

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT and PARENT	§	
	§	
v.	§	HEARING OFFICER FOR THE
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

**AMENDED DECISION OF HEARING OFFICER**

Petitioner, \*\*\* (“Student”), by next friends, \*\*\* and \*\*\* (“Parent”), filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The complaint was received by the Texas Education Agency on August 6, 2015 and assigned to this hearing officer. The Respondent in the complaint is Houston Independent School District, (“District” or “Respondent”).

At all times during the proceedings in this matter, Mark Whitburn and Sean Pevsner, attorneys, represented Petitioner. Hans Graff, attorney, represented Respondent at all times. One or both parents attended the due process hearing at all times. \*\*\*, District’s Senior Manager Special Education was party representative for Respondent.

The parties have had ongoing disagreements regarding Student’s educational program. As a result of a previous due process hearing, District was ordered to fund Student’s attendance at \*\*\*, a private school. The following year, District agreed to fund Student’s attendance at \*\*\* for a second year. Another agreement was made for a third year of private school; after that agreement, Parent notified District that Student was to attend a different private school, \*\*\* (“\*\*\*”). At the end of the third year of private enrollment, Parent again rejected District’s proposed program for Student and filed the instant action.

**Petitioner’s Issues and Requests for Relief**

Petitioner alleged that Respondent failed to ensure Student a free, appropriate public education (“FAPE”) for the 2015-2016 school year and alleges the following issues:

1. Whether District failed to determine Student’s current and future goals and provide Student with an appropriate Individualized Education Program (“IEP”);
2. Whether District failed to provide Student with a proper Behavioral Intervention Plan (“BIP”);
3. Whether District denied Petitioner’s request for an independent Functional Behavior Assessment (“FBA”);
4. Whether District lacks a Board Certified Behavioral Analyst (“BCBA”) on its staff;
5. Whether District has provided its personnel who will work with Student during the 2015-2016 school year with autism-specific or Student-specific training;
6. Whether, on May \*\*\*, 2015, District failed to collaborate effectively with Petitioner and Parent; and

7. Whether District failed to place Student in the least restrictive environment (“LRE”) by indicating placement in a Structured Learning Class with a one-on-one paraprofessional.

Petitioner requested the following relief:

1. An order directing District to pay for private placement for Student;
2. Alternatively, an order directing District to do the following:
  - a) pay for an independent FBA to be performed by an expert of Parent’s choosing prior to Student’s enrollment in District;
  - b) create an appropriate BIP for Student based on Student’s unique needs prior to Student’s enrollment in District;
  - c) provide autism-specific and Student-specific training to all District personnel who will work with Student during the 2015-2016 school year prior to Student’s enrollment in the District; and
  - d) employ a BCBA to monitor Student’s behavior and implement the BIP while Student is enrolled in District.
3. Any and all relief that the hearing officer deems appropriate or which Student’s experts and evaluators recommend.

### **District’s Counterclaim**

Respondent argues that it has no responsibility to conduct an evaluation or re-evaluation of Student because Student was parentally-placed in a private school located outside Respondent’s geographical boundaries. Respondent requests that if a determination is made that District has a responsibility to conduct an evaluation for Student, it then counterclaims the following issue: Whether Respondent’s FBA conducted in the last full individual evaluation (“FIE”) is an appropriate assessment and whether Parent is entitled to an independent FBA.

### **Findings of Fact**

Based on the evidence before this hearing officer, the following are findings of fact in the instant action. Citations to Joint Exhibits, Petitioner’s Exhibits and Respondent’s Exhibits are designated with a notation of “JX” “P” or “R” followed by the exhibit number. Citations to the transcript are designated with a notation of “T” followed by the page number.

1. Student is a \*\*\*-year-old child who resides within the geographical boundaries of the District. Petitioner is eligible to receive special education services from District under IDEA as a child with autism and speech impairment. P-10
2. Student has a robust vocabulary and reads at a high level. Student has difficulty with comprehension and making inferences. Student has difficulty with spontaneous language. Student has challenges with math concepts, calculation, along with written language. Student can communicate Student’s needs and wants, dress \*\*\*self and take care of Student’s toileting needs independently. Student is skillful in the use of \*\*\* in appropriate contexts. R-55, pg. 0852; JX-4, pg. 030; T-pgs. 22, 37, 526
3. Student is preverbal when requesting permission, commenting, initiating and responding. Student is able to use one word for greeting, calling (with prompts) and acknowledgement (with prompts).

Student's average phrase/sentence length is 5-6 words. Student consistently answers yes/no questions verbally and with head nods, but experiences difficulty with topic maintenance. R-55, pg. 0852

4. Student has difficulty inhibiting impulsive behavior and monitoring Student's own behavior or looking at the effects of Student's behavior on other people. Student likes routine, structure, and predictability. T- pg. 523; JX-12, pgs. 523-524
5. Student attended District's \*\*\* program, then was placed in \*\*\* in a structured learning classroom ("SLC"). Student left mid-year, then returned to District for \*\*\* and \*\*\* grades. In \*\*\* grade, Student attended District for about \*\*\*, and left District. Student enrolled in \*\*\*, a private school that has an applied behavior analysis ("ABA") program. In \*\*\* grade, Student attended District about \*\*\*, and left again. Student re-enrolled at \*\*\* in mid-\*\*\* of that year. T-pgs. 23-25
6. \*\*\* used a discrete trial method with Student. It is a one-on-one, fast-paced repeated task completion method used to change behavior and outcomes. A task is presented, if correct response is made, direct reinforcement is given. T- pgs. 334, 495, 639
7. In Student's \*\*\* grade year while attending District, Student was on grade-level with Student's peers in reading. Student's reading comprehension grade equivalent was \*\*\*. Student could identify characters in stories that Student read, but struggled with comprehension overall and answering questions that required Student to infer. With prompts, Student could listen to verbal instructions/questions. One of Student's goals was to help Student answer "who, what, where, when and how" questions. Student could identify grade level sight words, high-frequency vocabulary words, read simple sentences containing combinations of known words. In math, Student was on a \*\*\* level. In spelling Student was a \*\*\* level. Student could identify all letters of the alphabet as well as numbers. Student required verbal prompts and physical assistance to initiate proper pencil grasp. Student required occasional verbal prompts for letter formation as well as size and spacing of letters and words. Student could count by 1's, 5's, and 10's, and identify coins. Student was able to follow a visual schedule within the context of the group. Student could name numerals in sequence and read a calendar using days, weeks, and months. Student could observe and identify patterns including seasons, growth, day and night and predict what happened next. Student could share items when prompted and parallel play with peers. Student could follow one-step directions. With verbal prompts, Student could clean up an area following an activity. Student could sit at a table for 7-10 minutes. R-45, pg. 0470; R-49, pg. 0578; R-50, pg. 0597; T-pgs. 612-613, 619, 626
8. In \*\*\* grade, District worked on social skills goals to help Student learn to initiate interaction both with the teacher and teacher assistants and Student's peers. With prompts, Student cleaned up

following an activity. Student followed one-step directions. Student could identify characters in a story. Student had more difficulty when working in a group setting. T-pgs. 611-615

9. Based on \*\*\* reports, at the end of Student's \*\*\* grade year, Student could read \*\*\* grade text accurately, and with prompting Student could answer one explicit and one implicit question about what Student read. Student was learning \*\*\* grade spelling words. Student could add and subtract single digit numbers independently. Two digit addition and subtraction were emerging. Student identified states on a map. Behavioral concerns included difficulty in maintaining attention to task, difficulty understanding and interpreting verbal and non-verbal social cues, and difficulty with self-regulation. Student's behaviors also included \*\*\* and leaving assigned areas. R-54, pgs. 0759-0807
10. At the beginning of \*\*\* grade, based on \*\*\* reports, Student continued to read \*\*\* grade level sight words, high-frequency vocabulary words and could read \*\*\* grade chapter books with accuracy. Student continued to be able to answer 1 explicit and 1 implicit question about what Student read. Student's math addition and subtraction skills continued as earlier reported. As of September \*\*\*, 2013, based on Assessment of Basic Language and Learning Skills ("ABLLS"), Student had progressed with increased goals in the use of visuals to replicate a pattern, sort in categories, identify patterns, imitate motor movements, write by copying and tracing. Student progressed in 2 grooming goals. The data collected was based on performance with prompts and independence. JX-8, pg. 038
11. \*\*\* had a BCBA in the classroom. Student received an intense one-on-one applied behavior analysis ("ABA") program. Student attended physical education, spelling, and lunch with general education students at a neighboring \*\*\*. T-pg. 25-28
12. In \*\*\* grade, Student enrolled in \*\*\*. \*\*\*, Anxiety, Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder, and Autism Spectrum Disorder. Its methodology is not ABA although there is a BCBA on staff. At first, Student was in a class of 6 children and 3 instructors, called \*\*\* ("\*\*\*"). At mid-year, \*\*\* changed the arrangement and Student was in a classroom of 4 children to 2 \*\*\*. All children in Student's class were on the autism spectrum. At the time of hear, Student was again in a 6:3 classroom. P-21, pg. 114; R-85, pg. 1385; T-pg. 35-36, 40-41, 47-48, 85-86
13. \*\*\* has two programs. \*\*\* program has children who need more intensive intervention. \*\*\* program has children that are able to handle a more complex environment. \*\*\*'s \*\*\* program focuses on four goals: self-regulation awareness, executive functions, relationship development and academic/professional competence. Student is in the \*\*\* program. P-21, pgs. 254-255; T- pgs. 233-236
14. In February, 2015, the Oral and Written Language Scales, Second Edition was administered. It reflected Student's listening comprehension level as comparable to a child of age \*\*\* years, \*\*\*

- months. Student's oral expression level scores were comparable to a child of \*\*\* years, \*\*\* months. Student demonstrated excellent verbal memory skills as evidenced by Student's \*\*\*. Student's knowledge of language was probably from rote memorization. P-21, pg. 116
15. Student's behaviors include \*\*\*. When Student doesn't want to go or do what is requested of Student, Student either \*\*\*. This is called \*\*\*. For Student, \*\*\* is when Student \*\*\*. The function of both behaviors is to escape from a non-preferred task, and to a lesser extent, self-stimulatory. P-10, pgs. 25-26; R-55, pgs. 0851-0852; T-29
  16. \*\*\* focuses on self-regulation and social skills. \*\*\* regularly sends what is called "\*\*\*\*." These notes focus on the challenges that are being addressed at that time. The school later sends a celebration type note that points to positive things and Student's progress. P-20, pg. 97; T-pg. 37-38
  17. \*\*\* develops what is called a Treatment Plan for Student on a quarterly basis. For Student's \*\*\* quarter 2015, four core goal areas were addressed: self-awareness and self-regulation, relationship development, executive functions, and academic competence. P-20, pgs. 133-165
  18. In \*\*\* grade at \*\*\*, Student was on a \*\*\*-\*\*\* grade level in reading and language arts, social studies, and science and health. Student was on grade level \*\*\* in handwriting, and \*\*\* level in mathematics. P-21, pgs. 153-165
  19. \*\*\* collected data to reflect Student's behavioral progress. \*\*\* reported Student's academic progress in the form of comments to Student's treatment plan. P-14-16; JX-10, pgs. 102-108
  20. During Student's \*\*\* grade year at \*\*\*, Student's academic goals were essentially the same as the goals developed for Student by District when Student was last enrolled. From \*\*\* through the 2014-2015 school year, Student worked on reading and answering "wherever" questions and identification of elements of a story. During the same time period, Student worked on printing legibly, spacing letters and words and sentences appropriate. In math, Student worked on the same or similar goals. P-21, pgs. 153, 155; R-41, pg. 0367, 0371; T-pgs. 250-253
  21. \*\*\* reflects a child's progress as follows: M: mastered (observed 80% of the time); W: working (observed 40% of the time); Dv: developing (observed less than 40% but greater than 10% of the time); and NS: not seen (observed less than 10% of the time). Progress is also reflected in a "comments" section of \*\*\*\*'s quarterly reports. P-21, pg. 165; T-pgs. 246-247
  22. During \*\*\* grade, Student mastered two objectives in social studies/social skills: (1) provide personal information about \*\*\*self and (2) recognize the responsibilities of specific occupations in the community. JX-10, pg. 105
  23. During the \*\*\* quarter, \*\*\* grade, Student was observed 40% of the time printing legibly and spacing letters, words, and sentences appropriately, and using scissors with appropriate grasp and opposite hand to stabilize and turn paper. In science, Student received a W on one objective:

identifying Student's surroundings and exploring by using the five senses. The remaining objectives in all other academic subjects were shown as developing, i.e., observed less than 40% but greater than 10% of the time. Student was shown to be developing all year long in speech/language and occupational therapy. P-21, pgs. 153-165.

24. During the 2014-2015 school year at \*\*\*, the following accommodations and modifications were made: decreased fluorescent lighting, reduced distractions in the environment, integrated technology, student-teacher ratio of 2:1, class interactive schedule, organizational checklists, provision of breaks, non-verbal and verbal organizational strategies, differentiated instruction, visual teaching strategies, kinesthetic teaching strategies including manipulatives and hands-on activities, guided dyads and group lessons to aide communication and interaction with peers/adults, sensory integration practice, emphasis on personal responsibility, and consistency of expectations and redirection. P-10, pg. 4; P-21, pg. 166; R-55, pg. 0851
25. \*\*\*'s BCBA targeted Student's behaviors and develops positive behavioral supports such as a token system. For Student, \*\*\* took data on 20-minute intervals. If Student neither \*\*\* nor \*\*\* during that time, Student was given \*\*\*. Student gathered \*\*\* throughout the day that Student used to work \*\*\*. At the end of a day, depending on the number of \*\*\* Student got, Student could \*\*\* as a reward. R-84, pgs. 1330-1334; T-56
26. In December, 2014, \*\*\* conducted Student's FBA. \*\*\* targeted \*\*\* and \*\*\*, behaviors that Student used to escape or avoid a task, or possibly for access to tangible items and/or self-stimulatory (provision of an opportunity to \*\*\* or get movement). The assessment indicated that early warning signs of Student's \*\*\* behavior were: looking "zoned out," \*\*\*, or protesting. Early signs of \*\*\*, in addition to those listed for \*\*\*, were \*\*\*, poor posture and moving off of chair. Antecedents were transitions, especially from preferred to less preferred activity, difficult or less preferred tasks, finishing a task before Student's peers, waiting for the next activity, activity and noise in the classroom. The assessment reflected teaching replacement behaviors such as: communication chart with written scripts; role-play, faded prompts to read communication chart, requesting breaks, \*\*\*, more time, stop and no, and requesting items, walks or \*\*\*. The FBA included a transition/wait plan whereby Student chose an item such as \*\*\* during transition. When the new activity began, the \*\*\*. \*\*\* and Parent saw improvement following initiation of the FBA suggestions, particularly the transition/wait plan and the communication chart. By the end of February, 2014, the percentages of \*\*\* reduced from 67% to 54% and \*\*\* reduced from 64% to 40%. Student's \*\*\* increased. P-21, pgs. 31-32, 43, 46, 52, 55, 59, 193-194

27. In February, 2015, Parent completed a medical evaluation questionnaire for \*\*\* (“\*\*\*”). In response to a question regarding school plans for the 2015-2016 school year, Parent indicated an intention to continue at \*\*\*. JX-9, pgs. 074-081
28. Results of the developmental testing at \*\*\* reflected Student’s abstract language ability is consistent with a \*\*\* year-old child. Student’s concrete language ability was consistent with an \*\*\* year-old child. The report indicated that Student “continues to demonstrate expressive language that is solid at a \*\*\* y/o level with some scatter upward at times.” Student correctly named \*\*\* and \*\*\* grade sight words, but could only answer 2 of 7 concrete questions asked of Student about what Student read when reading a \*\*\* grade paragraph, calling the words at a mid- \*\*\* grade speed. Student correctly answered single digit addition problems. Student exhibited much-reduced eye contact for someone with even a \*\*\* year-old language ability level. Student made no attempt to connect with another individual except to get what Student wanted. Student used \*\*\*. JX-9, pgs. 079-080
29. District conducted a full, individual evaluation (“FIE”) of Student in February, 2015. The evaluation results reflected that Student displayed characteristics of a child with an autism spectrum disorder. Student exhibited a difficult time engaging in direct reciprocal social interaction with the examiner. At home, Student has difficulty noticing social cues and doesn’t always respond to others. Student experiences difficulty using verbal and non-verbal communication appropriately to initiate, engage in and maintain social contact. Student has difficulty \*\*\* appropriately. Regarding repetitive patterns, Student uses \*\*\*. In addition, Student \*\*\*. The FIE also concluded that Student has a communication disorder that adversely affects Student’s educational performance. JX-12
30. District’s FIE evaluator made the following recommendations: daily schedule reflecting minimal unstructured time; preparation for changes in routines; minimize unpredictability in routine or activity; interpret behavioral breakdowns as breakdowns in predictability, structure, and routine; as much as possible, incorporate Student’s own routines and rituals into Student’s plan. JX-12, pg. 161
31. District used the Kaufman Test of Educational Achievement, Second Edition (“Kaufman 2<sup>nd</sup>”) to assess Student’s achievement. The Kaufman 2<sup>nd</sup> is a norm based assessment that measures a child against the normed population. It confirmed that Student is in the average range of letter and word recognition, nonsense word decoding, decoding composite, word recognition fluency and decoding fluency. Student is below average in reading comprehension and phonological awareness. Student is in the lower extreme range in math concepts and applications, math computation, and written expression. P-24, pgs. 1-3; T-pgs. 526-529, 544-545
32. The 2015 FIE included recommendations for intervention techniques for use at school and home: rewards to shape behavior, teach Student certain ways of talking or thinking to \*\*\*self; avoid language that Student might misunderstand such as sarcasm, confusing figurative speech; work to

break down and simplify abstract language and concepts; avoid criticism; provide statements of approval; consistently reinforce all spontaneous or requested behavior involving work, movement, appropriate conversation, projects, discussion and participation; avoid physical isolation; seat near teacher; request eye contact and appropriate body posture; shortened assignments; frequent breaks; explicit, didactic teaching strategies for aid in “executive function” areas such as organization and study skills; visual examples of concepts; pre-teach vocabulary when possible; provide pictures of vocabulary words; teach with hands-on activities as much as possible; among others. JX-12, pgs. 161-162

33. District’s licensed specialist in school psychology (“LSSP”) conducted a FBA as part of her FIE. She conducted an antecedent-behavior-consequence analysis with data gathered by \*\*\*. It included interviews, observations and completion of the Functional Analysis Screening Tool and Durand’s Motivation Assessment Scale. The LSSP determined a target behavior to be \*\*\* for escape from non-preferred tasks and to a lesser extent self-stimulatory on average \*\*\* times per day. A second target behavior was \*\*\* at a frequency of \*\*\* times a day. The function of the behavior was to escape non-preferred tasks and, again to a lesser extent, self-stimulatory. The LSSP suggested reinforcers such as visual schedule, preparation for changes in routines, consistent, structured and predictable classroom routines, and continued use of \*\*\*. The LSSP recommended teaching verbal meditation so that Student could talk \*\*\*self through things by the use of stories. JX-12, pgs. 155-156; R-55, pg. 0884; T-pgs. 532-534, 541
34. District observed Student monthly while Student attended \*\*\* and \*\*\*. R-85, pgs. 1364-1385; T-pgs. 468-469
35. Prompt dependency is when a child requires an adult to be next to Student and to prompt Student to do and to stop doing anything. It is the inability of a child to initiate things independently and move through a task without being prompted to do so. Student is very prompt dependent. Student requires a person to tell Student to begin a task and to take the next step in that task. T-489
36. In preparation for Student’s return to District, the parties met for an ARD meeting in May, 2015. Based on the FIE and \*\*\*’s reports, District proposed goals and objectives in reading/language arts, science, social studies, social skills, math, health, vocational, behavioral, and speech/language. For the academic goals and objectives, required modifications were: prerequisite skills instruction, shortened tests/assignments; and simplified language/vocabulary. P-10, pgs. 7-14; R-55, pgs. 0854-0861
37. In addition to the academic, behavioral, and speech goals and objectives, District proposed several associate goals focused on Student’s areas of need that included solving one and two step problems in addition and subtraction, making inferences, behavioral redirection/crisis intervention,

completion of non-preferred tasks, developing conversation with peers and adults, cooperative social play and requesting assistance or asking for a break, among others. P-10, pg 18; R-55, pg. 0862-0865

38. District proposed the following student to staff ratio: Acquisition/learning new information, the ratio would range from 1:1 to 1:3; Fluency/information learned, increase speed and accuracy, the ratio would range from 1:1 to 1:4; and for Maintenance/preserving what has been learned, the ratio would be 1:4 to 3:10. P-10, pg. 21; R-55, pg. 0868
39. District proposed a plan to assist Student's reintegration into its public school. The plan for Student included \*\*\*, opportunities for Student to visit the teacher and campus, along with an invitation to attend a \*\*\* called \*\*\*. The \*\*\* is for children in the structured learning class. For Parent, the plan included tours of SLC classrooms in March and April, and introduction of \*\*\*. P-21-pg. 90-91; R-55, pgs. 0898, 1428
40. The May \*\*\*, 2015 ARD committee developed a Behavior Support and Intervention Plan, referred to in this decision as a BIP. The BIP indicated that Student responds to instruction and redirection with visual and verbal prompts in the classroom and on campus. Student required frequent reminders to stay seated and remain on task. Student responded well to \*\*\* for each task completed. R-55, pg. 0871-0874
41. The May BIP found Student's challenging behaviors to be off task, emotional outbursts/tantrums, leaves assigned area, noncompliance, negative physical, and other behaviors such as inappropriate verbal talk (\*\*\*) and touching by grabbing, hitting, and hugging. R-55, pg. 0871
42. The BIP noted that effective positive supports included verbal prompting, corrective feed back, reduction of number of directives, preferential seating and proximity control, behavior chart, visual prompt/cue/signal, counseling or conferencing, home school log, teach/establish clear rules, written or visual schedule, token point or level system, provision of choices, and removal of distracting materials. R-55, pgs. 0871-0872
43. Effective rewards in the BIP included private and public praise, positive note sent home, reward system, tangible rewards such as \*\*\* and earned activities such as \*\*\* or \*\*\*. Effective consequences for Student included reprimand/warning, nonverbal cue, loss of incentive or privilege, and failure to earn reinforcers/rewards. R-55, pg. 0872
44. At the May ARD meeting, Parent informed District that \*\*\* for Student. District's proposed IEP included \*\*\* as a reward. The ARD committee made no changes to the IEP in response to Parent's concern. R-55, pg. 0871-874; T-52-54
45. District's BIP addressed two behaviors: (1) leaving an activity that Student did not want to do and (2) \*\*\* \*\*\* \*\*\* when Student participated in a non-preferred activity. The BIP identified the

functions of the two behaviors: delay or avoid a task, communicate, sensory need or expression of frustration/anger. R-55, pgs. 0872-0873

46. To address \*\*\* \*\* from an activity, the BIP called for a reinforcement schedule with a menu of rewards, visual schedule, verbal, visual and physical prompting. Student was to be taught the strategies to use and replacement behaviors such as first/then chart, listening attentively, actively participating in assignments. Consequences included loss of reinforcements or choices in activities. Staff was to tell Student to take deep breaths and say “stop” with a hand sign. R-55, pg. 0872
47. To address Student’s \*\*\*, the BIP called for a reinforcement schedule and token reward system with choices of items on a menu and removal of items that may contribute to \*\*\* such as \*\*\*. Student was to be taught to ask for assistance and request a break. As reinforcement, Student would receive rewards on a classroom reinforcement system. Student would lose privileges as a consequence. New baseline data in the new environment would be collected, and the plan would be reviewed daily. The data would be reviewed weekly to determine if revision were required. R-55, pg. 0873
48. Student’s IEP included 30 minutes of direct speech/language as a related service. Student’s schedule of services reflects that all subjects would be taught in the special education location. Student would be accommodated, as follows: give short answer or multiple choice questions, receive multiple or frequent breaks, visual cues, use of manipulatives, positive reinforcement, warnings before changing activities, follow routines or schedules, be offered choices, use key words; modified length, type or complexity of expected oral responses, and individual or small-group administration. R-55, pgs. 0875-0876
49. The ARD committee recommended the structured learning class for Student with a 1:1 teaching assistant. Student would spend \*\*\* hours in general education (such as PE) and \*\*\* hours in special education per day. Student would attend \*\*\*, a \*\*\*. R-55, pgs. 0880, 0883; T-pg. 319
50. At the time of hearing, children in the \*\*\* SLC class go to \*\*\*, computer, P.E., and a class called \*\*\* with general education children. T-pg. 321
51. The May 2015 proposed IEP determined that Student needed the use of daily schedules that reflected minimal unstructured time and active engagement in learning activities. The reason for minimal unstructured time was due to Student’s behaviors exhibited in unstructured settings, Student’s difficulty with effective transition between activities and with initiating tasks independently with minimal prompting and Student’s need to have a visual daily schedule. The proposed IEP included naturalistic teaching to identify opportunities within Student’s schedule during recess, field trips, and lunch. Other teaching strategies included structured tasks designed to maximize independence using visual supports and organization, work systems with specific visual

schedule specific to Student, and visual schedules explaining the order of events across specified time. The IEP included consistent classroom routine and expectations that are visually presented; prompting and prompt fading to enable completion of a goal and decrease the level of support and increase independence. Reinforcement of correct responses and manipulating the antecedents and consequences of the behavior. R-55, pg. 0869

52. The proposed IEP included social skills supports and strategies as follows: social stories, visual supports, clear expectations, \*\*\*, role-playing, and direct instruction. It included positive behavior support strategies such as a token reinforcement system with a menu of preferred items or activities. Prompting would be provided as needed, along with visual cues and directives, antecedent manipulation, replacement behaviors, and social reinforcers. Data based decisions would be used when adjusting reinforcement. R-55, pg. 0868
53. District does not have a BCBA on the campus that Student would attend. District has a behavior specialist that provides support to the autism classes upon request. District's autism itinerant teachers provide more consistent support to the autism teachers. They provide resources, help the teachers with materials, preparation, and help the general education teachers and administration in understanding autism and how to support people with autism on their campus. R-55, pg. 0886
54. At the request of Parent, District agreed to pay for an independent educational evaluation ("IEE"). The report was completed in November 2015. The independent evaluator observed Student at \*\*\* on two occasions, one during \*\*\* and the other in October 2015. The evaluator observed Student demonstrated \*\*\* during both observations. A keyboard and a peer's \*\*\* during \*\*\* time distracted Student, and Student required redirection throughout the 15-20 minute period. Upon receiving reinforcement of several minutes of \*\*\*, Student did not want to stop and pushed against the BCBA and blocked Student's access to \*\*\*. When greeted by a staff member, Student established brief eye contact. JX-13, pgs. 164-166
55. Results of the independent evaluation assessment instruments indicated that Student demonstrate an intellectual strength in long-term memory with below average abilities note in crystallized intelligence, short-term memory and processing speed. Significant deficits were noted in the areas of fluid reasoning and visual processing. Academically, deficits in all areas were noted, including mathematics, written expression, reading fluency and reading comprehension. Student exhibited difficulties with comprehension of instructions and initiating work independently. JX-13, pgs. 172-173
56. Among the recommendations of the independent evaluator were: highly structured academic setting with a 1:1 ratio for acquisition of skills, a 1:2 ratio for skills documented at the fluency level, and 1:3 for maintenance and generalization of skills; classroom environment with few distractions and

significant use of visual supports; frequent breaks throughout the day; and increased opportunities for motor movement and sensory stimulation. The evaluator pointed out that Student requires 1:1 teacher support to maintain attention for approximately 10 minutes during an activity; thus she recommended blending 1:1 intervention with opportunities for practice with 20-minute segments.

JX-13, pg. 173

57. Acquisition of skills means practicing until one has gained a particular skill. Then the skill is practiced with a different person or group, called fluency. After achieving fluency, the skill is then practiced with more people and/or in a different environment, called maintenance and generalization. T-pgs. 166-169
58. When a child shifts from more restrictive to less restrictive environments, the child's behaviors are expected to increase. T-pgs. 206-208
59. The independent evaluator also recommended: break down information into smaller chunks, frequent check for understanding of information; consistent check on Student's progress to ensure correct completion of work; additional time to complete assignments; avoidance of repetitive copying and repetitive work; repeated instruction; social skills training at a minimum of 20 minutes per day to address initiating and maintaining social interactions as well as understanding others' thoughts and perspectives in real social environments. She recommended that social skills training incorporate social stories, visual support, and or cartoons, as needed. She recommended provision of well-developed and well-executed behavioral support in the classroom and throughout the educational environment developed and monitored by a BCBA, and extended year services throughout the summer with no more than two weeks between breaks. JX-13, pgs. 170-175
60. The growth scale value ("GSV") is the best measure of growth of a standardized assessment. In District's 2012 assessment, Student's GSV in letter and word recognition was \*\*\*. On District's Kaufman Test of Educational Achievement, 2<sup>nd</sup> Edition given in November 2014, Student's GSV in letter and word recognition was \*\*\*. In reading comprehension, Student's GSV rose from \*\*\* to \*\*\*; in math concepts and applications, the GSV rose from \*\*\* to \*\*\*. In math computation, the GSV stayed the same. R-36; T- pgs. 562-564
61. GSV's can't be compared across editions such as the Kaufman 2<sup>nd</sup> Edition and the Kaufman 3<sup>rd</sup> Edition. Comparisons can be made of standard scores and percentiles. On standard scores, a child must improve in the number of raw scores to remain on the same level. Then, one must estimate if a raw score improvement is sufficient to reflect growth. T- pgs. 566-567
62. The following table reflects Student's standard scores in the Kaufman 2<sup>nd</sup> and Kaufman 3<sup>rd</sup> (given by the independent evaluator given approximately one year after District's Kaufman 2<sup>nd</sup>. P-24; JX-13, pg. 171; R-36, pg. 0334; T-566-568

Sub-Test	Kaufman 2 <sup>nd</sup> 2014/District's FIE	Kaufman 3 <sup>rd</sup> 2015/Indep. Eval.
Letter & Word Recognition	***	***
Reading Comprehension	***	***
Silent Reading Fluency		***
Math Concepts & Applications	***	***
Math Computation	***	***
Math Fluency		***
Written Expression	***	***

63. In preparation for having Student come to her classroom at District, the SLC teacher visited \*\*\* to learn what Student was doing so that she might use that information upon Student's enrollment at District. The SLC teacher had no input into the preparation of Student's IEP or Student's BIP. T-pg. 280-282
64. Children in District's SLC classroom generally did three to four academic activities, then received a reward, then did three to four activities, then received a reward. Activities were performed in 30-minute blocks of time. R-55, pgs. 0927-0928; T-pg. 304
65. Student's private BCBA testified that ABA should be used in a supportive role. In planning transition, student to teacher ratios should be specified for the different activities. T-pgs. 346-357, 392
66. Students in the SLC classroom at \*\*\* have exposure to general education students in the cafeteria and in ancillary, \*\*\*, classes. The SLC teacher has opportunities to take the class into a general education classroom. T-pgs. 300, 442, 451
67. District uses the Unique Curriculum ("Unique") in its SLC classrooms. Unique is tied to the Texas Essential Knowledge and Skills ("TEKS"). A child's skills can be tracked in the program. Fluency tests are built in to the program. A child's frustration level can be determined through use of the program. Pre-tests and post-tests are administered monthly. Unique is used to present grade level information to a child at the child's current level. It identifies gaps in a child's academic skills and targets those areas. T-pgs. 446-447,
68. Itinerant teachers go to autism classrooms on a regular basis and provide the support, on-the-job training, student specific support to the teachers. They provide resources, help the teachers with materials, preparation, and help the general education teachers and administrators to understand autism and how to support people with autism on their campus. When a campus makes a student-specific request, the itinerant teacher assigned to that campus responds. T-pg. 464

69. At the time of hearing, the SLC teacher at the school where Student would attend in District has \*\*\* hours of ABA clinical work. She had \*\*\* children and \*\*\* teacher aides in the SLC classroom. T- pg. 630

### **Standard of Review**

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate services as necessary to provide a FAPE. The educational program must be meaningful, and reasonably calculated to produce progress as opposed to *de minimis* advancement. 20 U.S.C. § 1412(a)(1); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5<sup>th</sup> Cir. 1989).

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005). This includes the burden of proof with regard to harm or a deprivation of educational benefit. The law does not require that the student's educational potential be optimal or "maximized."

The school district's plan is presumed to be appropriate. *R. H. v. Plano Indep. School Dist.*, 607 F.3d 1003 (5<sup>th</sup> Cir. 2010). The party attacking the plan bears the burden of proof, by a preponderance of the evidence, of demonstrating why it does not comply with the IDEA. *Id.* at 1010-11.

There are four factors that can serve as indicators of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA: 1) Is the educational program individualized on the basis of the child's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated? *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997).

### **Discussion**

#### **District's Proposed IEP for Student**

Parent argues that District was unprepared for Student's re-entry to its school system. This is based partly on statements from District personnel that once Student returned to District, Student's reading levels would be assessed and Student would have reading books on Student's level. While Parent believes this reflects that District was unprepared for Student, I disagree. District proposed the reading goals based on information from \*\*\* and the current FIE. To assess the Student when Student enrolled is good practice so

that materials are selected at Student's level. At the end of a year, the teacher can then assess Student again to determine the amount of growth Student made.

Parent further argues that District was unprepared for Student because the FBA was based on data from 2012 and information gathered from \*\*\*. Parent ignores the FBA that the LSSP conducted in preparation for Student's return to District.

Parent argues that it is inappropriate to use \*\*\* access as reinforcement because she believes that access to any electronic device of this kind will dysregulate Student. She argues that \*\*\* uses computer in a lab setting. However, District personnel who observed Student at \*\*\* saw a computer in Student's classroom. Further, at \*\*\*, Student's good behavior is reinforced with \*\*\* at the end of the day.

In Texas, for children eligible under the autism classification, certain strategies must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP. One strategy that must be considered is suitable staff-to-student ratio *appropriate to identified activities* and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example: (A) adaptive behavior evaluation results; (B) behavioral accommodation needs across settings; and (C) transitions within the school day. 89 Tex. Admin. Code §89.1055(e) *emphasis added*. The document used in Texas for this purpose is called the Autism Supplement.

One of Parent's concerns with the proposed IEP is the staff to student ratio in the Autism Supplement. The IEP lists three learning levels: acquisition, fluency, and maintenance. The staff to student ratio for acquisition of skills ranges from 1:1 to 1:3. For fluency, the range of ratio is 1:1 to 1:4. For maintenance, the range is 1:4 to 3:10. When questioned about the meaning of this at hearing, District staff gave varying explanations. When explaining the range for acquisition of skills, District's Program Specialist described the range as aspirational. In other words, when a child is learning a skill, at first Student may need 1:1 ratio. She described the table to mean that District starts at a 1:1 ratio and tries to raise the ratio to 1 teacher to 3 children.

District's Manager for the Autism Team explained that a 1:1 ratio for Student would be for acquisition of new information, unless it was a preferred subject or something that is easier for Student. In that case, the ratio could be 1:3. The LSSP and \*\*\* agreed with that explanation. The LSSP did not know which skills Student would require 1:1 or 1:3. The IEP does not identify the activities that required a 1:1 ratio and which activities required a 1:3 ratio. Without that piece of information, the teacher or a substitute teacher would be hard pressed to deliver appropriate services to Student. Parent needed the information to effectively participate in the decision-making process.

\*\*\*, Student's private BCBA testified that if the staff to student ratio gives a range, it would be helpful to know the process for moving from one ratio to another. While she agreed that staff to student ratio could be 1:3, more information is necessary to make the determination. She testified that District's proposed ratios could very well be appropriate if the IEP identified the activities or skills that required each ratio.

Another concern of Parent is the assignment of a 1:1 aide for Student. For two years, Student was educated on a 1:1 basis at \*\*\*. At the conclusion of the two years, Parent testified that Student had progressed sufficiently to move Student to a higher staff to student ratio. Then, Student was enrolled at \*\*\*. The classroom had 3 staff members to 6 students. Parent was concerned that the assignment of a 1:1 aide for Student would be taking a step backward. She also believed that the ARD committee's assignment of a 1:1 aide was almost an after-thought at the committee meeting.

A review of the ARD document clearly indicates a discussion regarding a 1:1 aide to assist with Student's transition. The IEP states, "If an additional assistant is needed to support [Student], it will be provided." Ultimately, the committee recommended placement in the SLC with additional support of a 1:1 teaching assistant. The IEP sheds no further light on the subject. Consequently, one wonders if the 1:1 aide would be beside Student all day, only at the beginning of Student's transition to District, or for transition to general education classes. Who would make the determination as to when Student needed the support, and under what circumstances? Without knowing the extent of 1:1 assistance, Parent was hard pressed to participate in a meaningful discussion regarding the assignment of a 1:1 aide.

It is the 1:1 setting that Parent wanted to avoid when Student left \*\*\* and enrolled in \*\*\*. District staff members and the independent evaluator testified that the goal is to make children with autism more independent. The independent evaluator testified that one-to-one means that someone is "absolutely nonfunctional". Both District and the independent evaluator agreed that the use of a 1:1 aide can make a child more dependent such that Student would look to the aide for Student's every move rather than learning to initiate Student's actions. With that in mind, it becomes all the more important that an IEP gives directions as to the responsibilities of the aide such as when the services would be provided, whether it would be all day, part of the day, transitioning into District, or transitioning to and from general education classes. In other words, for what identified activities would the 1:1 aide be used?

Finally, District's Transition Plan is void of any plan to assist Student when school begins. The evidence indicates that transitions from one activity to another are difficult for Student. Transitioning from one school environment to another is all the more important upon Student's re-entry to \*\*\*. Other than showing Student the classroom and school prior to the beginning of the school year, there is no transition plan in place to assist Student in reintegrating into the daily life in the SLC classroom and ancillary classes.

### **District's Proposed BIP for Student**

There are no "...specific substantive requirements for the BIP contemplated by [the IDEA]." *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221*, 41 IDELR 146 (7th Cir. 2004), *cert. denied*, 543 U.S. 1009 (2004).

For a child with autism, Texas requires consideration of certain strategies in a document commonly called Autism Supplement. It describes the strategies that must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP. Positive behavior support strategies such as antecedent manipulation, replacement behaviors, reinforcement strategies and data-based decision are included. In addition, a BIP developed from a FBA that uses current data related to target behaviors and addresses behavioral programming should be considered. 19 Tex. Admin. Code §89.1055(e)

The ARD committee used current data from its FBA along with data and information from \*\*\* in the development of its BIP. The BIP focuses on two behaviors: \*\*\* and \*\*\*. For each targeted behavior, the BIP specifies antecedents such as reinforcement schedule, visual schedule, verbal, visual and physical prompting, token reward system, and removal of items that may contribute to \*\*\*. In regard to \*\*\*, it includes teaching behaviors through a reinforcement schedule, direct instruction of strategies to use and replacement behaviors such as first/then chart, listening attentively, actively participating in assignments. For the behavior of \*\*\*, the BIP includes token reward system, teach/reinforce replacement behaviors, and teaching Student to ask for assistance and request a break. Consequences include loss of reinforcements or choices. When positive behavior occurs, Student would receive rewards and praise. The BIP includes direction that staff can tell Student to take deep breaths and say stop through the use of a specific hand sign. The SLC teacher and teacher assistants would collect data, and evaluate the plan weekly to determine if revision of frequency of data collection and/or rewards needed revision.

Petitioner disputed that \*\*\* as an earned activity is appropriate. As reason for this, Petitioner argued that \*\*\* Student causes \*\*\*. However, the record shows that \*\*\* uses \*\*\* as rewards at the end of the school day. When Student has had a good behavioral day, Student is rewarded with \*\*\*. The time allowed is determined by the number of \*\*\* that Student has earned throughout the day for appropriate behavior and successful activities. Such reward appears to be successful at \*\*\*.

Petitioner failed to carry Petitioner's burden of proof that District's BIP is inappropriate.

### **Parent's request for FBA**

The parents of a child with a disability have the right to obtain an independent educational evaluation of the child if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must either file a due process complaint to request a hearing to show that its evaluation is appropriate or

ensure that an independent educational evaluation is provided at public expense. 34 C. F. R. §300.502.

District conducted an FIE that included a FBA. Parent disagreed with District's FIE and District granted an IEE psychological evaluation and speech/language/assistive technology evaluation on \*\*\*, 2015.

Among Parent's issues in the instant action is whether District denied Parent's request for an IEE-FBA. Parent testified that she wanted evaluations in all areas of Student's needs, specifically a FBA. District granted Petitioner's request for an IEE in other areas that it had evaluated. District argues that it has no responsibility to provide an IEE-FBA because Student is parentally placed in a private school outside District's boundaries. In light of the fact that District granted IEEs in other areas, to now argue it has no duty to provide an IEE/FBA falls short. However, District counterclaimed that its FBA was appropriate.

There is no generally-accepted definition of what constitutes a FBA. *Student v. Houston ISD*, 183-SE-0406. The general purpose of functional assessment of behavior is to provide the ARD committee with additional information, analysis, and strategies for dealing with undesirable behavior, especially when it is interfering with a child's education. The process involves identifying the target behavior; observing the child and collecting data on the target behavior, antecedents, and consequences. Following that, the process involves formulating an hypothesis about the cause or causes of the behavior and developing interventions to test the hypothesis, followed by collecting data on the effectiveness of the interventions in changing the behavior. *Independent School District No. 2310*, 29 IDELR 330 (SEA MN 1998).

District's LSSP conducted an antecedent-behavior-consequence analysis with data gathered by \*\*. The information included interviews, observations and completion of the Functional Analysis Screening Tool and Durand's Motivation Assessment Scale. From the data gathered, the LSSP determined target behaviors, antecedents to the behaviors, and recommended various intervention techniques. District's evidence is sufficient to find that the FBA conducted by District's LSSP is appropriate.

#### **BCBA on staff**

District does not have a BCBA on its staff. There is no requirement that a school district employ a BCBA.

#### **Autism-Specific or Student-Specific Training for Personnel Who Would Have Worked with Student During the 2015-2016 School Year**

At the time of the May 2015 ARD meeting, Ms. \*\*\* was to be Student's teacher. However, when the 2015-2016 school year began, she moved to a different position within the District. Although District presented testimony by the teacher that ultimately would have been Student's teacher, a hearing officer may consider only those services identified in the child's program at the time it is drafted. *R.E. v. New York City Department of Education*, 694 F.3d 167 (2d Cir. 2012), cert. denied (U.S. 06/10/13) (No. 12-1210).

Therefore, it is Ms. \*\*\*'s testimony that is considered.

At hearing, Ms. \*\*\* testified that she did not know Student. She visited \*\*\* one time to learn what things were being done for Student and determine if there were things that she could implement. She had no input in the preparation of Student's IEP or BIP. She had no ABA experience although she testified she uses some of its techniques.

District's proposed IEP included teaching strategies such as naturalistic teaching and prompt fading. At the hearing, the teacher could not describe naturalistic teaching and did not know about prompt fading. The evidence reflects that District failed to provide student-specific training to the teacher that was to be Student's SLC teacher and the main staff member that would work with Student.

### **District Collaboration with Parent**

Parent participated in the lengthy May 2015 ARD meeting. Parent asked many questions of the committee members and received answers to her questions. For example, in response to Parent's question regarding the determination of grade levels, the Program Specialist indicated that they were taken from \*\*\*'s progress notes. Discussion indicated that the grade levels were consistent with the results of the FIE. In response to Parent's comment that Student was reading \*\*\*, the SLC teacher indicated that she could use the books with Student once she had evaluated Student's level when Student arrived at \*\*\*. In response to a question about measuring objectives, the teacher confirmed that she presented a task, and took data on the objective. The block schedule used at the campus was explained to Parent.

Parent felt strongly that Student should not be allowed to use \*\*\* as a reinforcer. Although there was a suggestion that distractors could be removed from the room, the SLC teacher indicated that she needed \*\*\*. There was nothing further mentioned regarding Parent's concern.

Parent disagreed with some of the statements written in the IEP, and the Program Specialist said that the committee could reword the statement regarding physical blocking. Parent requested an occupational therapy evaluation and the committee agreed to conduct the evaluation once Student enrolled in District.

Parent was not denied the procedural opportunity to participate in the deliberations of the ARD committee. District committee members reached a different substantive conclusion from Parent. 34 C. F. R. §300.322.

### **Least Restrictive Environment /Structured Learning Class with a One-on-One Paraprofessional**

The IDEA requires District to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. Further, it requires that 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 regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C. F. R. §300.114(a)(2).

There is no dispute that Student requires a structured environment, low staff to student ratio, intermittent breaks, regular redirection and reinforcement. District offers a continuum of placements. The testimony supports the decision to place Student in the SLC, a class for autistic children. The main reason for that placement was the structure in SLC classes. The classroom that Student would have attended had stations for math, science, and reading, along with a place for relaxation. Each child had a place to keep Student's things and there was a section for the group. The classroom had a lower staff to student ratio.

Student would go out of the SLC classroom for PE, \*\*\* and other occasional opportunities to be with typically developing peers. At times, some general education students would come into Student's classroom and work with the SLC children. Opportunities existed for other times with non-disabled peers as a child progressed. District's recommendation of placement in the SLC classroom was the LRE for Student.

Petitioner argues that the assignment of a 1:1 aide makes placement more restrictive. At the heart of LRE is the emphasis on education of disabled children with non-disabled children as much as possible. It does not speak to a 1:1 aide in terms of LRE. In fact, the aide could be used to increase Student's time with non-disabled children. As above discussed, the IEP is void as to the purpose for the aide.

#### **FAPE**

Consideration of the indicators of whether Student's educational plan is reasonably calculated to provide the requisite benefits begins with the question of whether the educational program was individualized on the basis of the child's assessment and performance. District had recent evaluations regarding Student and information from \*\*\*, Student's current school. It developed a lengthy IEP with goals and objectives, numerous accommodations and modifications, positive reinforcements, Student's BIP was based on both \*\*\*'s and District's information and included positive behavior supports and reinforcement strategies. The program provided for speech therapy.

The IEP included ranges of staff to student ratios for the different levels of learning. The IEP did not discuss the activities that would be addressed at each ratio. Without a clear understanding of the staff to student ratios, those responsible for delivery of services would not have sufficient direction. Further, the assignment of a 1:1 aide without explanation of the aide's responsibilities is inappropriate. Again, those responsible for provision of services would be without direction regarding when and for how long the 1:1 aide would accompany Student. Petitioner needs tight structure throughout Student's school day and a predictable routine. Student needs to know what is going to happen next in Student's school day. The IEP does not meet Student's individual needs due to the lack of explanation regarding both the staff to student ratio ranges and the 1:1 aide assigned to Student.

Student's program would have been administered in the least restrictive environment. Student required much prompting and redirection in a low staff to student environment. The SLC is a structured

classroom, designed for students with autism. It has a low number of children. Student would have been with non-disabled peers for \*\*\* hours each day.

The testimony from District personnel reflected differing interpretations of the staff to student ratios that they placed in the autism supplement. The teacher that was to be Student's SLC teacher had no input in the preparation of the IEP or BIP. Further, the testimony showed that she had not had any training specific to the Student. She testified that she had not met Student. District has an autism team that supports its campuses along with itinerant teachers. A campus can request assistance when needed and the teacher had never made a request. The evidence presented supports a finding that the services would not have been provided in a coordinated and collaborative manner by the key stakeholders.

As above discussed, District's proposed program failed to precisely describe the staff to student ratios for Student, as well as how a 1:1 aide would be utilized. The teacher assigned to Student had little to no knowledge about Student and Student's needs. District personnel had different interpretations of the staff to student ratios such that services could not have been provided in a coordinated manner. The proposed IEP would not have provided positive academic and non-academic benefits for Student.

District's Transition Plan provides opportunities for Student to see the SLC classroom and tour the campus. It offers an invitation to what is called \*\*\*\*. It provides opportunities for Parent to meet District staff and view SLC classrooms. What it does not do is plan for Student's transition during Student's first days of attendance at District. Student is a child who needs to know what is going to happen next in Student's day. District acknowledges that changes can cause increased behaviors. District's Transition Plan contains no information as to how Student will be supported or what strategies will be in place to assist Student as Student adjusts to the new school.

### **Private Placement**

Parent requests an order compelling Respondent to pay for private placement. When determining if private placement is appropriate, one must look to see if the placement is essential for the child to receive an educational benefit and is primarily orientated toward enabling the child to obtain an educational benefit.

*Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286 (5th Cir. 2009).

\*\*\* is a school for children with disabilities including children with autism. The staff to student ratio is small. The focus is on four core areas: self-awareness and self-regulation, relationship development, executive functions, and academic competence. \*\*\*\*'s academic goals for Student were essentially the same goals and levels as District implemented when Student was last in its school, three years prior to hearing. Student's former teacher in District testified that three years earlier, they worked on the same goals as \*\*\* developed for Student in 2014-2015.

\*\*\* focuses more on behaviors and less on academics. Its staff takes data on Student's targeted behaviors to see if gains are made. There has been some improvement in Student's \*\*\* and \*\*\* behaviors.

There was no data presented to demonstrate gains academically. The \*\*\* head of school indicated that academic progress was reflected through notes. In almost all of Student's progress reports, Student was shown to be "developing" in Student's academic goals. "Developing" means Student was observed less than 40% but greater than 10% of the time. As an example, in the first three quarters of 2014-2015, Student was developing in the goal: Student will respond to who, what, when, where, and how questions. When a child is observed 40% of the time, Student is shown to be "working." To master a goal, a child must be observed 80% of the time. There is no individualized scale for Student. All students at \*\*\* are held to the same standard.

A comparison of District's 2012 achievement assessment with its 2014 assessment showed an increase in Student's growth scale values in letter and word recognition, reading comprehension, and in math concepts and applications. In math computation, the growth scale values stayed the same. When comparing the 2014 achievement assessment standard scores with the 2015 standard scores, there was a dip in letter/word recognition and negligible growth in math. In reading comprehension, Student's achievement level stayed the same.

Parent expressed a desire for Student to have opportunities to be with non-disabled peers. There are no typically developing peers in Student's \*\*\* classroom, and the school provides no opportunities for Student to be with non-disabled children.

District witnesses who observed Student during Student's \*\*\* grade year at \*\*\* testified that the \*\*\* classroom lacked structure, a cornerstone recommendation by both District and the independent evaluator. There were no visual supports on the walls or desks, and no clearly marked boundaries. District observers saw no transition cues, either verbally or through the use of cue cards. An observer testified that she saw \*\*\* staff reinforce inappropriate behaviors. Transition times were long, allowing the children to wander around the room. The same activity was done for all students. If a student finished early, Student had to wait for the others to finish.

Based on the evidence presented, I find that the private school, \*\*\*, is not essential for Student to receive an educational benefit and that it is not an appropriate placement.

### **Conclusions of Law**

1. Student is a child with a disability in need of special education and related services. Student resides within the geographical boundaries of Houston Independent School District.
2. Respondent's proposed IEP for the 2015-2016 school year was not appropriate. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).
3. Respondent's proposed educational program did not provide Student with a FAPE for the 2015-2016 school year. 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

4. Petitioner's private school is not appropriate for Student. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286 (5th Cir. 2009). *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
5. Respondent's proposed BIP is appropriate. *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221*, 41 IDELR 146 (7th Cir. 2004), *cert. denied*, 543 U.S. 1009 (2004); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
6. Respondent's proposed FBA is appropriate. Petitioner is not entitled to an IEE/FBA. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
7. Respondent is not required to have a BCBA on its staff. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
8. Respondent failed to provide personnel that would work with Petitioner with Student specific training. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
9. Petitioner failed to prove that Respondent failed to collaborate with Parent on May \*\*\*, 2015. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
10. Respondent's proposed placement was the LRE for Student. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

### ORDERS

After due consideration of the record, the foregoing findings of fact and conclusions of law, this hearing officer ORDERS that the relief sought by Petitioner is **GRANTED, in part**, as follows:

1. Within 10 school days of the date of this order, Respondent shall consult with Student's private BCBA, the independent evaluator, and Student's current private school to develop a transition plan for Student's return to District;
2. Within 15 school days of the date of this order, Respondent shall convene an ARD committee meeting to review Student's IEP including the transition plan discussed in paragraph #1. The ARD committee will review staff to student ratios and identify the activities that the staff to student ratios apply based on Student's needs. If a range of ratios is given, the committee shall specify how the range will be applied to the identified activities. The committee will consider the assignment of a 1:1 aide, and if a 1:1 aide is assigned, the committee will specify the responsibilities of the aide, including circumstances in which the aide will be with Petitioner. The committee will determine these issues in consultation with Petitioner's private BCBA. The purpose of the meeting shall be to

clarify the IEP to such degree that those who provide services, as well as Parent, have a clear understanding of Student's program;

3. Petitioner shall provide Respondent District twenty (20) school days written notice of the date Student will re-enroll in District;
4. So that District may prepare for Student's re-entry into its school, within two (2) school days following receipt of written notice of re-enrollment required in paragraph #3 above, Respondent will consult with Petitioner's private BCBA for the purpose of training all staff who would provide services to Student. The training shall be Student-specific, and include Student's IEP, BIP and implementation of each, transition, and autism as it relates to Student. The training shall occur prior to Student's re-entry date. Should any of such staff be absent from the training, Respondent shall ensure that the training is provided to the absent staff within 5 school days following the first training; the training shall be for no less than one and one-half (1 ½) hours in length; Should Petitioner's private BCBA be unable to conduct the training within the prescribed time, District and BCBA shall arrange the earliest date possible for the training. Respondent shall provide TEA and Parent written confirmation of attendance and trainings within 10 school days following each training held;
5. After Student has been enrolled in District for 18 weeks, at Parent's written request, District shall allow Petitioner's private BCBA to observe Student during the school day. The observation shall be no longer than one (1) hour. Following the observation, District's Manager for the Autism Team or her designee shall meet with the private BCBA to receive the BCBA's report. Following the meeting, the Manager or designee shall communicate with the Autism Team to consider the need for additional training; if training is needed, the team will arrange for a training session of District staff that provide services to Student, and shall notify Parent of the training session.

All other requests for relief are DENIED.

SIGNED on February 12, 2016.

\_\_\_\_\_  
/s/  
Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas

### **NOTICE TO THE PARTIES**

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §1415(i)(2).

DOCKET NO. 355-SE-0815

STUDENT § BEFORE A SPECIAL EDUCATION  
b/n/f PARENT & PARENT §  
v. §  
HOUSTON INDEPENDENT § HEARING OFFICER FOR THE  
SCHOOL DISTRICT § STATE OF TEXAS

**Synopsis**

- Issue Number 1:** Whether District failed to determine Student’s current and future goals and provide Student with an appropriate Individualized Education Program (“IEP”)  
**Held:** For the Petitioner; Respondent denied Student a FAPE  
**Citation:** 34 C.F.R. §§300.320 and 300.101; *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.* 200 F.3d 341 (5<sup>th</sup> Cir. 2000)
- Issue Number 2:** Whether District failed to provide Student with a proper Behavioral Intervention Plan  
**Held:** For the Respondent  
**Citation:** 34 C. F. R. §300.530 (f); *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
- Issue Number 3:** Whether District denied Petitioner’s request for an independent Functional Behavior Assessment  
**Held:** For the Respondent; Respondent counterclaimed in defense of its FBA and prevailed  
**Citation:** 34 C. F. R. §300.502(b)(2)(i); *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
- Issue Number 4:** Whether District lacks a Board Certified Behavioral Analyst on its staff  
**Held:** For the Respondent;  
**Citation:** 34 C. F. R. §300.156; *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
- Issue Number 5:** Whether District provided its personnel who will work with Student during the 2015-2016 school year with autism-specific or Student-specific training  
**Held:** For the Petitioner  
**Citation:** 34 C. F. R. 300.320; *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
- Issue Number 6:** Whether District failed to collaborate effectively with Petitioner and Parent  
**Held:** For the Respondent  
**Citation:** 34 C. F. R. §300.322; *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

**Issue Number 7:** Whether District failed to place Student in the least restrictive environment by indicating placement in a \*\*\* with a one-on-one paraprofessional

**Held:** For the Respondent

**Citation:** 34 C. F. R. §300.114; *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).