting; and, although Student had met objectives for the second and third grading periods, was not expected to master Student's seventh goal by the annual ARDC meeting.²³⁷ In addition, Student received the required number of speech therapy sessions, and was expected to master Student's communication goal by the next annual ARDC meeting. Except for a brief period when Student *** ** classroom *** the *** classroom, Student received all services in the placement set out in Student's IEP.

Petitioner presented no evidence to support a finding that the District failed to implement Student's IEP and revised IEP as written.

E. Conclusion

After considering the evidence and parties' closing arguments, the hearing officer finds that Petitioner did not meet Petitioner's burden of proof to prevail on any of the identified issues for this proceeding. Instead, the evidence shows that the District provided Student a FAPE in accordance with the IDEA and relevant case law. Accordingly, Petitioner is not entitled to any of the requested relief, including private school tuition reimbursement.

Private school tuition reimbursement is available as a remedy under the IDEA when a hearing officer finds the school district did not make FAPE available to the student in a timely manner prior to the private enrollment, and the private placement is appropriate.²³⁸ In the instant case, the hearing officer finds the District provided Student with a FAPE so the appropriateness of Student's placement at *** is not at issue.

²³⁶ *Bobby R.*, 200 F.3d at 348-349.

²³⁷ See Findings of Fact at Issue 4.

²³⁸ *Burlington*, 471 U.S. 359; 34 C.F.R. § 300.148(c).

VII. CONCLUSIONS OF LAW

1. The District is a local educational agency responsible for complying with the IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Petitioner bears the burden of proof on all issues raised in the proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997).
3. The 1-year statute of limitations applies to this proceeding. Petitioner presented no evidence and did not meet the burden of proof to show that the District subjectively determined Student was not receiving a FAPE and intentionally misrepresented those facts to Parents and withheld information about Student throughout the academic year and beyond. *Schaffer v. Weast, supra*; 19 Tex. Admin. Code § 89.1151(c),(d).
4. Petitioner did not prove that the District denied a FAPE to Student by failing to provide Student with a meaningful educational benefit or that any regression in Student's behavior resulted in a denial of FAPE. *Schaffer v. Weast, supra*; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; *Board of Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181; 102 S.Ct. 3034, 3038 (1982); *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), *cert. denied*, 522 U.S. 1047, 111 LRP 59224 (1998).
5. Petitioner did not prove that the District denied Student a FAPE by failing to place Student in the LRE or by failing to consider a continuum of alternative placements. *Schaffer v. Weast, supra*; 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114, 300.116; *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1039, 1046-1047 (5th Cir. 1989); ; *Letter to Cohen*, 25 IDELR 516 (OSEP 1996); 34 C.F.R. § 300.115(a), (b).
6. Petitioner did not prove that the District denied Student a FAPE by failing to provide an appropriate IEP or by failing to implement the IEP. *Schaffer v. Weast, supra*; *Rowley*, 458 U.S. at 181; *Michael F.*, 118 F.3d at 253; *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd on other grounds sub nom.*, *Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5th Cir. 1986); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000); 34 C.F.R. §§ 300.320, 300.323(c), 300.324.
7. Petitioner did not meet the burden of proof to show that the speech services stated in Student's IEP and those delivered by the District were inappropriate and failed to provide Student with the requisite educational benefit under the IDEA. *Schaffer v. Weast, supra*; 34 C.F.R. § 300.34(c)(15).

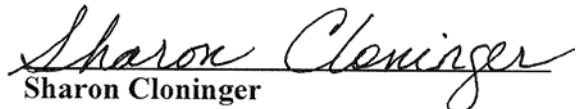
8. Petitioner did not prove that the District failed to conduct timely and appropriate assessments to address Student's individual special education needs. *Schaffer v. Weast, supra*; 34 C.F.R. § 300.324(a)(2)(i).

ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's claims for relief under the IDEA are DENIED. All other relief not specifically stated herein is DENIED.

SIGNED December 29, 2016.


Sharon Cloninger
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision 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.²³⁹

²³⁹ 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).