

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT,
bnf PARENT,
 Petitioner,**

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v.

DOCKET NO. 144-SE-0216

**GALVESTON INDEPENDENT
SCHOOL DISTRICT,
 Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, STUDENT bnf PARENT (“Petitioner” or “the Student”) brings this action against the Respondent Galveston Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq. (IDEA) and its implementing state and federal regulations.

There are two major issues in this case. First: whether the school district provided Student with a free, appropriate public education (FAPE) within the past school year. Second: whether the program and placement proposed for the upcoming school year is reasonably calculated to provide Student with the requisite educational benefit or whether Student requires residential placement in order to receive FAPE within the meaning of the IDEA. There is no dispute that Student is in *** and that the program and placement at issue are related to Student’s *** and ***.

The Prior Case

This case has its genesis in a prior due process hearing conducted on April 29-30 and May 1, 2015. The Decision of the Hearing Officer was issued on July 7, 2015 in Dkt. No. 163-SE-0215 (the prior case). The hearing officer takes judicial notice of the findings of fact and conclusions of law stated in the prior case and incorporates those findings and conclusions for all purposes herein.

The threshold issue in the prior case was whether the school district met its Child Find duty under the IDEA in identifying and evaluating Student for special education services when Student returned to the school district after ***. Additional issues were whether the school district should have identified Student as eligible for special education as a student with Other Health Impairment (OHI) and whether Student required residential placement.

The Decision of the Hearing Officer in the prior case concluded the school district did not meet its Child Find duty in a timely manner, that the failure to do so resulted in a deprivation of educational benefit, that Student met eligibility criteria for special education as a student with

OHI, that Student did not require residential placement in order to receive a free, appropriate public education (FAPE), and that Student was entitled to some equitable and compensatory relief.

*** and *** services, parent training services, a sensory needs assessment, staff training, the appointment of a parent liaison, and revisions to Student's Individualized Education Plan (IEP) as recommended by the school district evaluation were ordered as relief in the prior case. The parent was also required to provide the requisite consent to facilitate communication between school district staff and Student's outside, private providers.

Party Representatives

Petitioner was represented by Petitioner's legal counsel Dorene Philpot of The Philpot Law Office, P.C. Respondent was represented by its legal counsel Amy Tucker with the law firm of Rogers, Morris & Grover, L.L.P.

Resolution Session and Mediation

The parties convened a Resolution Session on February 16, 2016 but it was not successful in reaching a settlement. The school district declined the use of mediation.

Due Process Hearing

This case was continued once in order to allow the parties an opportunity to attempt informal settlement and to resolve a scheduling conflict for Student's lead counsel. The decision due date was extended in order to accommodate the new hearing date. The due process hearing was conducted on June 7-9, 2016. Petitioner continued to be represented by attorney Dorene Philpot, assisted at the hearing by her co-counsel Deborah Heaton McElvaney. Student's mother, PARENT, and ***, GRANDPARENT, also attended the hearing.

Respondent continued to be represented by its attorney Amy Tucker. Dr. ***, Director of Special Education for the school district, attended the hearing as the school district's party representative. The hearing was recorded and transcribed by a certified court reporter. The parties requested an opportunity to submit written closing briefs. The decision due date was extended again to provide the parties with an opportunity to submit the closing briefs with access to the hearing transcript and time for the hearing officer to review and consider the briefs in preparing the Decision.

Petitioner requested an extension of the deadline to file written closing briefs for three additional calendar days due to a medical issue for Petitioner's co-counsel who was responsible for writing the brief. Petitioner also requested a concomitant extension of the Decision due date. Respondent did not oppose the request. Both parties timely filed their respective written closing briefs on July 18, 2016. The decision of the hearing officer is due August 8, 2016.

Petitioner's Issues

Petitioner's broad issue for resolution in this case is whether the school district failed to provide Student with a free, appropriate public education (FAPE) within the meaning of the Individuals with Disabilities Education Act (IDEA) within the 2015-2016 school year and whether the proposed program and placement for the upcoming school year is reasonably calculated to provide Student with FAPE. Petitioner's claims arose within the one year statute of limitations rule as applied in Texas.

Petitioner also raised the following sub-issues supporting Petitioner's claim of a denial of FAPE as follows:

1. Whether the school district failed to timely identify Student as a student with Other Health Impairment (OHI) by failing to comply with the hearing officer's Order in the prior due process hearing to do so and/or provide Student's family with prior written notice of its refusal to do so;
2. Whether the school district failed to identify Student in all areas of eligibility, including for example, autism spectrum disorder;
3. Whether the school district failed to devise an appropriate Individualized Education Plan (IEP) – for example by failing to:
 - devise objective and measurable goals and objectives;
 - devise goals and objectives based on present levels of academic performance;
 - address all of Student's needs in the IEP;
 - include or implement appropriate ***;
 - provide therapeutic counseling as a related service;
 - address Student's socialization needs;
 - address identified areas of interfering behavior;
 - include an appropriate plan to address behavioral needs;
 - provide sufficient supervision of Student during the school day;
 - provide Student and Student's family with appropriate in-home and parent training;
 - provide counseling and assistance in securing ***;
 - provide Student with remedial services when Student failed the STAAR test;
 - failing to comply with a prior Decision of the Hearing Officer;
4. Whether the school district failed to properly implement the IEP – for example by failing to implement the *** in a timely manner at the beginning of the current school year;
5. Whether the school district failed to conduct timely and appropriate evaluations of Student in all areas of suspected disability; for example, in the areas of *** and ***, functional behavior assessment, adaptive behavior, social skills, and occupational therapy (OT) and/or

sensory needs;

6. Whether the school district failed to comply with student and parental procedural rights under the IDEA - for example by failing to:
 - provide prior written notice when the school district refused to conduct an evaluation or provide a service in response to parental requests;
 - provide the family with *** and in-home training evaluation reports in a timely manner or include the family in those evaluations;
 - responding to family requests for Independent Educational Evaluations (IEEs) in a timely manner; and,
7. Whether the school district violated student or parental rights under various other statutes and/or laws other than the IDEA including, for example, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family Educational Rights and Privacy Act and so on (p. 9 of the Complaint).

Petitioner's Requested Relief

Petitioner requests the following items of relief:

1. Findings of fact and conclusions of law in Petitioner's favor;
2. Identify Student as a student with OHI and any other eligibility classification recognized by the IDEA as recommended by Student's outside evaluators;
3. If the hearing officer determines the school district is unable to provide Student with an appropriate program, private residential placement for Student at school district expense as the least restrictive environment for Student -- at the time of the due process hearing Student proposed placement at *** -- or any other residential placement on the TEA list of approved Non-public Schools for Students with Disabilities;
4. Revise Student's IEP to include appropriate changes or additions in services, accommodations, modifications, goals and/or objectives that the hearing officer determines are needed;
5. Conduct evaluations in all areas of suspected disability or need;
6. Reimburse Student's family for the cost of private services and evaluations, including mileage to and from those services and evaluations;
7. Prospective private related services and/or evaluations at school district expense deemed appropriate by the hearing officer;

8. Compensatory educational services in an amount and type determined by the hearing officer; and,
9. Any other relief the hearing officer deems appropriate or as recommended by Student's experts and evaluators.

Petitioner included a request for reimbursement of expert witness fees and attorney's fees in the Complaint. During the initial prehearing telephone conference conducted on February 25, 2016 Petitioner conceded the hearing officer has no jurisdiction to award attorney's fees or costs of litigation including expert witness fees. During the prehearing conference Petitioner also conceded the hearing officer has no jurisdiction to resolve claims other than those arising solely under the IDEA.

The School District's Legal Position

The school district contends it worked in a highly collaborative manner with Student's family to implement the Decision of the Hearing Officer issued in the prior case. The school district argues Student's IEP is reasonably calculated to provide Student with the requisite meaningful educational benefit under the IDEA. The school district contends any claims raised by Student under any law other than the IDEA are outside the hearing officer's jurisdiction and should be dismissed. The school district contends some of Student's IDEA claims are barred by the doctrine of res judicata.

Findings of Fact

1. Student is a *** year old *** student eligible for special education services as a student with an Emotional Disturbance (ED), Other Health Impairment (OHI), and specific learning disabilities (SLD) in the areas of basic reading skills, written expression and mathematics calculations. (Respondent's Exhibit 1, pp. 1, 4, 6, 30)(referred to hereafter as "R. Ex. ___ :___.") (R. Ex. 2:2, 5, 20).
2. Student has a *** history. Student demonstrated difficulty with emotional regulation, socialization, and academic skill acquisition from an early age. (Petitioner's Exhibit 12)(referred to hereafter as "P. Ex. ___") (R. Ex. 6: 2, 4). In *** Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and subsequently diagnosed with a variety of disorders associated with mood regulation and conduct as well as *** (***) ***. (P. Ex. 2:14) (P. Ex. 12: 7-8) (R. Ex. 6:40) (R. Ex. 22:12). Student is also diagnosed with *** - ***. (P. Ex. 2:6-7) (R. Ex. 6:3, 40).
3. Beginning in *** grade Student began to exhibit *** behaviors. As a *** Student has *** - ***. Last year Student ***. (R. Ex. 6:3-6:4).
4. Student received *** services through the ***/*** located at the school district's *** campus. (R. Ex. 6:40). Student's *** care was first supervised by Dr. *** and since

October 2015 by Dr. ***. Dr. *** provides Student with *** services through ***. (Transcript Volume I, pp. 183-184, 187)(referred to hereafter as “Tr. Vol. __:___”)(Tr. Vol. II: 575-576, 577, 579-580) (P. Ex. 2:10) (P. Ex. 33) (R. Ex. 6:40). Student also received therapeutic counseling *** through the *** for a number of years. (P. Ex. 2:11) (P. Ex. 12:8) (R. Ex. 22).

5. Therapeutic counseling addressed daily living skills, mental health, social/leisure needs, and Student’s ***. The therapeutic goals included: ***, ***, ***, and, ***. (R. Ex. 22:15, 20-24). In therapy sessions Student often presented with a flat affect inappropriate to conversation, indifference, and a limited understanding of the consequences of Student’s behavior. (R. Ex. 22:25-28, 32, 34-39, 41-51, 55, 57, 66).
6. Therapy sessions often addressed conflicts ***, ***, ***, ***, ***, and ***. (R. Ex. 22:26-66). Student has not made satisfactory progress in therapeutic counseling. (Tr. Vol. I: 196, 226). *** years ago the mental health team concluded *** counseling services were not comprehensive enough and *** for behavior modification. (Tr. Vol. I: 193-194, 199, 225) (P. Ex. 33:15). Student expressed anxiety and fear of ***. (R. Ex. 22: 26).
7. Student has been diagnosed by various medical providers with: Oppositional Defiance Disorder (ODD), ***, ADHD – Combined Type, ***, ***, and ***, ***. Student was ***. (P. Ex. 2:11) (R. Ex. 6:40). More recently Dr. *** diagnosed Student with autism on the basis of what he thought was Dr. ***’s previous diagnosis. (Tr. Vol. II: 579). However, that diagnosis is not supported by the medical records. (Tr. Vol. II:510-511, 599)(Tr. Vol.III: 861)(P. Ex. 2:11). Student’s presenting characteristics may appear to be autistic but Student’s underlying processing deficits may account for behaviors associated with autism. (P. Ex. 2:7) (P. Ex. 6:3).
8. Student was also diagnosed with autism by Dr. ***, Student’s testifying expert. (Tr. Vol. II: 623). Dr. *** conducted an evaluation and wrote a report. (Tr. Vol. II: 621, 624)(P. Ex. 12). Dr. *** recommended residential placement to remediate Student’s identified deficits. (P. Ex. 12:19). As part of her evaluation Dr. *** observed Student at school while this litigation was pending. However those observations did not include unstructured time or when Student interacted socially with peers and/or staff. Instead, Dr. *** relied on her own interactions with Student in concluding Student lacked pragmatic and social skills. (Tr. Vol. II: 625)(Tr. Vol. III: 855-857)(P. Ex. 12). In fact Student is able to engage in reciprocal conversations although Student chooses to do so only with people Student is comfortable with. (Tr. Vol. III: 796-797, 857-858, 861).
9. Student ***. (Tr. Vol. II: 579)(P. Ex. 12). ***. ***. (R. Ex. 4:9). Student also exhibits some behavioral changes when Student ***. When *** Student appears to be more lively, open, and happy for a few weeks. However, this positive affect is replaced with more aggressive, negative, withdrawn behavior and a flat affect -- especially ***. (Tr. Vol. I: 203-204, 215-216, 217, 221).

10. Student has a processing deficit that impacts Student's involvement or progress in the general curriculum that can be addressed through accommodations. (R. Ex. 4:9). Student needs ***, ***, ***, ***, ***, ***, and ***. (R. Ex. 4:11)
11. During the 2015-2016 school year Student attended the school district's ***. (***) (R. Ex. 1:1) (R. Ex. 4:1). At the beginning of the school year Student was identified as eligible for special education as a student with an emotional disability (ED) and specific learning disabilities (LD) in the areas of basic reading skills, written expression, and mathematics calculation. (R. Ex. 4:4, 4:11). Student was classified as *** grader at the beginning of the 2015-2016 school year. (R. Ex. 3:1) (Tr. Vol. I: 150). By *** Student earned *** as a result of some summer school. (P. Ex. 35) (R. Ex. 4:24).
12. *** is a specialized *** program. (R. Ex. 6:1). Students take a *** with an instructor and *** instruction. (P. Ex. 2:12). Student's family prefers Student's placement at *** over the school district's *** campus. (Tr. Vol. II: 754-755). Student needs a structured setting with few distractions and a smaller teacher to student ratio to benefit from instruction. (P. Ex. 2:8) (R. Ex. 4:18). *** at *** are provided in a "****." (Tr. Vol. II: 765). It is permissible for students at *** to work on anywhere from *** at a time. (Tr. Vol. II: 708-709, 769) (R. Ex. 5:35, 40).
13. The school district conducted a Full Individual Evaluation (FIE) in ***. (R. Ex. 6). Sources of information for the FIE included referral data, a review of ***/*** records, review of educational records, parent interview, and information from school staff and staff interviews. (R. Ex. 6:1). An Individualized Education Plan (IEP) and Behavior Intervention Plan (BIP) were developed at an annual Admission, Review & Dismissal Committee (ARD) meeting in *** that also included a manifestation determination review to address a disciplinary issue. (R. Ex. 5:1-4, 11-22). Student, and Student's mother and *** attended the ARD. (R. Ex. 5:39, 42). The FIE was reviewed by all ARD members prior to the meeting. (R. Ex. 5:39). The FIE and other data were used to confirm Student's initial eligibility for special education and to determine Student's educational needs. (R. Ex. 5:1-2, 5-6, 7, 10, 25-26, 34). Information about *** services from the *** (***) was provided at the *** ARD. (R. Ex. 5:39).
14. Another ARD convened on *** to update the IEP developed in ***. (R. Ex. 4). Student, Student's mother, *** and the school district's *** Counselor attended the ARD. (P. Ex. 4: 25). A representative from ***/*** was invited but did not attend. A representative from *** attended and explained his role at the *** level. (R. Ex. 4:24) (R. Ex. 23:2). The *** representative was assigned to stay with Student throughout Student's time in the school district. (R. Ex. 4:24) (R. Ex. 21:2, 21:12).
15. A set of preliminary goals in the areas of ***, communication skills, and determination skills were added to Student's IEP. (R. Ex. 4:24). Several goals related to appropriate interpersonal goals were also approved by the *** ARD. (R. Ex. 4:12). Student's educational program for 2015-2016 included classes in English, math, science, social

studies, ***, and ***. All academic classes were general education classes with support through instructional accommodations and modifications. Student's plan also included counseling, psychological services, and transportation. (R. Ex. 4:15-16, 4:20).

16. The school district convened a training session for Student's teachers on *** (R. Ex. 9). The training session was conducted by the licensed specialist in school psychology (LSSP) who previously evaluated Student. The training included information related to Student's areas of eligibility, accommodations, behavioral goals and supports, the BIP, academic goals, ***, interventions for ADHD, ***, ***, depression, and anxiety. The training also included a review of accommodations to address basic math skill deficits and writing intervention resources. (R. Ex. 9:2, 9:57).
17. A Parent/Family Training Assessment was completed on ***. (P. Ex. 8). An OT assessment was completed on ***. (P. Ex. 10). Another ARD convened on *** to address those evaluations (P. Ex. 8) (P. Ex. 9) (P. Ex. 10) (R. Ex. 3). Student's sensory awareness and sensitivity were within normal range although Student was observed to be off-task in *** class, was easily distracted, and did not like unfamiliar contact or to answer questions or perform in front of peers. Student did not demonstrate a need for OT. (P. Ex. 10:2, 6) (R. Ex. 3:16).
18. The parent/family training assessment recommended providing the family with suggested interventions and resources and a plan for developing strategies to promote compliant behaviors and build trust in the parent/student relationship. (P. Ex. 8:4). The *** ARD agreed to add *** parent training sessions in the home to Student's IEP. (R. Ex. 3:14). In-home training was provided during the 2015-2016 school year. (Tr. Vol. III: 843-844)(R. Ex. 23:2-3).
19. The parent liaison provided the family with information about an after-school program called ***. The program was well supervised, included social activities, and, offered a *** class. Transportation was available so Student could participate in this extra-curricular activity. The family declined the offer. (Tr. Vol. III: 866)(R. Ex. 10:31, 10:36). Information about other types of resources was also provided by the parent liaison to Student's family, including a book about ***. Student's *** did not view the book as particularly helpful. (Tr. Vol. I: 482-483) (Tr. Vol. III: 837, 843-846).
20. In *** the school district conducted a *** assessment that included a parent and student interview. (R. Ex. 14). Student needed *** and programming and *** learning skills and *** training. (R. Ex. 4:18). Student's needs, strengths, preferences, and interests were considered in developing a coordinated set of *** activities for the 2015-2016 school year. (R. Ex. 5:26). Student needs to learn how to manage Student's *** in order to support Student's ***. (Tr. Vol. I: 456) (R. Ex. 5:25). Even at *** Student is not ready ***. (Tr. Vol. I: 200, 228, 457, 481).
21. Student has demonstrated a long term interest in ***. Student also demonstrates a wide-

range of interests that are constantly evolving. (Tr. Vol. II:666, 701-702)(P. Ex. 9:4) (R. Ex. 5:25). Student has multiple interests and is able to discuss Student's interests with school staff. Those interests include: ***, ***, ***, ***, ***, ***, and ***. (Tr. Vol. III: 802-803, 858-859, 701-702). Student also expressed interests in ***, ***, and *** (although Student is not particularly skillful at ***). (Tr. Vol. II: 760)(Tr. Vol. III: 860). Student is able to converse on a variety of topics. (Tr. Vol. III: 794-797).

22. Student's *** programming was increased to 120 minutes per day at the *** ARD. (Tr. Vol. I: 59) (R. Ex. 3:14). A *** *** plan was implemented during the 2015-2016 school year. The plan included development of communication skills, *** skills, setting goals and making decisions, and knowledge of basic *** and ***. (R. Ex. 15). Student participated in five hours per week of *** *** services with a special education *** class on the school district's *** campus. (R. Ex. 4:19-20, 4:24) (Tr. Vol. I: 141-142). The *** program included a *** *** *** at ***, ***, ***, and the *****. (Tr. Vol. II: 718-719, 732)(P. Ex. 17:49) (R. Ex. 15:4, 15:6).
23. The *** class was a special education class. (R. Ex. 3:14). The school district's *** Coordinator, a certified special education teacher, taught Student in the *** program. (Tr. Vol. II: 718). Transportation to and from the various *** *** program was provided as a related service. (R. Ex. 4:20-222). Student was supported in the *** program by an instructional aide who also worked with other students in the program. (Tr. Vol. II: 722, (724-725) (P. Ex. 45).
24. Student participated in *** and completed ***. Student was *** *** *** – ***. (R. Ex. 15:7) (R. Ex. 16) (Tr. Vol. II: 720-721). Student was very successful in Student's *** *** and learned new skills in the *** program. Student worked well with the *** and was courteous to ***. (R. Ex. 1:17) (R. Ex. 15:19). The *** aligned with Student's *** goals. (R. Ex. 1:17). Student made progress and learned new skills in the *** program. (Tr. Vol. II: 719-720, 722)(Tr. Vol. III: 859) (R. Ex. 1:17) (R. Ex. 15:6-15:7).
25. As a client of *** Student also *** ***, met with a *** counselor, and participated in *** ***. (Tr. Vol. II: 720-721) (R. Ex. 15:7, 15:11). *** plays a key role in Student's continued development. (Tr. Vol. II: 720-721). *** counseling was to continue at the end of the 2015-2016 school year through the summer including continued support at ***. (R. Ex. 15:19) (Tr. Vol. II: 459-460). Unfortunately, the *** counselor did not appear on the first day of the ***. Student's supervisor filled in as Student's *** instead. (Tr. Vol. I: 282) (Tr. Vol. II: 459).
26. Student consistently demonstrated appropriate social skills and responded to prompts to avoid engaging in inappropriate conversation and behavior in the *** program. (Tr. Vol. I: 330) (R. Ex. 15:7, 15:10, 15:14, 15:16, 15:19). Student's classmates in the *** program were students with intellectual disabilities and orthopedic impairments. Student was initially resistant to participating in the *** program. However, with 1-3 verbal prompts over time Student became a positive team member willing to help and assist Student's

classmates. (Tr. Vol. I: 273) (Tr. Vol. II: 719-720, 729) (Tr. Vol. III: 851-852) (P. Ex. 17:72) (R. Ex. 15:5-6, 10, 13-14, 16, 19).

27. Student was also supported by a certified special education teacher who monitored Student's academic and behavioral progress, collaborated with Student's teachers and other staff implementing and updating Student's IEPs, and served as Student's *** at ***. (Tr. Vol. I: 278, 280-282, 322) (Tr. Vol. II: 478). As *** the teacher collaborated with school district staff and Student's *** at *** in supporting Student's *** ***. (Tr. Vol. I: 283, 288, 291, 293-294, 295, 299-300, 301, 303-304, 307, 316-317) (P. Ex. 17: 10, 17, 20, 25, 69) (P. Ex. 32) (P. Ex. 34:2). Student grew in independence and in Student's ability to accept responsibility for Student's actions and regulate Student's emotions. (Tr. Vol. I: 334, 336).
28. A set of accommodations and instructional supports were included in Student's program for the 2015-2016 school year including: *** check for understanding; breaking material and tasks into small segments; oral administration of math, science and social studies tests; a ***; use of a calculator in math and science classes; extended time; opportunities to answer orally; small group administration; and use of a dictionary in English and social studies classes. (R. Ex. 4:15) (R. Ex. 5:26).
29. In the *** Student worked slowly but steadily through *** ***: *** and *** *** *** in addition to the ***. (Tr. Vol. II :761-762)(P. Ex. 16B: 36-66) (P. Ex. 17:58). Student also worked on a *** class supplemented with some *** activities. (Tr. Vol. I: 139) (P. Ex. 16B:49). Student's average rate of completion of academic activities was about *** that ***. (P. Ex. 16B:64). Student completed the majority of *** activities with a single attempt. (Tr. Vol. II: 700-701)(P. Ex. 36). Student's final grades were *** in *** and *** in ***. (P. Ex. 24: 3-4).
30. Student made particularly good progress in *** with an instructor who knew Student well. Student was respectful, eager to learn, and better prepared than most students. (Tr. Vol. II: 698-699). By the end of the 2015-2016 school year Student's retention of information and confidence in engaging in classroom conversations grew in the *** class. (Tr. Vol. II: 712).
31. Following the *** class Student's work productivity improved significantly. In the first *** class spring 2016 semester Student completed both the *** and *** ***, ***. By *** ***. (R. Ex. 7:1, 5). Student completed *** *** *** during the spring 2016 semester: ***, ***, *** and ***. Student also completed the second semester of the *** class. (R. Ex. 7:2, 4, 6-7, 8). Student passed the *** *** on the first attempt. Student received intensive remedial instruction in ***. Although Student passed the *** *** Student was unable to pass the *** STAAR. (Tr. Vol. II: 750) (R. Ex. 7:9-10) (R. Ex. 10:21).
32. Student exhibits deficits in friendship skills and understanding social nuances as well as others' intentions. Student has difficulty determining when someone is taking advantage of Student. Student does not use non-verbal behaviors such as facial expressions to assist with communication. (P. Ex. 12:18). The IEP for the 2015-2016 school year included a

measurable annual goal addressing Student's need to develop and practice positive interpersonal skills including conflict resolution, negotiation, teamwork, and leadership. A set of measurable short-term objectives to support the annual goal were included in the IEP. (R. Ex. 4:12). Student's program for the 2015-2016 school year included a Behavior Intervention Plan (BIP) with a single, measurable annual goal of demonstrating behavioral restraint in order to comply with environmental expectations (R. Ex. 8:1).

33. A measurable short-term objective was included in the BIP. Student's progress was measured throughout the 2015-2016 school year. The short term objective specifically targeted Student's *** behavior and ***. The short term goal referenced the set of modifications, accommodations, and set of related services Student was meant to utilize in reaching the goal. (R. Ex. 8:1). The 2015-2016 IEP also included a measurable annual goal in the context of the *** program to address Student's need to develop positive interpersonal skills. Three measurable, short-term objectives supported progress towards mastery of the annual goal. (R. Ex. 8:6).
34. Student received counseling for *** each week from a licensed professional counselor and psychological services from a LSSP for *** weeks as related services during the 2015-2016 school year. (Tr. Vol. III: 789)(R. Ex. 4:18, 4:20, 4:22, 4:24). Student needed counseling to address development of prosocial skills. (R. Ex. 4:18). The counseling supported Student's goals of improving social skills, self-esteem, and independence. (Tr. Vol. II: 667-668)(Tr. Vol. III: 842). In counseling Student worked on developing the ability to use compensatory skills in social situations, identifying behavioral triggers, making good choices, and learning how to gain attention in a positive rather than coercive manner. (Tr. Vol. II: 662-663).
35. Student made progress in Student's awareness of social interactions, self-confidence, and empathy towards others. (Tr. Vol. II: 664-665, 752-753). Psychological services addressed Student's struggles for independence. (Tr. Vol. III: 846-847, 848). By the end of the 2015-2016 school year Student was capable of self-advocating and demonstrated greater self confidence and a willingness to do Student's best in school. (R. Ex. 1:30). Student was beginning to respond positively to counseling support in changing Student's behavior. (Tr. Vol. II: 662-669).
36. Student was monitored during the 2015-2016 school year by an instructional aide. (Tr. Vol. I: 257-258). The aide was able to fade some monitoring support by the end of the school year particularly in the *** class. (Tr. Vol. I: 261). School staff collaborated in making decisions about Student's ability to handle more independence at school without monitoring support. (Tr. Vol. III: 848). The use of the aide for monitoring support was not documented in the ARD or IEP documents. (R. Ex. 4) (R. Ex. 8). The aide was not trained in Student's IEP or aware of Student's disabilities. (Tr. Vol. I: 255-256). In addition to the monitoring support Student's ***. Student was not allowed to ***. (P. Ex. 17:100).
37. This year Student was more outgoing and participated in some extra-curricular activities at ***. (Tr. Vol. II: 752, 790, 799). Student participated in "****" *** program. (Tr. Vol. II :

- 751)(Tr. Vol. III: 842). Student also *** ***. (Tr. Vol. III: 790-794, 811). Student was involved in various activities and events. Student ***. (Tr. Vol. III: 751-752, 790). On Student's own initiative Student ***. (Tr. Vol. III: 751, 793-794)(R. Ex. 13:3). Student invited Student's *** to ***. Student *** behaved appropriately. Student interacted with peers by ***. (Tr. Vol. I: 328-330).
38. The LSSP conferred with Student's mental health therapist twice during the 2015-2016 school year. (Tr. Vol. III: 838-839). In *** they shared information regarding counseling goals and activities and concluded the counseling plans were parallel. (Tr. Vol. III: 839). The two agreed to confer again should either one change their treatment plan or feel the need to talk for any reason. (Tr. Vol. III: 839). The two did confer again in *** to follow up on a family report to the therapist that Student was ***. The LSSP explained the report stemmed from ***. School staff *** and Student was disciplined. (Tr. Vol. III: 839-840).
39. School staff collaborated extensively with each other in implementing Student's IEP. (R. Ex. 9) (R. Ex. 10) (R. Ex. 14:1). Staff also collaborated to some degree with the *** representative. (Tr. Vol. I: 280-281). School staff explained recommendations to Student's family prior to ARD meetings, discussed possible changes to Student's *** services, conducted parent meetings and staffings, and, took family preferences into account in making placement decisions. (Tr. Vol. I: 337) (Tr. Vol. III: 841, 848-849, 850, 853) (R. Ex. 10). Parental input was encouraged at all ARD meetings. (Tr. Vol. III: 841).
40. Student is *** ***. (Tr. Vol. III: 799, 800-801, 802, 820, 822)(R. Ex. 1:15, 1:19). ***. (Tr. Vol. III: 799-800). An annual ARD convened on *** to plan for the upcoming 2016-2017 school year. (R. Ex. 1: 1, 33). At that point Student ***. (R. Ex. 1:30). By the end of ***. (R. Ex. 7:7). At the time of the *** ARD Student passed ***, ***, and ***. (Tr. Vol. III: 800)(R. Ex. 1:2). Subsequent to that ARD Student passed *****. (R. Ex. 7:7). Student has the option ***. Student has not yet completed ***. (Tr. Vol. III: 809).
41. Although Student performs better in *** classes Student's IEP for the upcoming 2016-2017 school year contemplates continued placement at *** in deference to family preference even though the *** campus offers *** classes. (Tr. Vol. II: 754-755)(P. Ex. 10:2) (R. Ex. 1:29) (R. Ex. 1:16). Student can be expected to be successful at either campus. (Tr. Vol. II: 687)(Tr. Vol. III: 854). Student needs to complete ***. (Tr. Vol. III: 834). At the time of the due process hearing Student ***. (Tr. Vol. II: 754) (R. Ex. 2). Because Student was mastering the general education curriculum the *** ARD did not design a set of IEPs in specific content areas. (Tr. Vol. III: 889)(R. Ex. 1:7).
42. Student expressed an interest in ***. (Tr. Vol. III: 802). Student is aware of the *** as a step towards *** but has not yet ***. (Tr. Vol. III: 803, 818). Student's counselor *** with *** so Student will be able to *** *** with accommodations next school year. (Tr. Vol. I: 291-293) (Tr. Vol. III: 803, 815-816, 817-818) (P. Ex. 17:20). There are other options besides *****. (Tr. Vol. III: 805, 808).

43. Student's needs in the areas of basic reading, math calculation, and written expression can be met with accommodations and the *** IEP included in the proposed 2016-2017 program. (Tr. Vol. I: 405-406) (R. Ex. 1: 7, 20-23). Special education services are to be provided in Student's *** class and regular education academic classes in the "****" at ***. (R. Ex. 1: 25). Although Student feels comfortable at *** Student would also benefit from greater access to *** classes, especially in *** classes such as ***. (Tr. Vol. III: 853).
44. Prior to the *** ARD school district staff met with Student and discussed *** goals and identified the set of activities and IEP goals needed to accomplish those goals. (Tr. Vol. III: 863-864). Three new *** goals in the areas of ***, ***, and *** were designed as components of the IEP for the 2016-2017 school year. (Tr. Vol. III: 864-865) (R. Ex. 1:17). The proposed IEP for 2016-2017 identified Student's strengths and designed new goals in the areas of improving appropriate use of time, requesting and accepting positive and negative criticism ***, maintaining appropriate ***, and, using positive coping strategies when asked for *** information Student cannot immediately recall. (R. Ex. 1:8-9). *** was included as a goal for Student next year. (Tr. Vol. III: 867).
45. A BIP and crisis management plan were proposed for the 2016-2017 school year at the *** ARD. A number of behavioral strategies and supports were included to address targeted behaviors including pursuing individualized attention ***. (R. Ex. 1:7, 11-12). The BIP indentified inappropriate behavior, replacement behavior, a set of positive behavioral interventions, strategies and supports, and a set of recommended behavioral consequences. (R. Ex. 1:13-14). Subsequent to the *** ARD Student's *** rescinded the family's prior agreement with the proposed IEP describing Student as not nice to everyone, defiant, and rude. The same schedule of counseling and psychological services from the 2015-2016 school year was proposed for the 2016-2017 school year. (R. Ex. 1:18, 23, 25).
46. A revised set of accommodations and instructional supports were proposed for Student's program for the 2016-2017 school year. Those accommodations include: checking for understanding of directions, breaking material and tasks into small segments, oral administration of math, science and social studies tests; reduced length of written assignment; a ***; the use of a calculator in math and science classes; extending time up to one day for assignments and ****% for tests; opportunities to answer orally; the use of a dictionary in English and social studies; small group administration; and clearly defined and consistent limits and positive reinforcement. (R. Ex. 1:6, 1:20). In addition, paired working arrangements on major projects were also included as instructional support. (R. Ex. 1:21). Intensive services to assist Student in *** were also proposed for the 2016-2017 school year (R. Ex. 1:2-3).
47. During the 2015-2016 school year there were issues in securing a physician's medical confirmation of Student's need for special education as a student with OHI. (Tr. Vol.: I:157)(R. Ex. 19). The school district sent an OHI form to Student's physician Dr. *** in ***. (R. Ex. 19:8). The school district finally received a signed OHI form from Dr. *** on *** identifying Student as qualified for services as a student with ADHD and ***. (R. Ex.

2:2, 2:5). An ARD convened on *** to review the OHI report from the physician. (R. Ex. 2:20). The *** ARD added OHI to Student's eligibility for special education. (R. Ex. 2:1-2, 2:5).

48. The school district granted parental requests for Independent Educational Evaluations (IEES) in response to parental disagreements with the schools district's *** FIE. (Tr. Vol. I: 435) (P. Ex. 17:59, 73, 84-89) (R. Ex. 20:8-9). The school district granted Petitioner's request for an independent evaluation by Dr. ***. (R. Ex. 20:2, 6-8). The school district's agreement included independent assessments in the following areas: psychological, emotional, language, cognitive, developmental, intellectual, adaptive behavior, and achievement/academic performance. (R. Ex. 20:8). Dr. *** completed her evaluation and issued a report on ***. The stated purpose of Dr. ***'s report was to determine Student's current level of social, emotional, and behavioral functioning as well as assessments of Student's intellectual ability and academic achievement. (P. Ex. 12:5).
49. The school district also granted the request for a *** IEE by ***. (R. Ex. 20:8). Ms. *** completed her evaluation and issued a report on ***. (P. Ex. 11:7). Ms. *** concluded Student's *** supports Student's goal for ***. However, Ms. *** noted Student's educational program does not include *** such as ***, *** or ***. The IEE *** assessment confirmed Student's ***. (P. Ex. 11: 14-15).
50. Ms. *** found Student is dependable, punctual, likes others, accepts consequences *** and can learn things directly associated with preferred tasks. Student's continued challenges include: low self-esteem, dealing with negative people triggering annoyance and irritation, and avoiding learning less preferred tasks. Student's *** skills include: ***, and articulating the need for repeated review. Student can be annoyed by "bossy" behavior and unaware of how to ***. (P. Ex. 11:12). Ms. *** concluded Student lacks basic *** skills with regard to *** and ***. Student understands Student's reading skills and processing speed impact Student's school performance. While Student has an understanding and desire *** Student does not yet have the problem-solving skills to cope with unexpected situations. (P. Ex. 9:4) (P. Ex. 12:17).
51. Ms. *** recommended the following improvements to Student's *** ***: (i) a strong IEP goal to address appropriate use of personal technology; (ii) a self-monitoring method so Student can begin tracking and self-managing behavior; (iii) a plan to reduce the level of monitoring that ensures safety but increases independence; (iv) a *** goal to specifically address self-advocacy so that Student will understand the nature of Student's disabilities and how they impact learning ***; (v) consider attending the *** campus for *** while continuing *** ***; and, (vi) reviewing with Student the impact of failing to *** on *** on *** options. (P. Ex. 11: 16-17)
52. Student's family received prior written notice of all evaluations conducted by the school district. (R. Ex. 4:5, 4:7, 4:24, 4:26). ARD meetings conducted in 2015-2016 reached consensus although Student's *** later rescinded agreement to the *** ARD. (R. Ex. 2) (R.

Ex. 3) (R. Ex. 4) (R. Ex. 24). The school district kept Student's family informed of all educational decisions and implementation of those decisions. (Tr. Vol. III: 848, 849-850). The school district provided Student's family with notice of the *** ARD meeting with the stated purpose to review the sensory, parent training and *** reports. (R. Ex. 3:29). Student's family confirmed waiver of the 5 day notice for the meeting and their attendance. (R. Ex. 3:28-29). All three evaluations were reviewed at the *** ARD and the ARD reached consensus. (R. Ex. 3:28). Student's mother and *** were included in each evaluation. (P. Ex. 8:1) (P. Ex. 9:1) (P. Ex. 10:1) (R. Ex. 6:1).

53. There is a history of ***. (Tr. Vol. I: 205, 207-208, 209, 213, 218-219, 223-224). (Tr. Vol. II: 444, 448, 516-519)(Tr. Vol. III: 905-906)(P. Ex. 27) (P. Ex. 33:61). Student would benefit from comprehensive wrap around services and *** where Student would receive ***, and ongoing intensive therapy. (Tr. Vol. I: 225, 229).

54. Student's family attempted to *** for Student in the past. Student's family explored the use of Student's ***. The *** and thus did not meet ***. (P. Ex. 2:11). Student's therapist discussed the possibility of *** with Student's family to facilitate *** but discovered that was not an option ***. (Tr. Vol. I: 219) (P. Ex. 33: 53).

55. The Texas Education Agency (TEA) resolved Petitioner's Complaint that the school district failed to comply with certain aspects of the hearing officer's orders in the prior case on November 17, 2015. The school district submitted documentation in response to the Complaint. TEA concluded the school district implemented the relief ordered by the hearing officer and no corrective action was required. (R. Ex. 23:23:2 – 23:20).

Discussion

Free, Appropriate Public Education

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 a meaningful educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982); 20 U.S.C. § 1401(9); 34 C.F.R. § 300.26. While the IDEA guarantees only a "basic floor of opportunity" the IEP must nevertheless be specifically designed to meet Student's unique needs supported by services that permit Student to benefit from the instruction. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. at 188-189.

However, the IEP need not be the best possible one nor must it be designed to maximize Student's potential. Instead, the school district must provide Student with a meaningful educational benefit – one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. VP*, 582 F. 3d 576, 583 (5th Cir. 2009) cert. denied, 559 U.S. 1007(2010). The basic inquiry in

this case is whether the IEP implemented by the school district was reasonably calculated to provide Student the requisite meaningful educational benefit. *Rowley*, 458 U.S. at 206-207. Similarly, I must also determine whether the proposed program and placement for the upcoming school year is also reasonably calculated to provide the requisite educational benefit. *Id.*

Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). 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). Therefore, the burden of proof in this case is on Petitioner. *Schaffer v. Weast*, *supra*; *Richardson Ind. Sch. Dist. v. Michael Z.*, *supra*.

The Four Factors Analysis

In this jurisdiction there are four factors applied in order to determine whether the IEP at issue was reasonably calculated to provide Student with the requisite meaningful 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. Instead the factors are merely indicators of when an IEP meets IDEA requirements. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d at 293.

Furthermore the provision of FAPE must be evaluated by the overall educational benefits received and not whether the student's disability was remediated. *Klein Independent School District v. Per Hovem*, 690 F. 3d 390, 391 (5th Cir. 2012) (*school district provided FAPE to student with severe learning disabilities where IEPs enabled student to excel with accommodations in mainstream *** school curriculum*).

The requisite educational benefit is not defined exclusively or even primarily in terms of correcting a student's disability. Instead, the issue is whether Student's IEP is designed to enable Student to make progress in the general education curriculum. Remediation (including behavioral modifications) may be a component of a student's IEP. However, it is the educational experience as a whole and its adaptation to confer an overall educational benefit that is the ultimate goal of the IDEA. *Klein Ind. Sch. Dist. v. Per Hovem*, 690 F. 3d at 397, 398. I must therefore determine whether the IEP implemented last school year and the IEP proposed for the upcoming school year

were reasonably calculated to provide Student with the requisite educational benefit from this holistic perspective. *Id.*

*** and ***

***. ***. ***. The school district *** during the 2015-2016 school year. The proposed plan for the upcoming 2016-2017 school year includes continuing ***.

The evidence showed Student's *** needs were met with a set of *** services and opportunities to *****. The combination of class instruction and *** supported Student's development of appropriate skills ***. Student also learned to support Student's classmates and exhibited some leadership and empathy.

While the evidence showed the *** could be better the IDEA does not require a school district to deliver the best possible program or to maximize a student's potential. *Rowley, supra*. Instead, the evidence showed Student was successful in ***, ***, *** – ***. The evidence shows the *** provided Student an opportunity to make progress *** as well as opportunities for appropriate problem-solving and social development.

Did the Program Implemented in 2015-2016 Provide Student with FAPE?

Individualized on the Basis of Assessment

The evidence shows the educational program and placement implemented during the 2015-2016 school year was individualized on the basis of assessment and evaluation. The IEP was revised and adjusted in *** following ARD consideration of the results and recommendations of the OT, ***, and in-home training assessments completed in compliance with the orders in the prior case. The school district's *** FIE provided a foundation for the IEP's design.

The record demonstrates the 2015-2016 IEP included a set of academic, behavioral, ***, and counseling goals and objectives that met Student's individualized needs. A set of instructional accommodations to support Student's access to the general curriculum addressed Student's processing and attentional deficits and learning disabilities in reading, writing, and math.

A behavior intervention plan was designed and implemented to address Student's problematic behaviors identified by the evaluation data which included input from Student's family. Replacement prosocial behaviors were included in the educational program. The program was updated in *** following review of the school district's *** assessment. A *** was implemented that addressed needs identified in the *** assessment that included input from Student and family.

The 2015-2016 IEP included counseling and psychological services based on behavioral data from a variety of sources including Student's family and medical and mental health providers. Those services were individualized to address Student's specific needs to develop appropriate social skills, make healthy life style choices, and positive social engagement in the school environment.

Petitioner argues the school district failed to assess Student in all areas of suspected disability -- specifically autism. Petitioner's testifying expert concluded Student met criteria as a student with autism and made a number of recommendations for revising the educational program on that basis. However, the preponderance of the evidence shows Student is properly identified and that some conclusions drawn by the expert were based on incomplete or not entirely accurate observational data.

Even if Student should have been evaluated or identified as a student with autism the IEP at issue was nevertheless individualized to meet Student's needs. Student was provided with small group instruction, 1:1 support as needed, a self-paced curriculum, appropriate instructional accommodations and modifications, and related counseling and psychological services to support appropriate behavior. Once a student meets eligibility criteria -- no matter what that disability may be -- the IEP must meet the student's needs in order to make progress in the general education curriculum and whatever other needs result from the disability. 34 C.F.R. § 300.320 (a) (2). Student's IEP and BIP addressed Student's academic, behavioral, social, and emotional needs without the addition of autism as an eligibility category.

Administered in the Least Restrictive Environment

Student's program was implemented in a mix of ***, *** instruction, with one *** ** class at *** -- a general education placement preferred by Student's family over placement at the school district's *** ** campus. The *** program was implemented in a variety of settings with some classroom instruction at the *** ***, ***, and ultimately ***. Although the evidence shows Student performs better in *** classroom the evidence also showed the mix of instructional settings and experiences provided Student with access to the general curriculum and opportunities to be educated with non-disabled peers to the maximum extent appropriate. 34 C.F.R. § 300.114.

The evidence did show that Student received *** instruction with students who either had orthopedic impairments or who were more intellectually challenged than Student. However, once Student overcame Student's initial resistance, the evidence showed Student was able to demonstrate some empathy and leadership with Student's disabled classmates. The *** ultimately led to *** where Student interacted with ***. The IDEA includes a preference for mainstreaming and overall Student's educational program for 2015-2016 met this preference. *Id.*

Program Implemented in Collaborative Manner by Key Stakeholders

First, the school district collaborated with Student's family by deferring to the family preference for placement at *** even though Student can also be successful at the ***, *** campus where more *** classes are available.

Second, information from Student's medical providers was considered and incorporated into the school district's *** FIE that provided the framework for the IEP ultimately implemented in 2015-2016.

Third, the LSSP conferred with Student's mental health therapist twice during the 2015-2016 school year sharing information and therapeutic goals and treatment plans.

Fourth, Student's *** collaborated with school staff in implementing and revising Student's IEP and in supporting Student ***.

Fifth, Student's mother and *** were active members at each ARD meeting. School staff discussed recommended changes to Student's *** program with Student's family and met with Student's family to review Student's academic and behavioral progress.

Sixth, representatives from *** were invited to an ARD meeting that Student's mother and *** attended. The *** representative attended and contributed to the discussion. The school district cannot require *** to collaborate or attend ARD meetings but should encourage and invite their participation when the *** may have relevant resources to meet a student's needs – as was true here.

Finally, the evidence also showed the school district provided Student's family with information, resources, and support through the parent liaison and parent-training features of Student's program. Whether Student's family chose to use the information or resources or not is not determinative in concluding the school district collaborated or coordinated the implementation of Student's IEP with key stakeholders.

Positive Academic and Non-Academic Benefits

Student ***. Perhaps Student's pace was somewhat slower than what is preferred or expected but nevertheless Student made academic progress and passed Student's *** ***. Student is making progress towards meeting the *** – Student needs to *** and may ***.

Student engaged in some school-based extra-curricular activities, practiced prosocial skills, took the initiative in several activities including ***, working on ***. Over the course of the year Student began to gain greater independence, accept responsibility for Student's actions, and to regulate Student's emotions in the school environment. To be sure Student needs to continue to generalize these skills to the home setting and make healthy choices when Student is ***.

The evidence showed Student gained some self-esteem, awareness of social interactions, and showed empathy towards others at times. Student's classroom behavior, especially in the ***, was very appropriate – Student came to class prepared and Student's willingness and confidence to engage in classroom discussions improved.

Student ***, ***, and ultimately was successful in *****. The evidence also showed that Student grew in Student's ability to perform *** interacting appropriately with *****. Although Student continues to need to learn and develop more *** and Student is not *** Student gained some preliminary skills in making progress towards ***.

Student was provided with experiences that support Student's *** but also had opportunities to explore other interests. The *** assessment made several recommendations for building on the initial program provided in 2015-2016. Future ARD Committees may certainly consider those recommendations. However, the fact that the *** program can be improved does not undermine the meaningful benefits provided to Student during the 2015-2016 school year.

Conclusion – FAPE for the 2015-2016 School Year

The preponderance of the evidence leads me to conclude that the overall educational program implemented during the 2015-2016 school year provided Student with the requisite meaningful educational benefit when the four factors are considered and applied to the credible facts in this case. I am particularly persuaded by the academic and non-academic benefits the IEP (including the *** ***) and related services provided. Student's ability ***, Student's greater positive engagement in campus activities, and academic progress in *** all support the conclusion that the IEP as implemented provided student with FAPE. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d at 253; *Klein Ind. Sch. Dist. v. Hovem*, 690 F. 3d at 391.

Is the Program Proposed for 2016-2017 Reasonably Calculated to Provide Student FAPE?

The IEP proposed for the upcoming school year also meets the requisite legal standard. The evidence showed that it too is individualized on the basis of assessment data and addresses Student's academic and behavioral needs, contemplates continued collaboration between school staff and the family as well as the involvement of Student's ***.

The program is to be delivered in the general education setting with appropriate instructional supports to facilitate Student's access to the general curriculum - the least restrictive environment meeting the statutory preference for mainstreaming to the maximum extent appropriate. 34 C.F.R. § 300.114. Student will be provided with continued counseling and psychological services to support Student's continued development of prosocial and *** ***.

Because the proposed program contemplates many of the same features as the 2015-2016 program it is reasonable to conclude the program is also likely to provide Student with both academic and non-academic benefits. School staff assisted Student in applying for the accommodations Student needs to *** *** and further Student's *****. Student is expected to complete Student's required ***. ***. I conclude the proposed program is therefore reasonably calculated to provide Student with the requisite educational benefit and therefore a free, appropriate public education. *Rowley*, *supra*.

Residential Placement

In this jurisdiction a residential placement under the IDEA is appropriate when it is (i) essential in order for the student with a disability to receive a meaningful educational benefit; and (ii) primarily oriented toward enabling the student to obtain an education. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286 at 300. This two part test includes consideration of two factors: first, whether the

student was placed at the private facility for educational reasons and second whether the student's progress at the private facility is primarily judged by educational achievement. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d at 301.

The first prong of the test is *not* met when an educational benefit is merely incidental to a private placement made primarily for medical reasons. *See, Fort Bend Ind. Sch. Dist. v. Douglas A.*, 65 IDELR 1 (5th Cir. 2015)(*school district not required to reimburse placement at a mental health facility where primary goal of facility was to treat children with reactive attachment disorder – unilateral private placement by parents made for emotional and mental health reasons and not educational purpose*). In sum, if a child is able to receive an educational benefit without the residential placement, even if the placement is helpful to the child's education, the school district is not required to fund the residential placement under the IDEA. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d at 300.

In this case Student seeks prospective placement at *** or another appropriate TEA approved residential placement at school district expense. Therefore, I must consider whether the evidence supports the reasonable conclusion that a residential placement is essential in order for Student to receive a meaningful educational benefit and second, whether residential placement is primarily oriented toward enabling Student to obtain an education. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d at 301.

Least Restrictive Environment

In resolving the placement issue I must also consider whether residential placement, even if beneficial and appropriate for Student, would nevertheless meet the IDEA's requirement of placement in the least restrictive environment. The IDEA requires the school district ensure, to the maximum extent appropriate, students with disabilities are educated with their non-disabled peers. Special classes, separate schooling or removal of students with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114 (a) (2).

In addition, the school district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Supplementary services such as resource room or itinerant instruction provided in conjunction with regular class placement are also required. 34 C.F.R. § 300.115.

A residential placement is the most restrictive instructional setting along the continuum of educational placements with the exception of placement in a juvenile detention facility or a state supported living center. *See, 19 Tex. Admin. Code §89.63(c)*. State law places additional requirements on the use of state and federal funding for a residential placement. No state funding will be provided if the placement is due primarily to the student's medical problems or primarily to

problems in the student's home. Funding is also denied if the school district did not first attempt to implement less restrictive placements prior to the residential placement (except in an emergency documented by the ARD) or when residential placement is not cost effective when compared with other alternative placements. *19 Tex. Admin. Code §89.61(b)*.

Residential Placement Would Be Primarily Medical Not Educational

Where placement in a residential treatment facility is primarily medical rather than educational a school district is not responsible for the placement under the IDEA. *Richardson Ind. Sch. Dist. v. Michael Z., supra; Fort Bend Ind. Sch. Dist. v. Douglas A., supra (parents made unilateral residential placement due to concerns student would make another suicide attempt and because of student's on-going drug problem)*.

In this case the evidence shows the primary motivation for residential placement is to relieve the family's significant distress coping with Student's behavior and ***. ***, *** – ***.

***. The family is clearly burdened and overwhelmed coping with Student at home. Student's primary caregivers feel compelled to monitor Student 24 hours a day and are exhausted doing so. Although a residential placement would provide Student's family with the relief they seek the evidence shows a residential placement is not an educational necessity in order for Student to receive a meaningful educational benefit within the meaning of the IDEA. *Richardson Ind. Sch. Dist. v. Michael Z., supra*.

The preponderance of the evidence shows Student's behavior overall at school is fairly good. Student made academic and non-academic progress in the general education setting with appropriate instructional accommodations and modifications, supported by counseling and psychological services, and a ***. Student began to engage more actively in school-based activities that provided opportunities for socially appropriate behavior and an outlet for Student's creativity, ***, and building a more positive self-esteem. Student acquired some ***, ***, and worked on steps towards ***. Student does not need residential placement to meet Student's educational needs. *Id.*

Conclusion as to Residential Placement

Residential placement at *** or a similar residential program for *** might well be beneficial for Student and for Student's family. However, I agree with the school district that the educational program delivered to Student last school year was reasonably calculated to provide Student with the requisite meaningful educational benefit and was therefore appropriate. Similarly, the proposed program and regular education placement for the upcoming 2016-2017 school year is also reasonably calculated to provide Student with the requisite educational benefit under the IDEA. *See, Walczak v. Florida Union Free Sch. Dist., 142 F. 3d 119, 132 (2d Cir. 1998) (placement in residential setting with superior opportunities was not appropriate when student made meaningful progress in less restrictive program.)*

Furthermore, and most importantly, the evidence shows that although Student continued to engage in some ***. There is some evidence that Student ***.

However, the credible evidence also showed that for the most part the issues that cause stress and worry for Student's family ***. A minimal number of behavioral incidents at school are insufficient to warrant a residential placement – one of the most restrictive instructional settings on the educational placement continuum. *19 Tex. Admin. Code § 89.63 (c) (10)*.

The IDEA requires the school district address Student's academic and behavioral needs in the regular school environment with appropriate supports, accommodations, and related services to the maximum extent appropriate. *34 C.F.R. § 300.114 (a) (2)*. The need for special education services is not strictly limited to academics but also includes behavioral progress and the acquisition of appropriate social skills as well as academic achievement. *Venus Ind. Sch. Dist. v. Daniel S. 2002 U.S. Dist. LEXIS 6247 (N.D. Tex. 2002)*. Therefore, I agree with Petitioner that the school district's program must address Student's behavioral, ***, emotional, and *** needs.

However, the evidence shows that for the most part the program implemented last school year met those needs and the program proposed for the upcoming school year is reasonably calculated to address those needs as well. Certainly there are improvements to the school district's program that may be beneficial such as adding a greater focus on *** *** and some ***. Consideration of more *** academic classes might also be revisited by a future ARD. However, the conclusion that some improvements can be made to the school district's program does not inevitably lead to the conclusion that Student needs residential placement for educational reasons.

The evidence shows Petitioner's request for residential placement is largely related to ***. Even if Student could realize an educational benefit from a residential placement the evidence showed Student can and did receive the requisite educational benefit within the school district. *Richardson Ind. Sch. Dist. V. Michael Z., 580 F. 3d at 300-301*. Therefore, I conclude that Petitioner did not meet Petitioner's burden of proving the need for residential placement in order to receive a free, appropriate public education under the IDEA. *Schaffer v. Weast, supra*.

Subsequent Allegations

At the time of the hearing Student continued *****. Petitioner's closing brief alleges Student *** while this decision was pending. Petitioner's brief alleges Student ***. Petitioner's brief alleges Student ***. Petitioner also alleges Student *** the due process hearing was in session.

These alleged facts were not evidence for purposes of the due process hearing. Nevertheless, while certainly deeply troubling, the allegations that Student's behavior at home or *** do not support residential placement for educational reasons. The allegations related to recent maladaptive and inappropriate behaviors are certainly legitimate concerns for Student's family, ***, and Student's mental health and medical professionals.

I do not disagree with Petitioner's assertion in Petitioner's closing brief that Student needs help.

However, any failure to provide Student with the support Student needs to lead ***, healthy life are, in my view, failures of the mental health community, ***, and State and local social service agencies and/or institutions. A local school district in Texas is an important provider of services for students with disabilities. However, nowhere in the IDEA are school districts required to provide all things to all students with disabilities.

Student presents with an extremely complex profile and difficult history. There is no dispute that Student continues to face challenges related to ***** on Student's behavior, learning differences that make reading, writing and math more difficult, and significant emotional and mental health conditions that impair Student's ability to make healthy and appropriate behavioral and social choices.

To be sure, the school district is an important partner in meeting a student's educational needs – some of which may be behavioral and social as they are here. But where the record reflects academic, behavioral, and social progress at school -- even when there are on-going behavioral, medical, and *** issues at home *** -- the IDEA does not require the school district to resolve or remediate Student's every single problem or issue with a residential placement. While I am sympathetic to the family's distress the IDEA does not extend a school district's responsibility beyond what is appropriate educationally. *See, Richardson Ind. Sch. Dist. v. Michael Z., supra.*

Right to Independent Educational Evaluation

A parent has a right to an independent educational evaluation at school district expense if the parent disagrees with the results or recommendations of the school district's own evaluation. *34 C.F.R. §300.502 (b) (1)*. The evidence shows the school district agreed to fund IEEs in the areas of parental disagreement with the school district's FIE. There is insufficient evidence to prove the school district violated the IDEA in this regard.

Claims Related to Enforcement of the Prior Decision

One of the issues Petitioner raises is whether the school district failed to comply with the Decision of the Hearing Officer issued in the prior case (and by implication whether that failure resulted in a failure to provide Student with FAPE during the 2015-2016 school year). Any claims regarding enforcement of the school district's failure to comply with a hearing officer's orders are outside my jurisdiction as a special education hearing officer in Texas. Instead, the proper mechanism for resolving issues related to the enforcement of a hearing officer's orders is to file a state Complaint with the Texas Education Agency. *34 C.F.R. § 300.151(b) (1); 19 Tex. Admin. Code §§ 89.1150 (a) (6); 89.1195 (e) (5) (A)-(E) (6) (A) (7)*.

Petitioner claims the school district failed to provide a home-school liaison in a timely manner, failed to conduct timely and appropriate evaluations, failed to timely identify Student as a student with OHI, and failed to include recommendations from the FIE in the IEP. These claims are all related to the hearing officer's Decision issued in the prior case. The proper avenue for addressing these claims was to file a Complaint with TEA. Petitioner did file such a Complaint and it was resolved by TEA in November 2015. No corrective action was required.

Claims Arising Under Laws Other Than the IDEA

The jurisdiction of a special education hearing officer in Texas is strictly limited to the issues identified as subjects for a due process hearing under the IDEA. Any claims arising under any law other than the IDEA are outside my jurisdiction and shall be dismissed. 34 C.F.R. §§ 300.503; 300.507. The record reflects Petitioner conceded at the initial prehearing conference the hearing officer's jurisdiction does extend to claims arising under any law other than the IDEA. Similarly, the hearing officer in a special education due process hearing does not have the jurisdiction to determine whether Petitioner has exhausted Petitioner's administrative remedies with regard to any claims arising under laws other than the IDEA.

Conclusions of Law

1. Petitioner is eligible as a student with a disability for special education and related services under the Individuals with Disabilities Act as a student with an emotional disturbance, specific learning disabilities, and other health impairment. 34 C.F.R. §§ 300.8 (c) (4)(9)(10).
2. Petitioner did not meet Petitioner's burden of proof that Petitioner meets eligibility criteria as a student with autism. 34 C.F.R. § 300.8 (a)(c)(1).
3. Petitioner failed to meet Petitioner's burden of proof that the school district's program and placement during the 2015-2016 school year did not confer the requisite meaningful educational benefit within the meaning of the IDEA. *Schaffer v. West*, 546 U.S. 49, 62 (2005); *Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292, n. 4, 293 (5th Cir. 2009).
4. Petitioner failed to meet Petitioner's burden of proof that the school district's proposed program and placement for the upcoming 2016-2017 school year is not reasonably calculated to confer the requisite meaningful educational benefit within the meaning of the IDEA. *Id.*
5. Petitioner is not entitled to an Independent Educational Evaluation at school district expense beyond the Independent Educational Evaluations Respondent already approved and/or funded. 34 C.F.R. § 300.502 (b) (1).
6. Petitioner did not meet Petitioner's burden of proving the need for residential placement for educational purposes. Residential placement is not the least restrictive environment for Petitioner at this time. 34 C.F.R. § 300.114 (a); 19 Tex. Admin. Code § 89.61; *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d at 300-301.
7. Petitioner's claims related to the enforcement of the hearing officer's orders in a prior due process hearing fall within the jurisdiction of the state educational agency and are therefore

dismissed as outside the hearing officer's jurisdiction. *34 C.F.R. § 300.151(b) (1); 19 Tex. Admin. Code §§ 89.1150 (a) (6); 89.1195 (e) (5) (A)-(E) (6) (A) (7).*

8. Petitioner's claims that arise under any law other than the Individuals with Disabilities Education Act are dismissed as outside the hearing officer's jurisdiction. *34 C.F.R. §§ 300.503; 300.507.*

ORDERS

Based upon the foregoing findings of fact and conclusions of law it is therefore **ORDERED** that Petitioner's requests for relief are hereby **DENIED**.

It is further **ORDERED** that any and all claims arising from the enforcement of the Decision of the Hearing Officer in the prior case under Docket No. 163-SE-0215 are hereby **DISMISSED** as outside the hearing officer's jurisdiction.

It is further **ORDERED** that any and all claims arising under any law other than the Individuals with Disabilities Education Act are hereby **DISMISSED** for want of jurisdiction.

All other relief not specifically stated herein is **DENIED**.

SIGNED the 29th day of July 2016

/s/ Ann Vevier Lockwood

Ann Vevier Lockwood

Special Education Hearing Officer

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