

throughout this litigation by its legal counsel Denise Hays and her co-counsel Kelly Shook with Walsh, Gallegos, Trevino, Russo & Kyle.

B. Resolution Session and Mediation

The parties agreed to attempt mediation in lieu of a Resolution Session. The parties proceeded to mediation on January 4, 2017 but were not successful. Notice of the outcome of mediation was submitted by Petitioner on January 10, 2017.

C. Continuances

A single continuance of the due process hearing was granted in this case at Respondent's request. Respondent also requested an extension of the decision due date. Petitioner opposed the requests. Both parties filed cross motions on the issue. Order No. 4 granted Respondent's requests. The due process hearing was reset to January 24-26, 2017 and the decision due date extended to April 12, 2017 on a finding of good cause.

D. Preliminary Motions

Several preliminary motions were resolved by written orders issued prior to the due process hearing including confirming Petitioner's itemized list of reimbursement requests and resolving Student's interim educational placement while the due process hearing was pending. Hearing Officer Berger also granted Respondent's Partial Motion to Dismiss limiting Petitioner's claims under the IDEA. Hearing Officer Berger determined all claims prior to April 8, 2016 were resolved by a mediation settlement agreement executed by the parties on April 7, 2016 in resolution of a previous due process hearing.

E. Due Process Hearing

The parties filed a set of Stipulated Facts on January 23, 2017 (Stipulation of Facts). The due process hearing was conducted on January 24-26, 2017. Petitioner continued to be

represented by Student's legal counsel Elizabeth Angelone assisted by her co-counsel Idris Motiwala and Sonja Kerr with The Cuddy Law Firm. In addition, Student's parents, *** and *** also attended the hearing.

Respondent continued to be represented by its legal counsel Denise Hays and her co-counsel Kelly Shook and Ann Mewhinney of Walsh, Gallegos, Trevino, Russo & Kyle. In addition, ***, Executive Director of Federal and Special Programs, attended the hearing as the school district's party representative.

The hearing was recorded and transcribed by a certified court reporter. Both parties filed written closing arguments by the March 3, 2017 deadline. The Decision in this case is due April 12, 2017.

II. ISSUES

A. Petitioner's Issues

Petitioner identified the following issues for decision in this case:

1. **FAPE AND PLACEMENT:** Whether the school district failed to provide Student with a free, appropriate public education beginning on April 8, 2016 up through the date Student withdrew from the school district; including whether the school district failed to provide Student with an individualized program with the requisite educational benefit and whether the school district provided Student a FAPE in the LRE; including specifically:
 - a. Whether the school district failed to draft appropriate present levels of academic achievement and functional performance (PLAAFPs) with baseline data to determine Student's progress on IEP goals and objectives;
 - b. Whether the school district failed to track Student's progress;
 - c. Whether Student needed dyslexia services in *** grade and whether the school district withdrew those services; and,

- d. Whether the school district failed to provide necessary behavioral supports, social skills training, in-home parent training, and extended school year services (ESY).
2. IDENTIFICATION: Whether the school district failed to properly identify Student as a student with autism and dysgraphia, and therefore failed to provide appropriate services to meet Student's needs as a student with autism and dysgraphia.¹
 3. PROCEDURAL:
 - a. Whether the school district predetermined the IEP proposed for the 2016-2017 school year without parental input and outside of the Admission, Review & Dismissal Committee (ARD) process;
 - b. Whether the school district failed to provide Student's parents with the requisite Prior Written Notice and, if so, whether that failure significantly impeded parental participation in the educational decision-making process and deprived student of the requisite educational benefit; and,
 - c. Whether the school district failed to provide Student's parents with IEP progress reports in a timely manner.

B. Petitioner's Requested Relief

Petitioner requests the following items of relief from the school district:

1. Reimbursement to Student's parents in the amount of \$2,200 for the cost of a privately obtained Individual Educational Evaluation (IEE);
2. Compensatory dyslexia instructions services provided by a Certified Academic Language Therapist (CALT) 4 per hours/ week at an average cost of \$60/hour;
3. Reimbursement to Student's parents for the cost of placement at *** for the fall semester of 2016 including both a registration fee of \$1,000 and fall semester tuition in the amount of \$18,500;
4. Fund Student's placement at *** for the spring semester of 2017 at a cost of \$18,500;

¹ Student withdrew the issue of whether Student should be identified as a student with autism during the due process hearing so that issue and an issue related to consideration of the autism supplement will not be decided in this Decision.

5. Reimbursement to Student's parents for the cost of independent physical education (PE) in the form of *** at *** in the amount of \$600 for the cost of PE from October 2016-January 2017;
6. Fund Student's independent PE at *** for the spring semester of 2017 at an additional cost of \$600; and
7. Reimbursement to Student's parents for the cost of mileage to and from *** (from Student's parent's place of employment to ***) for the 2016-2017 school year for 150 days of school a total of two round trips/ day at *** miles/trip – *** miles/day; as of the date of the due process hearing Student attended *** for ***.

Petitioner's request for attorneys' fees was previously dismissed by Hearing Officer Berger on December 13, 2016.²

C. Respondent's Issues and Legal Position

Respondent requested resolution of the following additional issues for decision in this case:

1. Whether the hearing officer has jurisdiction to resolve Petitioner's non-IDEA claims; and,
2. Whether Petitioner should be limited by the 1 year statute of limitations (SOL) to those issues that arose after the mediated settlement agreement of April 7, 2016; i.e. whether Student's IDEA claims are limited to those that accrued on April 8, 2016.³

The school district contends it provided Student with FAPE during the 2016 spring semester and that its recommendation for placement in a therapeutic day treatment or residential treatment center is reasonably calculated to provide Student with FAPE in the setting Student needs. The school district argues it complied with all procedural requirements at issue.

² Order No. 3 Memorializing Prehearing Conference.

³ Hearing Officer Berger resolved these issues in Respondent's favor in Order No. 9.

III. FINDINGS OF FACT

1. Student is a *** year old *** grader who resides within the jurisdictional boundaries of the school district.⁴ Student lives with Student's parents, ***, ***, ***.⁵
2. Student attended school in the *** Independent School District (*** ISD) from *** through ***.⁶ Student exhibited behavioral difficulties beginning in *** and continuing throughout Student's enrollment in *** ISD. Student was physically aggressive towards peers and was generally disruptive in class.⁷
3. Student was first identified as eligible for special education services by the *** ISD. Student met criteria as a student with an Emotional Disturbance (ED) and Other Health Impairment (OHI). The OHI was based on a medical diagnosis of Attention Deficit-Hyperactivity Disorder (ADHD).⁸ ADHD is a developmental disorder comprised of deficits in behavioral inhibition, sustained attention, and resistance to distraction, as well as inhibition to regulate activity according to the demands of a situation. ADHD symptoms are likely to change as a consequence of the individual's environment. Student exhibits difficulty in behavior regulation and much of Student's behavioral pattern is accounted for by Student's ADHD.⁹ Student has also been identified as a student with dyslexia.¹⁰
4. Dyslexia is a disorder of neurological origin manifested by a difficulty in learning to read, write, or spell despite conventional instruction, adequate intelligence, and sociocultural opportunity. Related disorders include developmental dysgraphia and developmental spelling ability.¹¹ ADHD is a common co-occurring disorder with dyslexia.¹²
5. ADHD may have a significant impact on the effectiveness of instruction for students coping with both conditions. Motivation, in particular, is critical to the success or failure of instructional practices. Students must be engaged and motivated to understand what they

⁴ Stipulation of Fact No. 1.

⁵ Petitioner's Exhibit 58:1, 59:2 (referred to hereafter as P. Ex. __:__); Respondent's Exhibit 34:64 (referred to hereafter as R. Ex. __:__).

⁶ Stipulation of Fact Nos. 1 and 2.

⁷ P. Ex. 47:1, 5-6, 18, 25-26; 50:4; R. Ex.4:5.

⁸ Stipulation of Facts No. 5; P. Ex.49:1.

⁹ R. Ex. 4:48.

¹⁰ R. Ex. 4:5-6; R. Ex. 37:1.

¹¹ *Tex. Educ. Code* § 38.003(1)(2).

¹² P. Ex. 56:13, 16.

- read. ADHD or symptoms of anxiety, anger, depression or low self-esteem may lower student motivation and engagement in learning.¹³
6. Other evaluations over the years confirm Student's eligibility for special education services as a student with ED and/or OHI. A recent school district evaluation also suggests Student exhibits characteristics of *** (***), and a possible ***/***. Student presents a complex case exhibiting difficulties in several areas and many behaviors that can be associated with various classifications.¹⁴
 7. Between *** and *** grade Student demonstrated a significantly high level of problem behaviors both at home and at school.¹⁵ Student's behaviors negatively impacted Student's ability to function in either setting.¹⁶ Over the years Student's maladaptive behaviors at school included: ***, ***, ***, ***, ***, ***, ***, and ***.¹⁷ Student has a history of difficulties with ***.¹⁸
 8. However, at times, Student can also be respectful and polite, sweet and appropriate, and a very typical child in every respect. Student has been described by teachers and support staff as ***, ***, ***, ***, ***, and ***.¹⁹
 9. Student withdrew from *** ISD in *** over parental concerns Student was not being sufficiently supported.²⁰ Student attended two different *** *** after leaving *** ISD. The family then moved to Georgetown.²¹
 10. Around this time Student and Student's family began receiving services from *** (***). *** provided Applied Behavior Analysis (ABA) therapy, a behavioral assessment, and *** (***).²² Student and Student's family received services from *** based, in part, on diagnoses of Asperger's and ADHD by a pediatric neurologist in ***.²³

¹³ P. Ex. 56:11.

¹⁴ R. Ex. 4:47, 53.

¹⁵ P. Ex. 47:11, 17.

¹⁶ P. Ex. 47:17, 25.

¹⁷ P. Ex 47:5, 11, 17-18; P. Ex. 50:4; R. Ex. 3:1-2; R. Ex. 4:5-7; R. Ex. 42:11, 14-16; R. Ex. 43:3, 12, 14; Transcript Volume IV: 463-464, 537, 582-583, 586-587, 598, 602-603 (referred to hereafter as Tr. ____:____).

¹⁸ Tr. III: 330.

¹⁹ Tr. II: 213-214; IV: 464, 582, 613-614; P. Ex. 59:9; R. Ex. 4:33.

²⁰ R. Ex. 24:1; R. Ex. 25:3.

²¹ R. Ex. 4:2.

²² Tr. II: 406; R. Ex. 34:1-8; R. Ex. 40.

²³ R. Ex.34: 2, 39, 121.

11. *** provided services for *** and then some consultation services thereafter.²⁴ Student made progress in meeting ABA therapy goals over the *** course of treatment. *** ABA services ended on ***.²⁵ Student's parents learned effective ways to respond to Student's behaviors.²⁶
12. Student enrolled in the school district as a *** grader in ***.²⁷ A transfer ARD convened on ***.²⁸ Student was placed on a regular *** campus in a mix of general education classes with accommodations and special education services including a Behavior Intervention Plan (BIP), social skills training, and dyslexia services. Behavioral support was provided through the *** (***) program.²⁹
13. The *** program is a special education program. Students are closely monitored in the regular classroom. They go to the *** classroom when they need to "regroup" and then are re-introduced back into the regular classroom. *** support can also be provided in the regular classroom. Student was removed to the *** classroom when Student's disruptive behavior escalated in the regular classroom.³⁰
14. A brief ARD convened on March ***, 2015 to discuss the State of Texas Assessments of Academic Readiness (STAAR) -- the state mandated assessment for public schools. The ARD agreed Student would take the *** grade STAAR tests with accommodations to address Student's reading and attention deficits.³¹ An annual ARD convened on April ***, 2015. A review of existing educational data (REED) was conducted. The ARD agreed on the need for a Functional Behavior Assessment (FBA). The April ARD continued the current placement, *** support, and dyslexia services.³²
15. A FBA is a problem-solving process used in the treatment of challenging behavior. The FBA goes beyond merely describing the appearance, form, or topography of behavior. A FBA offers an understanding of the function or purpose behind behavior by focusing on determining "why" a person behaves in a specific manner. Understanding the functions of problem behaviors assists in the development of a BIP specific to the child and that targets the underlying environmental causes of the behavior.³³

²⁴ R. Ex. 34:85, 88.

²⁵ R. Ex. 34:92, 95.

²⁶ R. Ex. 24:2-3.

²⁷ Stipulation of Fact Nos. 1 and 2.

²⁸ Stipulation of Facts No. 7; R. Ex. 5:6; R. Ex. 40:1, 11.

²⁹ R. Ex. 40; R. Ex. 42:18; Tr. II: 281.

³⁰ Tr. I:111; Tr. II:281-282.

³¹ R. Ex. 4:7; R. Ex. 41:4.

³² R. Ex. 42:1, 6, 8, 18.

³³ R. Ex. 2:1.

16. Student's BIP was reviewed at the April ***, 2015 ARD before the FBA was completed. Student's behaviors included *** and off-task behaviors. These behaviors impeded Student's ability to complete academic work. Student needed continued counseling to regulate verbalizations, learn self-advocacy, and identify strategies when faced with non-preferred tasks or answers. An *** IEP was added to the program for the development of self-regulation and coping skills.³⁴
17. Social skills instruction, counseling, ***, *** staff monitoring and ***, dyslexia instruction, and an extensive set of instructional accommodations were included in Student's IEP.³⁵ The April 2015 IEP was to be implemented from April ***, 2015 through March ***, 2016.³⁶ Student did fairly well in *** grade as a result of the support at home from *** and collaboration between the family and school district staff.³⁷
18. The school district's FBA was completed on May ***, 2015.³⁸ An ARD convened on May ***, 2015 to discuss the results of the school district's FBA, update Student's IEP, and plan for ***. The *** BCBA attended the ARD.³⁹ Target behaviors identified by the school district's FBA included *** and ***. Those behaviors occurred frequently and across school settings. Student engaged in the behaviors for escape/avoidance and to gain attention.
19. At the time of the May 2015 ARD Student was responding well to the accommodations, the support of the *** program, counseling, and a reinforcement schedule. The set of behavioral strategies implemented at school and home were successful. The ARD determined a BIP was no longer needed. However, accommodations and classroom-based behavior reinforcement schedules were to continue in *** grade with continued collaboration between *** staff, general education teachers, and Student's parents.⁴⁰
20. Student began *** grade in general education classes on *** campus in August 2015. Student continued to receive counseling services and *** support. Dyslexia services were now provided on a consult only basis. A set of accommodations continued.⁴¹ By this time the direct ABA services from *** ended.⁴² Amendments to the ARD were made early in the fall semester for special education transportation.⁴³

³⁴ R. Ex.4:7; R. Ex. 42:11, 14-16.

³⁵ R. Ex. 4:7; R.Ex.42:18.

³⁶ R. Ex. 4; 42:18.

³⁷ R. Ex.4:3; R. Ex. 24:1; 34:137-139.

³⁸ P. Ex. 38:10-12.

³⁹ Stipulation of Fact No. 10.

⁴⁰ R. Ex.4:6; R. Ex. 43:12, 14.

⁴¹ R. Ex.4:7-8; R. Ex. 43:8-9, 15-16.

⁴² Stipulation of Fact No. 11; R. Ex. 34:95.

⁴³ R. Ex. 4:8.

21. Student had difficulty adjusting to ***. An ARD meeting was held on October ***, 2015 to address parental concerns over Student's classroom behavior and homework. Student began Student's day with ***, ***, *** and did well but began to have difficulty as the day wore on. Student was unable to complete assignments, displayed off-task behavior, and ***. The ARD decided to re-implement a BIP.⁴⁴ ***, ***, ***, and *** were all concerns.⁴⁵
22. Student was *** and very sensitive to teaching and discipline styles.⁴⁶ Student remained on task and did Student's work when the *** principal popped into the classroom but Student resumed off-task behaviors once the principal left.⁴⁷ Student responded well to Student's ***. She established a rapport with Student who produced work for her with consistent prompting.⁴⁸ Student also responded appropriately to the campus licensed specialist in school psychology (LSSP) who provided therapeutic counseling and behavioral support.⁴⁹ Student's maladaptive behaviors continued to escalate as the school year wore on.⁵⁰ Student was *** in January 2016 for ***.⁵¹
23. In *** 2016 Student's mother contacted the *** principal over concerns that Student was being bullied by peers. Student was *** on ***, 2016 due to the concerns over bullying.⁵² The school district investigated the bullying complaint. The school district concluded Student was not a victim of bullying. Student *** on ***, 2016.
24. Student's behavior *** was highly disruptive and inappropriate. Peers reacted negatively to Student's behavior.⁵³ An ARD convened on February ***, 2016 to discuss Student's behavior. As Student's behavior in other classes deteriorated Student's inappropriate behavior started to bleed into ***.⁵⁴ Student's *** continued. *** was a factor in triggering maladaptive behaviors. ***. Student was not making much progress in counseling with the LSSP.⁵⁵

⁴⁴ R. Ex. 16, 44:21.

⁴⁵ R. Ex.4:8; R. Ex. 44:11.

⁴⁶ Tr. IV: 516-517, 586, 593, 599-600, 621.

⁴⁷ R. Ex. 44:20; R. Ex. 45:25.

⁴⁸ Tr. IV: 437-438, 516.

⁴⁹ Tr. IV: 454, 461-462.

⁵⁰ Tr. II: 268-276, 287; Tr. IV: 532-538, 540; Tr. VI: 829-835.

⁵¹ R. Ex. 4:3.

⁵² R. Ex. 4:3; R. Ex. 39.

⁵³ R. Ex. 39; Tr. VI: 841-842.

⁵⁴ R. Ex. 45:25.

⁵⁵ R. Ex. 45:25; Tr. IV: 474.

25. The February 2016 ARD conducted a REED and planned for Student's three year re-evaluation due April ***, 2016.⁵⁶ The BIP was revised to address additional target behaviors including ***, ***, and ***. Replacement behaviors were included in the revised BIP as well as the use of positive behavioral interventions, strategies and supports, a set of recommended consequences, and mastery criteria.⁵⁷ Self-advocacy and self-regulatory/coping skills were added to the *** IEP.⁵⁸ Instructional accommodations and supports and counseling continued to be components of Student's educational program in *** grade.⁵⁹
26. During the spring of 2016 Student's negative behavior at school continued. Non-compliance and *** were issues.⁶⁰ Student's behavior at school was very problematic and in some ways escalated. Student began ***, ***, ***, and ***. Non-compliance with teacher directives and inappropriate behavior were problems in the *** classroom. Student was ***. However, when the *** teacher dropped in Student straightened up and behaved appropriately. Student was also able to complete some academic work and exhibited greater calm when the counselor dropped in.⁶¹
27. Another ARD convened on March ***, 2016 to discuss Student's progress and placement.⁶² Student's mother expressed concern that other students in the *** classroom influenced Student's ***. Anecdotal data from staff documented in February 2016 was available to the ARD in discussing Student's behavior.⁶³ The school district proposed the use of an individualized redirection setting. The school district called this setting an "****" (***). The *** was a self-contained special education setting with no other students staffed by a special education teacher and a 1:1 paraprofessional.⁶⁴
28. The March ***, 2016 ARD designed *** for Student. ***: regular classroom placement with behavioral support from the *** program when behavior in regular classes became disruptive. *****. *****. *****. *****. A behavioral tracking chart was included to implement this plan.⁶⁵
29. The school district offered to provide in-home ABA services for *** hours/every *** months with an outside provider. Student's parents refused the offer because they felt it

⁵⁶ R. Ex. 45:3.

⁵⁷ R. Ex. 44:13; R. Ex. 45:6.

⁵⁸ R. Ex. 45:11-12.

⁵⁹ R. Ex. 44:16-17; R. Ex. 45:13, 24.

⁶⁰ R. Ex. 46: 13-14.

⁶¹ P. Ex. 34; R. Ex. 46:14.

⁶² Stipulation of Fact No. 13; R. Ex. 4:9; R. Ex. 46:13.

⁶³ R. Ex. 1: 5-6; R. Ex. 13; Tr. II: 290.

⁶⁴ Tr. I: 106.

⁶⁵ R. Ex. 4:9; R. Ex. 46:11, 15-18; Tr. II: 263, 279.

was not sufficient to meet Student's needs. There was also a disagreement about communication between home and school. The school district agreed to provide Student's daily behavior logs to Student's parents weekly but could not commit to doing so daily.⁶⁶

30. The March ***, 2016 ARD also planned Student's re-evaluation. An outside LSSP met with the school district's assessment team to plan the re-evaluation prior to the March *** ARD. The outside evaluator returned later in March to begin testing.⁶⁷ Following the March *** ARD the school district began collecting and tracking behavioral data. Behavior data collection continued through the end of *** grade.⁶⁸
31. An annual ARD was conducted on March ***, 2016.⁶⁹ Student's behavior in the *** was discussed. Despite some strengths Student continued to display non-compliant and *** behavior. At times Student's behavior posed safety risks to ***self or others. Student resisted returning to a regular class because Student did not want to do the work. Student continued ***** . *** .⁷⁰
32. However, Student was doing a good job participating in counseling activities and seemed to enjoy them. Although it took Student a little while to settle down Student did well once the counseling activities began. Student continued to work on identifying coping skills and problem solving in order to get needs met. Although Student was able to verbalize thoughts and feelings in counseling sessions Student was unable to generalize that ability outside of counseling.⁷¹
33. The March *** IEP included a set of accommodations to address Student's reading, writing, and attention deficits. Redirection, positive praise, and private correction of behavior were supports implemented that spring.⁷² The March *** IEP also included the use of accommodations for the STAAR reading and math tests.⁷³ The March ***, 2016 ARD designed IEP goals and objectives and a BIP based on Student's PLAAFPs.⁷⁴ The parties agreed to reconvene on April ***, 2016.⁷⁵

⁶⁶ R. Ex. 46:18.

⁶⁷ R. Ex. 4: 1-2; R. Ex. 46:13, 15.

⁶⁸ R. Ex. 10; R. Ex. 11.

⁶⁹ Stipulation of Fact No. 14; R. Ex. 1; R. Ex. 4:9.

⁷⁰ R. Ex. 1:6, 30-35; R. Ex. 10:1-5; Tr. II: 263-264, 268-270, 277.

⁷¹ R. Ex.1:14, 30; Tr. IV: 514.

⁷² R. Ex.1:20; Tr. II: 275-276, 281; Tr. VI: 467-468.

⁷³ R. Ex. 1:21.

⁷⁴ R. Ex. 1:4, 6-12.

⁷⁵ P. Ex. 30; R. Ex. 1:35-36, 45.

34. Student's parents secured an independent FBA on March ***, 2016. Student was not attending school at the time of the independent FBA.⁷⁶ Consistent with other assessments the independent FBA noted the function of Student's behaviors was to escape demands or non-preferred tasks and gain attention.⁷⁷ The independent FBA identified ineffective strategies that were reinforcing Student's maladaptive behaviors.⁷⁸
35. The independent FBA acknowledged Student's behaviors could be different in the school setting. The independent FBA recommended creating a data collection system individualized to Student's behavioral challenges at school. The independent FBA also proposed a BIP and training for both teachers and parents on implementing the proposed BIP.⁷⁹
36. Student's parents filed a request for a due process hearing over continued parental concerns about Student's program. On April 7, 2016 the parties entered into a mediated settlement agreement that resolved the claims. A set of educational services for the remainder of the 2015-2016 school year was included in the mediation settlement agreement. Implementation of the IEP designed at the March ***, 2016 ARD was included as a provision in the mediated settlement agreement.⁸⁰
37. As part of the settlement the school district agreed to ***. ***.⁸¹ *** had not been provided as of the date of the due process hearing.⁸²
38. Another ARD convened on April ***, 2016.⁸³ The purpose of the ARD was to comply with the mediation settlement agreement. The school district's three year re-evaluation was still underway at that point. Student's special education teacher reported some decrease in negative behavior and Student was working for reinforcements. Student was attending a regular *** class but resisted adding a second regular education class to Student's school day. Student continued to ***. Student's completed work was not making it home.⁸⁴
39. Despite some behavioral improvement Student continued to ***. Student continued to ***. The counselor had to ***.⁸⁵ However, Student could behave appropriately in the

⁷⁶ Stipulation of Fact No. 15; P. Ex. 27; R. Ex. 24: 1-3.

⁷⁷ R. Ex. 24:4.

⁷⁸ R. Ex.24:4-7.

⁷⁹ P. Ex. 27.

⁸⁰ Stipulation of Fact No. 16; R. Ex. 26.

⁸¹ Tr. I: 89-90; R. Ex. 26.

⁸² Tr. I: 89-91; P. Ex. 51:9, 48.

⁸³ Stipulation of Fact No. 17; R. Ex. 30.

⁸⁴ R. Ex. 30:4.

⁸⁵ R. Ex. 30: 5-6.

presence of the school campus officer. Student's behavior in the regular education classroom was generally better than in the ***.⁸⁶ The parties agreed to reconvene on May ***, 2016 at which time the three year re-evaluation FIE would be discussed and programming changes could be considered.⁸⁷

40. The school district arranged for its own FBA through the ***. The *** FBA was completed on May ***, 2016. The special education teacher collected behavioral data for the FBA.⁸⁸ The *** FBA noted many of the same behaviors identified in prior assessments. Once again the function of Student's behavior was primarily to avoid task demands and gain access to attention or preferred activities. Ineffective strategies that reinforced Student's maladaptive behaviors were identified and were comparable to prior assessments.⁸⁹
41. A BIP was proposed by the *** FBA. The proposed BIP identified the set of challenging behaviors at school, the antecedents to those behaviors, a set of replacement and desired behaviors, and a set of consequences. Consistency across environments was deemed a pivotal part of the process to support Student in adopting appropriate replacement behaviors. The *** FBA strongly recommended training for staff, parents, and outside providers to ensure effective implementation of the BIP "with fidelity."⁹⁰ The proposed BIP included a set of behavioral goals and objectives and a point sheet to implement the plan.⁹¹
42. The *** FBA recommended a twice weekly data collection system to measure Student's work completion and behaviors with bi-weekly data analysis to ensure behavioral interventions were effective.⁹² The *** FBA recommended the use of positive reinforcement, setting up a classroom environment that would be motivating for Student, and some instructional modifications. Strategies to address precursor behavior and a crisis intervention plan were also features of the proposed BIP. Teaching Student how to appropriately escape a demand in the classroom and requesting attention appropriately were included in the proposed BIP.⁹³
43. Student's behavior at school continued to be disruptive and inappropriate throughout the spring 2016 semester.⁹⁴ The school district completed the three year re-evaluation FIE on

⁸⁶ R. Ex. 30:6.

⁸⁷ R. Ex. 30:6-8.

⁸⁸ Stipulation of Fact No. 18; R. Ex. 2.

⁸⁹ P. Ex. 27; R. Ex. 2:16-17; R. Ex. 34: 65, 67, 71, 83-84, 107-110; R. Ex. 36.

⁹⁰ R. Ex. 2:17; R. Ex. 3:1, 5.

⁹¹ R. Ex. 3:2, 6.

⁹² R. Ex. 3:5.

⁹³ R. Ex. 3.

⁹⁴ R. Ex. 10:6-29; R. Ex. 17; Tr. II: 268-272, 275, 277, 281.

May ***, 2016.⁹⁵ The FIE was a comprehensive multidisciplinary evaluation consisting of the following components: speech-language, occupational therapy (OT), psychoeducational, and emotional-behavioral-social. An in-home needs assessment and the *** FBA were also components of the FIE.

44. The purpose of the FIE was to identify Student's strengths and weaknesses, determine appropriate disability conditions, describe Student's current levels of educational and functional performance, and make recommendations to the ARD for educational programming purposes.⁹⁶ A wide variety of assessment and evaluation procedures and tests were used in the FIE including a review of records, interviews, observations, and both formal and informal instruments. The FIE was a valid representation of Student's abilities and behavior in the areas assessed given the consistency across results and historical consistency with prior assessments.⁹⁷
45. An OT assessment was a component of the FIE. For the most part, student's fine and gross motor skills were within normal limits. However, Student's *** and visual/motor integration skills are weak.⁹⁸ Student's spatial skills are significantly above average. Student made errors in the OT assessment due to motor impreciseness and rushing through tasks without much attention to detail.⁹⁹
46. The FIE confirmed Student's resistance and difficulty with writing tasks. Student uses ***. The quality of Student's writing is, in part, impacted by Student's level of compliance and attention to the task at hand.¹⁰⁰
47. Student does not exhibit good independent work habits or make efficient use of class time. Student has difficulty attending to directions, instructions, or lessons for more than 15 minutes. Student has difficulty asking for help when the rules or directions are not clear. Student requires cues, prompts and supports to complete academic tasks. ***. ***. ***. ***.¹⁰¹
48. Student's Full Scale IQ falls in the average range. However, Student's General Ability Index falls in the high average range. The difference between these scores indicates Student's overall level of cognitive functioning is affected by difficulties in working memory and processing speed.¹⁰² Working memory is the ability to attend to, retain,

⁹⁵ Stipulation of Fact No. 19; R. Ex. 4:1.

⁹⁶ R. Ex. 4:1; Tr. IV: 560.

⁹⁷ R. Ex. 4:10.

⁹⁸ R. Ex. 4:15-16, 26.

⁹⁹ R. Ex. 4:16.

¹⁰⁰ R. Ex. 4:17, 31.

¹⁰¹ P. Ex. 41:5-6; P. Ex.43:2-3; P. Ex.47:4-5, 15; R. Ex.4:32-33.

¹⁰² R. Ex. 4:25.

- manipulate, and transform something in a short term time span.¹⁰³ Student's working memory deficit is consistent with Student's ADHD. Student has difficulty following long instructions and multi-step directions. Student has trouble focusing.¹⁰⁴ Student exhibits deficits in processing speed. Student's ability to copy symbols is an area of weakness for Student. This deficit is very common with students with ADHD. Student's visual tracking and visual discrimination abilities are intact.¹⁰⁵
49. Student also exhibits cognitive processing deficits in long term storage and retrieval of information. Student has difficulty learning and encoding new information and retrieving previously learned information effectively. Student's long term retrieval deficits impact academic performance. Student needs accommodations such as repetition, learning through association, and multiple-choice in order to facilitate academic performance.¹⁰⁶
50. Student has taken the STAAR ***. The STAAR is designed to measure the extent to which the student is learning the content and skills in academic areas for that grade level. Student passed the *** STAAR *** but did not pass the *** STAAR ***. Student passed the *** STAAR ***. Student passed the *** STAAR ***. By the end of *** grade Student was meeting grade-level expectations in all areas except ***.¹⁰⁷ Student did not pass the *** STAAR tests in *** or ***.¹⁰⁸
51. Student's academic performance in the classroom and on district-based measures is not consistent with skill levels measured on criterion-referenced testing.¹⁰⁹ Student is capable of functioning on grade level in math but performance can be affected by behavior.¹¹⁰ Student's isolated word reading skills are intact but Student reads quickly and does not apply decoding strategies.¹¹¹ Student is capable of reading when motivated and has the ability to read wordy passages. Student's reading vocabulary is within normal limits but falls at the *** percentile. *** is a weakness for Student.¹¹²
52. The FIE concluded Student was progressing in the *** but also needed the set of proposed additional interventions. The FIE recommended continued placement in the *** with earned time in regular education classes. The FIE also recommended that if

¹⁰³ Tr. V: 678.

¹⁰⁴ Tr. V: 678-679.

¹⁰⁵ Tr. V: 680-681.

¹⁰⁶ Tr. V: 683-685; R. Ex. 4:26.

¹⁰⁷ R. Ex. 4:28.

¹⁰⁸ R. Ex.18:4-8; Tr. I: 98-99.

¹⁰⁹ R. Ex. 4:28.

¹¹⁰ R. Ex.4:29.

¹¹¹ R. Ex.4:30.

¹¹² R. Ex.4:31-32.

Student's behavior declined the school district could consider placement in either a therapeutic day treatment or residential treatment center.¹¹³

53. An ARD convened on May ***, 2016 to review and discuss the FIE.¹¹⁴ Student's behaviors continued to be problematic and Student continued to have difficulty producing academic work.¹¹⁵ Student's engagement in counseling was unraveling and Student was not progressing on counseling goals.¹¹⁶ The May *** ARD recommended direct dyslexia services be added back into Student's educational program.¹¹⁷ By the end of *** grade Student was able to complete some academic tasks – particularly those that were “hands-on” and required some creativity.¹¹⁸ However, overall, Student was regressing (especially behaviorally) and not progressing.¹¹⁹
54. The school district proposed continuing to implement Student's IEP in the same placement as before with an increase in counseling services for the upcoming 2016-2017 school year. The school district proposed implementation of the BIP designed by the *** FBA.¹²⁰ Consultative OT services, direct individualized behavior support, ***, and transportation were also recommended.¹²¹ Student was scheduled to receive summer services as a result of the April 2016 mediation agreement.¹²² The school district offered in-home needs support which was refused by Student's mother. The *** grade teachers were to collaborate with the *** grade teachers by sharing strategies and reviewing the BIP.¹²³
55. Student's mother attended the May 2016 ARD with an advocate.¹²⁴ Student's mother declined to make any decisions about the proposed program and the parties agreed to reconvene in June.¹²⁵ Prior Written Notice was included in the ARD documents.¹²⁶ On June ***, 2016 Student's mother requested an IEE.¹²⁷

¹¹³ R. Ex. 4:53.

¹¹⁴ Stipulation of Fact No. 20; R. Ex. 5:1, 39.

¹¹⁵ Tr. IV: 532-537, 540-541; Tr. VI: 834-835.

¹¹⁶ Tr. IV: 462-463, 474.

¹¹⁷ R. Ex. 5:24, 45.

¹¹⁸ R. Ex. 47; R. Ex. 48; Tr. II: 266-267; Tr. IV: 501.

¹¹⁹ R. Ex. 10: 1-5; Tr. II: 263-264, 268-270, 277.

¹²⁰ R. Ex. 5:24-25, 45-46.

¹²¹ R. Ex. 5:25, 33.

¹²² R. Ex. 5:46.

¹²³ Tr. II: 285-286; Tr. IV:560-561.

¹²⁴ R. Ex. 5:39, 45.

¹²⁵ R. Ex. 5:46.

¹²⁶ R. Ex. 5:37.

¹²⁷ R. Ex. 22.

56. Teachers and staff collaborated in providing Student instruction and behavioral support throughout the 2015-2016 school year. The special education teacher reviewed Student's BIP with the other teachers. When Student was in the *** the teachers gave their lesson plans to the special education teacher who provided the instruction. At times the teachers would stop in and check on Student's progress or help Student with a test. The counselor and special education teacher worked together in designing and implementing the counseling IEP and discussed various strategies to address behavior.¹²⁸
57. The May *** ARD reconvened on June ***, 2016. Student's mother again attended with an advocate.¹²⁹ Parental questions about dyslexia services were answered. Parental concerns about Student's behavior, collection of behavioral data, and alleged bullying by peers were also discussed.¹³⁰ The school district agreed to try a keyboarding device to address Student's resistance to writing. A Summary Action Plan was included in the ARD deliberations. The school district proposed returning to ARD after the first 9 weeks of *** grade to review progress and placement.¹³¹
58. On June ***, 2016 the parent and Special Education Director exchanged emails about the IEE request. Student's mother disagreed with the school district's FIE in all areas. On July ***, 2016 the school district filed a request for a due process hearing to prove the appropriateness of its FIE and challenge the parental right to an IEE at school district expense.¹³²
59. On August ***, 2016 Student's mother notified the school district of her disagreement with the June *** ARD decisions.¹³³ The parties reconvened on September ***, 2016. Student's mother disagreed with all aspects of the May/June 2016 ARD meetings.¹³⁴ The September *** ARD did not make any changes to the IEP proposed at the May or June 2016 ARD meetings.¹³⁵
60. By this time Student was back in school and now in *** grade. The school district did not implement the proposed IEP.¹³⁶ Collaboration between staff continued. The school district continued to support use of the ***.¹³⁷ No staff training by a BCBA had been

¹²⁸ Tr. I: 118; Tr. II: 260-261, 274, 280, 285-286; Tr. IV: 461.

¹²⁹ R. Ex. 5:47.

¹³⁰ R. Ex. 5:50-51.

¹³¹ R. Ex. 5: 51-52.

¹³² P. Ex. 21; R. Ex. 22.

¹³³ R. Ex. 5:53.

¹³⁴ R. Ex. 5:53-54.

¹³⁵ Tr. I: 79-80.

¹³⁶ Tr. IV: 559.

¹³⁷ R. Ex. 5:51, 53-54; R. Ex. 6:3-4, 8; Tr. II: 285-286.

provided at the time of the September *** ARD.¹³⁸ The parties could not reach consensus.¹³⁹ The school district's legal challenge to the parental request for an IEE remained pending.¹⁴⁰

61. Following the September *** ARD meeting Student's mother visited the *** and was very upset by what she saw and heard from the teacher. Student was ***. ***. In her view nothing *** seemed conducive to the learning environment. The teacher told her about an incident when Student ***¹⁴¹ On September ***, 2016 Student's parents provided the school district written notice of their intent to withdraw Student and place Student at *** (***) - a private school.¹⁴²
62. Prior Written Notice regarding the school district's intent to implement the May/June proposed IEP and its refusal to grant the IEE request was prepared on September ***, 2016. The Prior Written Notice was sent to Student's parents on September ***, 2016 via email and regular first class mail.¹⁴³
63. Another ARD convened on September ***, 2016. The purpose of the ARD was to discuss the parental request for private school placement. At the time of this ARD Student was in school for about *** spending most of it in the *** ***. Student resisted opportunities to return to general education classes.¹⁴⁴ Special education staff reported Student's ***. However, the dyslexia teacher reported Student was responding well to the individualized dyslexia instruction.
64. By the September ***, 2016 ARD the school district withdrew its hearing request and agreed to fund the parental request for an IEE. The school district provided Student's mother with its IEE criteria and offered to meet with the parent to answer any questions but the parent never did so.¹⁴⁵ The school district continues to agree to fund the parental request for an IEE.¹⁴⁶
65. At the September ***, 2016 ARD the school district proposed a change in placement to a residential treatment center on the basis of Student's behavior during the *** in *** grade and Student's history of maladaptive and *** behaviors. The school district

¹³⁸ R. Ex. 5:54, 56.

¹³⁹ Stipulation of Fact No. 20; R. Ex. 5:56, 60.

¹⁴⁰ R. Ex. 5:57.

¹⁴¹ Tr. Vol. III: 386-387.

¹⁴² P. Ex. 15; R. Ex. 6:10; Tr. I:80.

¹⁴³ R. Ex. 5:59.

¹⁴⁴ Tr. I: 118, 120; II: 287; VI: 857; R. Ex. 6.

¹⁴⁵ P. Ex. 14; R. Ex. 6:8-9, 20; Tr. I: 98.

¹⁴⁶ Tr. III: 376; IV: 551-552.

concluded it could not provide the therapeutic environment school staff decided Student needed.¹⁴⁷

66. The school district proposed three different residential facilities: ***, ***, (***) and ***. The school district did not propose any one of the three residential facilities over the others.¹⁴⁸ The residential facilities were selected by the Director of Special Education who either heard positive reports about a facility from a colleague or because school district staff were “aware” of a particular facility.¹⁴⁹ The parties agreed to table the meeting so Student’s parents could consider the school district’s proposed change in placement.¹⁵⁰
67. *** ***. The Director of Special Education had a “general conversation” by phone with someone at *** about its services.¹⁵¹ The Director of Special Education also spoke with someone from *** the week before the due process hearing.¹⁵² The program at *** is designed primarily for children with ***.¹⁵³ The Director of Special Education also spoke with someone at ***.¹⁵⁴ The focus at *** is on ***. It is primarily a medical treatment facility not an educational program.¹⁵⁵ The Director of Special Education did not visit any of the proposed residential placements.¹⁵⁶
68. On September ***, 2016 Student’s mother notified the school district in writing of her disagreement with the September *** ARD proposals. The notice stated the family’s decision to place Student at *** and their intent to seek reimbursement from the school district for the private school placement. Student was withdrawn on September *** and enrolled in ***.¹⁵⁷
69. The September ***, 2016 ARD reconvened on November ***, 2016.¹⁵⁸ The school district now proposed a therapeutic day treatment center as an alternative to residential placement.¹⁵⁹ Two therapeutic day treatment centers were proposed: *** and ***. *** is

¹⁴⁷ Tr. IV: 555-556.

¹⁴⁸ P. Ex. 11:10, 12; Tr. I: 63.

¹⁴⁹ Tr. IV: 568-569.

¹⁵⁰ R. Ex. 6:1, 5-6, 9-10.

¹⁵¹ Tr. I: 70-72; IV: 563.

¹⁵² Tr. I: 73.

¹⁵³ Tr. III: 326.

¹⁵⁴ Tr. I: 74.

¹⁵⁵ Tr. III: 326-327.

¹⁵⁶ Tr. I: 671-73, 75-77; Tr. III: 326-327.

¹⁵⁷ Stipulation of Fact No. 22; P. Ex. 15; R. Ex. 6:9-10.

¹⁵⁸ Stipulation of Fact No. 3; R. Ex. 7; R. Ex. 8:11.

¹⁵⁹ Tr. IV: 548-549.

a ***. The day treatment program at *** is a *** (***). The Director of Special Education spoke with a representative at *** the day before the hearing but has not visited that facility.¹⁶⁰ The Director of Special Education selected *** and *** because they were located ***.¹⁶¹

70. Student's mother continued to disagree with the school district's placement proposals and reported Student was doing well at ***. School district staff asked questions about *** and offered to visit the school. The parent was invited to visit any of the proposed residential facilities. The parent agreed to facilitate a visit by school district staff to ***. The parties did not reach consensus on the placement issue. Prior Written Notice of the school district's placement decisions was provided to the parent.¹⁶²
71. While the placement disputes were on-going Student's parents obtained an independent psychological evaluation. The independent psychological began in late August and was completed with a report dated October ***, 2016.¹⁶³ The cost of the independent psychological was ***. The independent psychological was not shared with the September *** or November *** ARD Committees.¹⁶⁴ The independent psychological supported many of the recommendations of the *** FBA as well as parent-training, individual therapy, and a transfer to another *** offered by the school district.¹⁶⁵ The independent psychological concurred with the school district's FIE that an in-patient setting with a strong behavior management component and intensive therapy should be considered if Student's symptoms worsened.¹⁶⁶
72. The Texas Education Agency (TEA) allows a school district to contract with either a public or private facility for residential placement of a student with special needs.¹⁶⁷ A letter of intent to TEA triggers the start of the application process and alerts TEA that the school district will be seeking funding from TEA for the placement.¹⁶⁸ A letter of intent to TEA is not required for the school district to place a student in a residential setting but only to secure TEA funding to do so. The estimated annual cost of funding a 24-hour-care residential placement is \$130,000-150,000.¹⁶⁹

¹⁶⁰ Tr. I: 75-76; Tr. III: 327-328.

¹⁶¹ Tr. I: 570.

¹⁶² R. Ex. 8:12-14, 16.

¹⁶³ Stipulation of Fact No. 23; P. Ex. 58.

¹⁶⁴ R. Ex. 6; R. Ex. 7.

¹⁶⁵ R. Ex. 1; R. Ex. 25; R. Ex. 26; R. Ex. 30.

¹⁶⁶ R. Ex. 25:11.

¹⁶⁷ Tr. I: 64-65.

¹⁶⁸ Tr. I: 65; Tr. IV: 549.

¹⁶⁹ Tr. IV: 549-550, 561-562; VI: 878.

73. If TEA approves the placement the school district negotiates with TEA to determine what proportion of the cost TEA will pay including funding for related services. The school district's financial contribution is then limited to a certain percentage of its federal set-aside funds. TEA ultimately decides how much of the cost towards the non-public placement it is willing to contribute.¹⁷⁰
74. ***, ***, and *** are on the TEA list of approved non-public placements. *** sent the school district a fee schedule. The Director of Special Education secured cost estimates from the other facilities by telephone.¹⁷¹ The school district did not request parental consent to share Student's records or information about Student with the proposed treatment facilities.¹⁷²
75. School district staff did not visit *** right away.¹⁷³ It was not until early December 2016 when the parent contacted the Director of Special Education to offer signed consent that school district staff took steps to visit ***. The parent signed the requisite consent form and returned it to the Director in early December. The Director and the campus LSSP visited *** in early January 2017. They spoke with the head of school, observed Student in Student's *** class, and reviewed records. Student was not exhibiting the same extreme behaviors Student demonstrated on the ***.¹⁷⁴
76. However, the Director concluded Student was not being appropriately challenged academically and was receiving too much support and guidance with too many prompts from the teacher. The Director also thought Student would not receive sufficient counseling, behavior services, or social skills training. The Director and LSSP concluded *** was not appropriate for Student.¹⁷⁵
77. At all relevant times Student's parents were provided with copies of ARD documents, including Prior Written Notices of the school district's decisions. The Prior Written Notice forms referenced ARD documents. The Prior Written Notices contained the following: a statement that parents had protection under the procedural safeguards, the means by which the parents could access the procedural safeguards document, and a source for assistance in understanding procedural provisions of the IDEA.¹⁷⁶
78. All ARD documents were very detailed with information about the school district's proposals regarding changes in Student's placement, identification, and the provision of FAPE or when the school district initiated a proposal to conduct evaluations or

¹⁷⁰ Tr. IV: 569; VI: 884-885.

¹⁷¹ Tr. IV: 564-566.

¹⁷² Tr. IV: 567-568.

¹⁷³ Tr. I: 83-84.

¹⁷⁴ Tr. I: 81-83; Tr. II: 423-424.

¹⁷⁵ Tr. IV: 557-558; 606, 616-618.

¹⁷⁶ R. Ex. 5:37; R. Ex. 30:47.

83. After each class the student attends a ***. Two adults are assigned to every ***.¹⁸⁷ There is an opportunity to socialize with peers or staff if the student does not have any work to do. Students may also collaborate with one another on class projects in the ***.¹⁸⁸
84. The total student body at *** is roughly *** full-time students ***. There are some ***. ***.¹⁸⁹ There are *** administrators on campus. The physical building is ***.¹⁹⁰ *** operates under a *** day calendar. *** students are required to take a total of *** classroom hours per year.¹⁹¹
85. Student attends *** ***. Student attends *** classes on *** and ***.¹⁹² For the first two weeks Student was *** -- typical of new students. By the third week Student was “a different child” and became part of the community.¹⁹³ Early on Student was academically slightly behind as a *** grader. Student had a hard time with writing even though Student could produce a correct answer orally. The teachers were directed to work on this skill. At the time of the hearing Student’s writing skills were improving.¹⁹⁴
86. During the fall semester at *** Student continued to struggle with writing tasks, managing feelings over social situations, staying organized, and completing work. However, the *** teachers found ways to address those issues adjusting the method or focus of the lesson as needed, setting clear expectations, using positive reinforcement, and teaching Student appropriate responses and behavior.¹⁹⁵ Student was making *** and *** in Student’s classes at the time of the hearing.¹⁹⁶
87. Initially, Student did not always know the appropriate thing to say in a social situation. Self-advocacy is a focus at *** so ***.¹⁹⁷ Student has made significant behavioral progress at ***.¹⁹⁸ The head of school found that once he had a conversation with

¹⁸⁷ Tr.I:143.

¹⁸⁸ Tr. II: 204.

¹⁸⁹ Tr. I: 146; Tr. II: 207-208.

¹⁹⁰ Tr. I: 149-150.

¹⁹¹ Tr. I: 147-148.

¹⁹² Tr. I: 148.

¹⁹³ Tr. I:152.

¹⁹⁴ Tr. I: 156-158.

¹⁹⁵ P. Ex. 18: 1-76.

¹⁹⁶ Tr. I: 158.

¹⁹⁷ Tr. I: 156; Tr. II: 205.

¹⁹⁸ Tr. II: 232; P. Ex. 18:77-79.

Student about *** he “never had to bring Student back for the same thing twice.” Student has reduced ***.¹⁹⁹

88. Student has not been observed ***.²⁰⁰ Student has not ***. Student has not been restrained at ***. Student has not tried to ***.²⁰¹ Student has not been sent home or suspended from ***. Student needs a lot of “hands on” to be engaged in lessons. Student has learned to express ***self verbally in an appropriate way to let teachers know Student is having difficulty with a lesson. The teachers can quickly adapt and change the way the lesson is being presented.²⁰²
89. *** is not accredited by the Texas Education Agency but is accredited through ***.²⁰³ Teachers are not required to be certified but are required to have a minimum of a bachelor’s degree within their field of teaching with a preference for a master’s degree.²⁰⁴
90. Each class at *** has a written curriculum aligned with the state mandated curriculum known as the Texas Essential Knowledge and Skills (TEKS). The instruction is ***. The school also addresses executive functioning skills such as organization and note-taking.²⁰⁵ Teachers send daily notes to parents by email reporting on the student’s behavior, academics, emotions, and what happened in class that day.²⁰⁶
91. *** offers summer school – ***. ***. Some students utilize the summer program for remediation if they need to retake a class or if they failed a class elsewhere.²⁰⁷
92. The school offers ***.²⁰⁸ There are also ***. On the ***.” ***. Student may participate in all these activities and has been successful doing so. Student interacts with school staff and classmates on a daily basis. Everyone on campus has lunch together for one hour.²⁰⁹ Student has friends at ***.²¹⁰

¹⁹⁹ Tr. I: 153-155; Tr. II: 205-206.

²⁰⁰ Tr. I: 174.

²⁰¹ Tr. I: 187; Tr. II: 225-226.

²⁰² Tr. I: 162.

²⁰³ Tr. I: 144, 180-182.

²⁰⁴ Tr. II: 186

²⁰⁵ Tr. I: 145-146; Tr. II: 208-210, 233.

²⁰⁶ Tr. I: 141; Tr. II: 201-201; P. Ex. 18.

²⁰⁷ Tr. I: 148-149, 182.

²⁰⁸ Tr. I: 146-147.

²⁰⁹ Tr. I: 150-151, 159, 160-161.

²¹⁰ Tr. II: 229.

93. There is a licensed professional counselor (LPC) on staff available to provide counseling services to students as needed. Individual counseling is also available at a cost of ***/hour.²¹¹ Student would benefit from counseling services.²¹² The counselor is on campus every day.²¹³
94. Outside of school Student participates in ***. The *** provide Student with physical activity. ***.²¹⁴ Student is friendly, helpful, compliant, *** and is responsible.²¹⁵ The cost of ***. The total cost ***.²¹⁶ There is a discount in tuition at *** if a student has an outside PE activity. The *** program counts as PE at ***.²¹⁷
95. Student attends ***. Student has been ***. ***.²¹⁸ Initially Student exhibited a limited attention span and was more cooperative on some days than others. Student avoided writing tasks. Student required multiple prompts to stay focused on an activity. Student used to ***.²¹⁹ This year Student is able to maintain attention to task. Student is “a different kid this year.”²²⁰ Student is more relaxed, more mature, and doesn’t engage in silly behavior. Student is no longer ***. Student is now ***. Student takes this very seriously and seems to enjoy ***.²²¹

IV. DISCUSSION

There are two major issues in this case and two secondary issues. First, whether the school district provided Student with a free, appropriate public education for the period of time beginning on April ***, 2016 up through the point of Student’s withdrawal from the public school district on September ***, 2016. Second, whether Student’s parents are entitled to reimbursement for the costs of Student’s unilateral private placement at *** and for the cost of funding Student’s continued placement at *** for the remainder of the 2016-2017 school year.

²¹¹ Tr. I: 151, 190.

²¹² Tr. I: 164.

²¹³ Tr. I: 176.

²¹⁴ Tr. II: 239-240, 243-245, 249-250.

²¹⁵ Tr. II: 245-247, 248.

²¹⁶ P. Ex. 53:4.

²¹⁷ Tr. III: 377-378.

²¹⁸ Tr. VI: 893, 894-895; R. Ex. 34:65.

²¹⁹ Tr. VI: 898.

²²⁰ Tr. VI: 898, 900-901.

²²¹ Tr. VI: 899-900.

A secondary issue is whether the school district should have identified Student as a student with dysgraphia and whether the failure to do so resulted in the denial of FAPE. Another secondary issue is whether the school district committed procedural violations that significantly impeded parental participation in the educational decision-making process that resulted in the denial of FAPE.

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free, appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. *20 U.S.C. § 1400 (d)*. Under the IDEA the school district 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)*.

A free, appropriate public education 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 an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. *20 U.S.C. § 1401(9); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 188-189, 200-201, 203-204 (1982)*.

To meet its substantive obligation under the IDEA the school district must offer an Individualized Education Plan (IEP) that is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. The adequacy of a given IEP turns on the unique circumstances of the student for whom it was created. *Andrew F. v. Douglas Cnty. Sch. Dist., No. 15-827, 2017 WL 10662601@ *10 (U.S. Mar. 22, 2017)*.

B. Reimbursement for Private Placement

A parent is entitled to reimbursement for the unilateral private placement of a child with a disability if the public school's program does not provide the student with a free, appropriate

public education and the private school's program is appropriate. *Sch. Comm. of Burlington v. Dept. of Educ. of Mass*, 471 U.S. 359, 370 (1973).

In this case the first issue is whether the school district's program was appropriate. If not, the second issue is whether Student's unilateral private placement at *** is appropriate. *Burlington*, 471 U.S. at 370. The private placement need not meet all State requirements for reimbursement purposes so long as the private placement meets Student's individualized needs and is therefore appropriate. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 13, 15 (1993). If both prongs of the *Burlington* test are met the hearing officer may also consider whether reimbursement should nevertheless be reduced or denied. 34 C.F.R. § 300.148 (d).

V. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. ²²² *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). Therefore the burden of proof is on Student to prove the IEP at issue were not reasonably calculated to enable Student to make educational progress given Student's unique, individual circumstances.

A. First Prong: Was the School District's Program Appropriate?

There are two components to determining whether the school district's program was appropriate. First, whether the IEP in place and implemented during the spring semester from April ***, 2016 to the end of that school year was appropriate. Second, whether the IEP proposed for the 2016-2017 school year that proposed residential or day treatment placement was appropriate.

²²² There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009).

B. The Four Factors Analysis

In this jurisdiction there are four factors to determine whether the IEP at issue and as implemented was reasonably calculated to provide Student with the requisite educational benefit under the IDEA. These factors are:

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

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997). There is no requirement the four factors be considered or weighed in any particular way. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d, 286, 293 (5th Cir. 2009).

VI. ANALYSIS**A. The Spring 2016 IEP****1. Was the Spring 2016 IEP Individualized on the Basis of Assessment and Performance?**

Student raises several specific issues related to this factor. First, Student contends the school district failed to include appropriate present levels of academic achievement and functional performance (PLAAFPs) with baseline data to measure Student's progress in meeting IEP goals and objectives. Second, Student contends the school district failed to track Student's behavioral progress. Third, Student contends Student needed direct dyslexia services and argues the school district's decision to withdraw those services from Student's program was not appropriate.

2. PLAAFPs and Baseline Data

The evidence showed the school district utilized baseline data, including Student's strengths and weaknesses, in developing IEP goals and objectives from Student's PLAAFPs. The IEP designed at the March ***, 2016 ARD (as revised at the April ***, 2016 ARD) was the IEP implemented during the spring semester of 2016. The behavioral goals developed at the ARD meetings were based on a set of identified behaviors from both formal and informal assessments. A specific goal was developed to target each behavioral weakness identified with specific baseline data provided for each goal. The PLAAFP statement used in developing counseling goals identified Student's behavioral weaknesses and included baseline data for the development of measureable goals and objectives.

3. Tracking Behavioral Progress

The evidence showed Student's behavioral progress throughout the relevant time period was tracked on a daily basis. Student's progress in meeting behavioral expectations and earned points were collected. A separate behavior tracking chart tallied negative or unsafe behaviors. The behavior tracking data was sent home weekly. Although parents may have preferred the behavioral data be sent home daily there is nothing in the IDEA that requires a specific level of communication with parents except for IEP progress reports. *See, 34 C.F.R. § 300.320 (a) (3) (ii)*. The record also shows the special education staff in the *** maintained a set of anecdotal notes that provided additional data to describe Student's behavioral patterns. This information was shared at ARD meetings for educational decision-making.

4. Dyslexia Services

The evidence showed that Student received dyslexia services in *** grade and again in *** grade. By *** grade Student no longer received direct dyslexia services but only dyslexia monitoring. Although Student's word reading and linguistic skills are adequate Student tends to ***. Student's deficits in ***, and attention deficit disorder affect Student's reading ability.

The evidence is clear that writing tasks are difficult for Student and could trigger negative behaviors. Student has difficulty in the physical task of producing written work and *** is also an area of weakness. Although Student's attentional deficits and resistance to engaging in sustained periods of instruction were also obstacles to reading performance the evidence also showed Student responded well to direct individualized dyslexia instruction. Student needed direct dyslexia services in order to support academic performance and appropriate behavior.

5. Least Restrictive Environment

Under the IDEA the school district must ensure that to the maximum extent appropriate children with disabilities are educated with children who are nondisabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412 (a) (5); 34 C.F.R. § 300.114 (a) (2).

The evidence showed that for the period of time beginning in April 2016 up through September ***, 2016 Student was supposed to be served in a mix of regular education and special education classes. However, based on the changes made at the March ***, 2016 ARD, Student was primarily served in the *** – ***. The evidence showed that Student ***.

The evidence showed this proved fairly difficult for Student who became more and more isolated as the spring semester wore on. The evidence also showed Student was increasingly resistant to ***. It is reasonable to infer from the evidence that this resistance was rooted, at least in part, by Student's difficulties with the academic tasks in the regular class and inability to interact appropriately with peers. The evidence showed that *** was not particularly successful and did not provide Student many opportunities to interact or learn with Student's age appropriate non-disabled peers. The record shows Student's *** behaviors (***) escalated during the spring semester and ***. However, the evidence also showed that Student's behavior tended to be somewhat better when Student was in the regular education setting as opposed to behavior in the ***. Student was not being educated in the LRE.

6. Services Provided in Coordinated and Collaborative Manner

The evidence showed school district staff provided services in a coordinated and collaborative manner. The special education teacher collaborated with regular education teachers in providing academic instruction. The LSSP who provided counseling and behavioral support and the *** principal, as well as the ***, all worked together and with teaching staff in attempting to support and address Student's increasingly difficult behaviors at school. Student's mother, as a key stakeholder, also participated in all ARD meetings at times with an advocate. The *** BCBA also participated in an ARD in a discussion of Student's needs in planning for ***. School district staff shared behavioral data with the parent and her advocate and attempted to respond to parental concerns as they arose.

7. Academic and Non-Academic Benefits

The evidence shows that Student's disruptive behaviors – which allowed Student to avoid tasks or gain attention – continued throughout the relevant time period. Although there is some evidence Student was able to complete some academic work (responding particularly well to *** activities) the assessment data and Student's academic performance showed Student did not meet criterion-referenced benchmarks nor could Student pass the *** grade STAAR tests. Student needed direct dyslexia services and did not receive them.

Overall Student's academic benefit from the IEP implemented in the spring of 2016 was somewhat mixed. Student's grades in academic subjects were not what would be expected of a student with Student's level of intelligence and cognitive capabilities. The evidence also showed that the non-academic benefits of Student's spring IEP were equally minimal. Student's behavior worsened and became increasingly provocative, dangerous, and the *** was very high. Student had very little positive social interactions with peers. Interactions with school district staff worsened by the end of the school year. In sum, the overall experience in spring 2016 did not result in sufficient academic and/or non-academic benefits.

B. Conclusion as to Spring 2016 IEP

Whether Student derived the requisite educational benefit from the IEP at issue must be viewed in light of Student's unique circumstances. *Andrew F., supra*. The evidence showed the IEP at issue was designed on the basis of individualized assessment and performance. Services were provided in a coordinated and collaborative manner by key stakeholders. However, the IEP was not provided in the least restrictive environment nor did it demonstrate sufficient positive academic and non-academic benefits. The failure to provide services in the LRE or provide positive academic and non-academic benefits outweigh the other two factors. Student did not receive the requisite educational benefit under the IDEA. *34 C.F.R. § 300.114; Rowley; Andrew F.; Michael F.; Michael Z., supra*.

1. Was the School District's Proposed Placement in a Residential or Therapeutic Day Treatment Center Appropriate?

The first prong of the reimbursement analysis asks whether the school district's proposed placement at either a residential treatment facility or a therapeutic day placement is appropriate for Student. The evidence showed neither of these proposed placements are appropriate for Student at this time.

First, although the school district identified three possible residential facilities and two possible day treatment placements the evidence showed the school district had very little information about any of the proposed placements. The evidence showed most of the proposed placements were selected primarily because they were on the TEA approved list of non-public placements. The evidence showed school district personnel did not visit any of the proposed placements. There is some evidence that a few of the proposed placements were clearly not appropriate for Student because they were either *** placements of an essentially medical nature or served populations where Student did not fit the population criteria.

It is true that school district invitations to visit the proposed placements with Student's parents were rejected. However, the record also shows the school district took very few steps to research the proposed placements in any in-depth or meaningful way. The school district argued it lacked the requisite consent from Student's parents to discuss Student or Student's needs with any of the proposed residential or day treatment centers. The evidence is not compelling on this point. The school district knew Student's needs, behaviors, and academic capability. School district staff could have secured enough information from each proposed placement without revealing Student's identity or breaching confidentiality rules.

Second, it is reasonable to infer from the evidence that cost considerations were a factor in the school district's decision-making. Although there was evidence the school district was willing to pay the full cost of a 24-hour placement for Student there was also credible evidence that once a non-public school is identified from the TEA list the school district negotiates with TEA for some percentage of cost sharing with TEA and therefore the school district's contribution may be significantly reduced.

Third, evidence of Student's current behavioral and academic progress at ***, in Student's ***, and Student's successful participation in ***, undermine the argument that Student needs residential or therapeutic day treatment in order to learn and behave appropriately. At this juncture the evidence shows Student can be successful in a small, structured, 1:1 learning environment with opportunities for appropriate social engagement and immediate feedback that is close to home so Student can continue to participate in the community programs that have proven to be successful.

Fourth, a residential treatment facility is one of the most restrictive settings on the continuum of instructional settings provided by school districts. *19 Tex. Admin. Code § 89.63 (c) (10)*. Removing Student from Student's home, Student's family, Student's ***, *** is not justified at this time. Furthermore, the two day treatment facilities proposed by the school district are outside Student's home community and some geographic distance away --- much farther from Student's home than ***.

Finally, the school district's proposal that Student be placed in a residential treatment facility or day treatment center was not advanced until the September ***, 2016 ARD meeting – after Student had been in school for only *** of the new school year. The school district proposed the more restrictive placements without implementing the plan it advocated beginning in late May through early September. The revised IEP contained a more comprehensive BIP based on the school district's own FBA, with BCBA support and increased counseling services. The revised IEP also included on-going staff support and mentoring by a BCBA to ensure the revised BIP would be implemented consistently and effectively.

The revised IEP reinstated daily, direct dyslexia services as well as additional individualized dyslexia instruction *** a week. The evidence showed the direct dyslexia services at the beginning of *** grade were successful. The use of *** to address Student's resistance to *** task was to be attempted and then evaluated. Student's special education and *** teachers were slated to consult with the *** grade teachers to share effective instructional and behavioral strategies. The revised IEP also incorporated provisions from the April 2016 mediation agreement including *** which was never provided. An ARD was to convene following the first *** weeks to review Student's progress and placement. Had the school district defended this IEP the legal conclusion here might have been different.

However, the school district made a radically different decision only *** into the new school year with its proposed change in placement to a residential or day treatment center. School staff apparently made the change in placement decision in response to concerns over Student's behavior during those ***. It is difficult to reconcile the school district's position in the spring and summer of 2016 up through September ***, 2016 with the recommendation for a much more restrictive placement on September ***, 2016. Even the school district's own FIE supported the implementation of additional interventions in the current placement before consideration of a day treatment or residential placement.

In sum, the lack of information about the school district's proposed placements, the geographic distances between the proposed facilities and Student's home, family, and community, the decision to abandon implementation of the revised IEP with its new features and

supports, and the progress Student is making at Student's current private school, undermine the school district's argument that a residential or therapeutic day treatment placement is appropriate for Student at this time. Certainly, should Student's maladaptive behaviors re-emerge at the private school to the same degree exhibited at the ***, the parties will need to reconsider whether a therapeutic day treatment or residential placement would then be appropriate in meeting Student's needs.

2. Second Prong: Was the Unilateral Private Placement Program Appropriate?

The second prong of the reimbursement analysis asks whether the educational program provided by the private school is appropriate. *Burlington*, 471 U.S. at 370. The private school program need not necessarily meet every specific requirement of the IDEA but only that it be "otherwise proper" under IDEA. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 13, 15 (1993). See also, *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). The evidence showed that it was.

*** delivers Student's academic instruction in a *** instructional arrangement by teachers who implement a curriculum aligned with the TEKS -- the state mandated curriculum. The evidence showed that although Student continues to struggle with *** and attending and sustaining attention to task it also showed the teachers at *** are able to individualize and adapt lessons on the spot in response to Student's needs.

Although the school district criticized the level of prompting Student received at *** the evidence shows that Student needs this level of instructional intensity coupled with lessons that are "hands on" that tap into Student's interests and maintain motivation for learning. *** provides Student with the individualized, structured educational setting and small teacher to student ratio Student needs. *** provides Student with the consistent and predictable setting Student needs with daily integrated opportunities to learn and practice socially appropriate behaviors.

The record is clear that Student's behaviors in the public school were impeding Student's ability to learn. The record is also clear that as Student's behavior improves so does Student's access and ability to engage in academic learning. Student's behavior and social skills significantly improved at ***. Student is making both academic and non-academic progress there. Counseling services are available. For these reasons the unilateral placement at *** is appropriate under IDEA.

3. Private Placement

Private placement is justified when a student's needs cannot be met in the public school and the private placement is "essential" for the Student to receive the requisite educational benefit. Furthermore, the private placement must be primarily oriented toward enabling the student to obtain an education as opposed to treatment of medical needs. *See, Richardson Ind. Sch. Dist. v. Michael Z., 580 F. 3d at 299-300.*

Student needs placement at *** unless and until Student begins to engage in the highly inappropriate and disruptive behaviors Student exhibited in *** and *** determines it can no longer meet Student's needs. The evidence establishes Student's needs could not be met in the public school under the March 2016 IEP and that private placement is essential for Student to receive an educational benefit – at least for the time being. Although school staff thought Student was not being academically challenged enough at ***, the evidence demonstrated ***'s program meets Student's behavioral, cognitive, and attentional needs that otherwise interfered with Student's ability to learn. Student can also receive counseling at *** and Student's *** ***,

If circumstances change – i.e. if Student's maladaptive behaviors reappear to such a degree that Student's behavior is a threat to Student's own safety or the safety of others or *** determines it can no longer meet Student's needs the parties will need to return to ARD and reconsider therapeutic day treatment or residential treatment placement. *See, Michael Z., supra.*

However, so long as Student continues to demonstrate behavioral and social progress and continues to engage in productive academic work the evidence supports Student's private placement at *** through the end of the current school year – including into the summer of 2017 should that be required for Student to complete the *** grade curriculum. The school district and Student's parents must work cooperatively together in monitoring Student's progress at *** for the remainder of the 2016-2017 *** grade school year. To do so Student's parents must facilitate communication between the school district and *** to provide information about Student's academic and behavioral progress. *** teachers and administrators must be invited by the parties to an ARD when Student completes the *** grade curriculum at *** to review Student's progress.

4. Identification

Petitioner contends the school district's failure to identify Student as a student with dysgraphia resulted in the denial of FAPE. The evidence shows the school district consistently recognized and identified Student's *** deficits and implemented appropriate accommodations and modifications in instruction, learning, and test-taking. Although Student's difficulties in *** contributed to Student's inappropriate behaviors the failure to formally identify Student with dysgraphia did not, in itself, result in the denial of FAPE.

5. Procedural Issues

There is little evidence to suggest the school district predetermined the IEP at issue in this case and the seminal placement issue. It is true the school district's FIE recommended consideration of more restrictive placements but not until the current placement with the additional interventions and features proposed at the May 2016 ARD meeting proved unsuccessful. The independent psychological secured by the parents made a similar recommendation. Recommendations in assessment reports, discussion of possible alternative placements among school staff or with an outside evaluator, and/or outside an ARD meeting do not necessarily prove the school district predetermined placement decisions without parental input.

The evidence also showed the school district provided Student's parents with the requisite Prior Written Notice. Student's parents had plenty of information to understand the basis and reasons for the school district's identification, evaluation and placement decisions as well as those related to FAPE. Furthermore, there is not much in the record to show any failure to provide Prior Written Notice resulted in significantly impeding the parental right to participate in the educational decision-making process with regard to the provision of FAPE. To the contrary, the evidence showed Student's mother had numerous opportunities and did actively participate in all ARD discussions and decisions. There may have been disagreement about those decisions but disagreements alone do not prove Student's mother was denied a meaningful opportunity to participate. *34 C.F.R. § 300.513 (a) (2.)* Finally Petitioner provided virtually no evidence to show the school district failed to provide Student's parents with IEP progress reports as required by the IDEA. *34 C.F.R. 300.320 (a) (3) (ii)*.

6. Requests for Mileage and Compensatory Dyslexia Services

Petitioner requested reimbursement for the cost of mileage to and from Student's *** and ***. There is nothing in the record to show the actual cost per mile Petitioner seeks. Therefore this item of relief is denied.

Petitioner also requested compensatory dyslexia services. Petitioner did not prove the amount or scope of the compensatory dyslexia services Petitioner contends Student needs. *See, Reid v. Dist. of Columbia 401 F. 3d 516 (D.C. Cir. 2005)*. Furthermore, the 1:1 individualized instruction Student receives at *** provides Student with sufficient support in reading Student needs. The benefit of direct dyslexia services was not necessarily in teaching Student *** (which Student already learned) but reminding and supporting Student's use of those strategies in a 1:1 setting that addressed Student's cognitive deficits in ***. Petitioner did not prove the need for compensatory dyslexia services.

VII. CONCLUSIONS OF LAW

1. Respondent failed to provide Petitioner with a free, appropriate public education in light of Petitioner's unique circumstances for the spring 2016 and for the period of time Petitioner attended the public school at the beginning of the 2016-2017 school year. *Bd. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*; 458 U.S. 176 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist., No. 15-827*, 2017 WL 10662601@*10 (U.S. Mar. 22, 2017); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245 (5th Cir. 1997); 34 C.F.R. § 300.101 (a).
2. The unilateral private placement made by Petitioner's parents is appropriate. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).
3. Petitioner is entitled to reimbursement for the out of pocket cost to Student's parents of private school placement. *Sch. Comm. Town of Burlington v. Dept. of Educ., Mass*, 471 U.S. 359 (1973); 34 C.F.R. § 300.148(c).
4. Petitioner is entitled to reimbursement for the cost of the independent psychological because Respondent agreed to fund the independent psychological and failed to prove that the independent psychological did not otherwise meet Respondent's IEE criteria. 34 C.F.R. § 300.502.

ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **GRANTED IN PART AND DENIED IN PART** as follows:

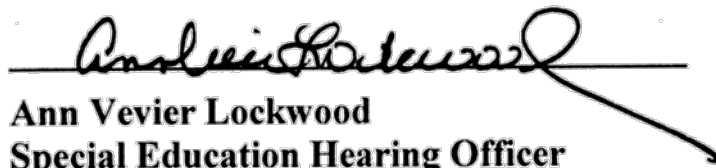
1. The school district shall reimburse Petitioner for Petitioner's out of pocket costs of the placement and program provided by *** as follows:

\$ ***	Registration Fee
\$ ***	Tuition for the spring semester of the 2016-2017 school payable within 30 school days from the date of this Decision;
2. The school district shall reimburse Petitioner for the cost of the private psychological in the amount of \$ *** payable within 15 school days from the date of this Decision;
3. The school district shall fund the cost of tuition at *** for the remainder of the 2016-2017 school year in the amount of \$*** payable within 60 school days from the date of this Decision;

4. The school district shall reimburse Petitioner for the cost of *** services for the 2016-2017 school year in the amount of \$*** payable within 15 school days of the date of this Decision;
5. The school district shall fund the cost of *** services for the remainder of the 2016-2017 spring semester in the amount of \$*** payable within 30 school days of the date of this Decision;
6. The school district shall fund the cost of individual counseling at *** for the remainder of the 2016-2017 school year or when Petitioner completes the *** grade curriculum at ***, whichever is first, in the amount of \$***/***. The arrangements for invoicing and payment of the counseling services are to be arranged by mutual agreement between the school district and ***;
7. Student's parents must provide written consent for school district staff to confer with *** staff at regular grading period intervals for the remainder of the 2016-2017 school year within 10 calendar days from the date of this Decision;
8. Student's parents shall facilitate an ARD meeting with the school district, at a mutually agreeable time and place, and ensure participation of *** teaching and administrative staff in the ARD for the purpose of reviewing Student's progress both academically and behaviorally.

All other requests for relief not specifically stated in these Orders are hereby **DENIED**.

SIGNED April 10, 2017.


Ann Vevier Lockwood
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. *19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).*