

DOCKET NO. 144-SE-0119

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

DECISION OF THE HEARING OFFICER

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Petitioner, “Student”, by next friend, “the Parent” filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) on November 14, 2018. Respondent in the complaint is Conroe Independent School District, (“the District,” “CISD,” or “Conroe ISD”). A second Request for Due Process Hearing was filed by Petitioner on January 15, 2019, and a Request for Due Process Hearing was filed by Respondent on January 22, 2019. On January 23, Conroe ISD filed a Motion to Consolidate the pending actions. The Motion to Consolidate was granted by this Hearing Officer on January 24, 2019, and the cases were consolidated under Docket No. 144-SE-0119. The hearing convened on April 16, 2019.

At all times during the proceedings, Petitioner was represented by Dorene Philpot, attorney at law. Respondent was represented by Amy Tucker, attorney at law.

Petitioner’s Claims

1. The District failed to provide Student with a Free and Appropriate Public Education (FAPE) during the applicable period.
2. The District failed to devise and implement appropriate Individualized Education Plans (IEPs) for Student.

3. The District violated Student's and Parent's procedural rights.
4. The District failed to conduct a psychological evaluation of the Student timely and appropriately.
5. The District violated Student's rights under other laws, including Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Title IX of the Education Amendments of 1972, and the Fourteenth Amendment to the United States Constitution.
6. The District denied Student a FAPE by failing to protect Student and/or family from bullying, harassment, discrimination and/or retaliation.

Petitioner's Requested Relief

Petitioner sought the following relief against the District for these alleged violations:

1. A finding of denial of FAPE.
2. A determination that the Student is eligible for special education and related services under the categories of ***, Specific Learning Disability, and Speech Impairment.
3. Reimbursement for costs of Multidisciplinary IEEs and other expenses (P. Ex. 26; Tr. at p. 168 and 329), including \$*** for the psychological evaluation by Dr. ***. (P. Ex. 26-2—3) and Parent's incurred mileage in order to obtain the evaluation. (P. Ex. 26-10); amounts paid or that will be paid for a multidisciplinary evaluation by providers of the Parent's choice in the areas of: *** planning, Functional Behavior Assessment, counseling, In-Home training, Parent Training, Parent counseling and assistive technology.
4. Services consistent with those recommended by Dr. ***. (Tr. at p. 478).
5. Reimbursement for other costs, including those for appropriate services at ***, summarized at (P. Ex. 26-1), expenses for past ***'s counseling in the amount of \$*** (P. Ex. 26-17) plus mileage of *** miles at the rate the District reimburses its own employees. (P. Ex. 26-29 and letter/spreadsheet supplied by agreement on 04-***-19).
6. Reimbursement of prospective costs that Parent will incur, including the costs of ***, consisting of \$*** for school year 2019-2020, plus mileage and any out-of-pocket costs for ***'s *** (***) program conducted on Mondays, Wednesdays and Saturdays to address Student's counseling needs, plus mileage. (P. Ex. 26).
7. Speech/language therapy: The remaining 30-minute session of speech therapy recommended by the 2019 *** speech evaluation but not covered through the provider of those services at ***, *** ISD, which offered only one 30-minute session. (P. Ex. 51; Tr. at p. 335).
8. Staff training in Child find, bullying prevention recommendations (P. Ex. 30-38 and P. Ex. 50-27), how to respond to *** at school, appropriate *** planning, and how to address any other violations of the law found by the Hearing Officer. (Tr. at p. 332).

9. Any compensatory services determined appropriate due to the District's denial of FAPE, in the amounts and types determined by the Hearing Office to compensate Student for violations of law.
10. Any other appropriate remedies and/or relief that the Hearing Officer deems appropriate.

Respondent's Defenses, Claim, and Requested Relief

The District asserted the following defenses, claim, and request for relief:

1. The defense of the Texas one-year limitations rule bars any claims of Petitioner that arose more than one year before the date that Petitioner filed for a due process hearing.
2. All of Petitioner's claims based on laws other than the IDEA should be dismissed.
3. The Parent should be ordered to allow the District to proceed with a reevaluation of Student in the absence of Parental consent.

Dismissal of Petitioner's Claims That Are Based on Laws Other Than IDEA

Because the authority of a Hearing Officer under the IDEA is limited to determinations relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child, the Hearing Officer, before the due process hearing was held, dismissed for lack of jurisdiction the claims by Petitioner that the District had violated the Fourteenth Amendment to the United States Constitution, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and Title IX of the Education Amendments of 1972 (see Petitioner's claims listed in number 5 above).

The Due Process Hearing

The due process hearing began as scheduled on April 16, 2019. The hearing was closed to the public, and the Student did not attend. Each party was allowed twelve hours for the presentation of argument and evidence at the hearing.

The presentation of evidence concluded on April 18, 2019. At the close of the evidence, Respondent made a motion on the record that the parties be allowed to submit written closing arguments and that the decision due date be extended a commensurate number of days to allow the parties additional time to submit their closing arguments. Petitioner agreed with Respondent's motion, and the Hearing Officer granted the motion. The date for submission of written closing arguments was continued to May 24, 2019 and the decision due date was extended to June 7, 2019.

On May 18, 2019, Respondent filed an unopposed Motion for Continuance of the deadline for filing of written closing arguments and an extension of the decision due date for a commensurate number of days due to a family emergency. Based on a finding of good cause for a continuance, the motion was granted by this Hearing Officer on May 20, 2019. As a result, the deadline for filing of written closing arguments was continued to June 7, 2019, and the decision due date was extended to June 21, 2019.

FINDINGS OF FACT

Based on a preponderance of the evidence admitted at the hearing, the Hearing Officer makes the following findings of fact.

1. Conroe Independent School District is a political subdivision of the State of Texas and a duly incorporated Independent School District.
2. Student is a ***-year old ***. At all relevant times, with the exception of October ***, 2018, through November ***, 2018, Student resided with Student's Parent within the jurisdictional boundaries of the District.
3. Student was determined eligible for special education services as Other Health Impaired (OHI) for Attention Deficient Attention Disorder (ADHD) on May ***, 2013. (R. Ex. 6-38). Student received special education services from the District from May ***, 2013 until Student withdrew from the District on October ***, 2018.
4. Beginning on October ***, 2018, and ending November ***, 2018, Student resided at ***, ***. (R. Ex. 23-1).
5. Parent was timely provided with notices of procedural safeguards beginning on September ***, 2012. The safeguards included information about the legal requirements at the time for students and parents concerning filing requests for due process, disagreeing at admission, review and dismissal committee (ARDC) meetings, independent education evaluations (IEEs), and private placements at public expense. (R. Ex. 13-1).
6. *** (Psychology Services) completed a Neuropsychology evaluation of Student on April ***, 2012. The report concluded that Student meets the *criteria for ADHD Combined Type* (***: ***, *and Mathematics Disorder* (***)) (P. Ex. 36).
7. In October 2012 the District conducted a Full Individual Evaluation (FIE) and determined that Student was not eligible for special education services. Parent disagreed with the District's FIE and received two Independent Educational Evaluations (IEEs) on the basis of *** disagreement. (R. Ex. 6).

8. The first IEE obtained by Parent, a psychological evaluation, was conducted by Dr. ***. (R. Ex. 5-1—35). On the WISC-IV, *** determined that *** full-scale IQ was in the low average range – an ***. (R. Ex. 5-18). He noted Student’s working memory score, a ***, was in the “extremely low range,” ranking in the 2nd-percentile range. Aware of Student’s medical and psychological treatment for a mood disorder, *** also assessed Student’s emotional and behavioral well-being but noted that Student did not present with mood difficulties at school. (R. Ex. 5—3). Dr. *** did not identify Student as a student with an *** (***), although he noted Student’s ***** for ADHD. He recommended the ARDC consider “emotional factors” in educational planning. (R. Ex. 5-13—14). Dr. *** concluded Student was eligible for special education under the categories of OHI and LD. (R. Ex. 5-13).
9. The second IEE obtained by Parent was a speech/language assessment conducted by ***. (P. Ex. 40) (Speech/Language, Communication, & Functional Emotional Development Assessment dated July ***, 2013). *** concluded that Student had a “mixed receptive-expressive language disorder,” and recommended speech therapy services “to facilitate the development of receptive, expressive, and pragmatic language.” (P. Ex. 40-9).
10. At an ARDC meeting on May ***, 2013, Student was determined by the District to be eligible for special education services as Other Health Impaired (OHI) due to ADHD. (Tr. at p. 17 (lines 22-25); at p. 18 (lines 1-5)).
11. The recommendations of the IEEs were thoroughly reviewed in ARDC meetings in September and November 2013, the beginning of Student’s ***-grade year. (P. Ex. 3-7—8; Tr. at p. 219 (lines 11-20)). Parent was accompanied by Mr. Louis Geigerman, an advocate, at the ARDC meetings. (Tr. at p. 219 (lines 11-14); Tr. at p. 444 (lines 6-11)). Changes were made to the Individualized Education Plan (IEP), including new accommodations to address Student’s cognitive processing deficits and a goal to address the social skills deficits identified by ***. (Tr. at p. 444 (lines 18-22)). The ARDC meeting ended in agreement, including the area of eligibility – OHI (ADHD). (Tr. at p. 444 (lines 6-21)).
12. Between *** grade and *** grade, Student experienced success at school with the special education services and supports in place. (R. Ex. 12-2; Tr. at p. 321 (lines 9-17)).
13. The District’s March ***, 2015, Review of Existing Evaluation Data (REED) noted Student was ***. (P. Ex. 42-3). Parent advised District of *** and mood issues on February ***, 2017 (P. Ex. 27-1) and on November ***, 2017. (P. Ex. 27-5).
14. Parent provided the District with copies of private evaluations of Student conducted by ***, ***, ***, ***, and ***. (P. Ex. 4-6; 10; 36; 39-41).
15. In February 2016 Student’s ARDC finalized the IEP developed during Student’s *** grade year. The Parent participated in the ARDC meeting and was aware in February 2016 of the provisions of Student’s 2016-2017 IEP. (R. Ex. 3-1—31).
16. The February 2016 ARDC considered age-appropriate *** assessments, information from school personnel and the Parent’s concerns for enhancing the education of the child. (R. Ex. 3-2). Student’s ***-grade teachers described Student as “an eager learner who asks

appropriate questions when [Student] does not understand the material being presented and [Student] contributes to classroom discussion.” (R. Ex. 3-3). They further described Student as “cooperative and compliant, follows classroom rules, and comes to class prepared.” (R. Ex. 3-3; 3-6; 3-27).

17. The IEP devised on February ***, 2016 determined that Student’s disability affects Student’s involvement and progress in the general education in the areas of language arts, math, social studies, and science. (P. Ex. 32-9).
18. To address Student’s learning needs in the areas determined affected by Student’s disability, the February 2016 ARDC determined that Student would receive an accelerated instruction plan that would include “targeted instruction during the school day to address deficit areas.” (R. Ex. 3-5). Annual goals and objectives were developed in all core academic areas. Because Grade-level TEKS “exceed [Student’s] present levels of educational performance,” the ARDC recommended instruction on a modified curriculum in the resource classroom for core academics. (R. Ex. 3-12—18 (goals); R. Ex. 3-24—25 (LRE consideration, schedule)). Accommodations addressing assignments, instruction, materials and behavior were recommended. (R. Ex. 3-20—21).
19. The February 2016 ARDC utilized *** assessments, parent information, teacher, and student information. (R. Ex. 3-6). Present levels of performance related to Student’s ***/objectives, *** goals, *** goals, and *** experience goals were developed. (R. Ex. 3-1—3-2). Student’s strengths and needs related to *** were identified. (R. Ex. 3-6). Student’s IEP would be utilized as Student’s personal *** and included a proposed *** plan of study to achieve ***. (R. Ex. 3-7—3-2).
20. Despite targeted instruction in Student’s areas of deficit, Student was unsuccessful on two administrations of the STAAR examination. At the Parent’s request, an ARDC met on May ***, 2017 and agreed to exempt Student from a third administration of the STAAR examination. (R. Ex. 2-1—6).
21. ***, Assistant Principal at ***, testified that “with special ed kids that have taken the STAAR test and failed that test more than one time, despite interventions, the ARD Committee has the ability to promote the child despite the child’s not having met the STAAR standards.” (Tr. at p. 132 (lines 14-21)).
22. Student mastered all of Student’s *** grade IEP goals with grades in all core academic classes between *** and ***. (R. Ex. 12-2).
23. The IEP in effect on November ***, 2017 (during Student’s *** grade school year) was the February ***, 2017 IEP developed during Student’s *** grade year. (R. Ex. 3). The ARDC that devised the IEP started with a thorough review of Student’s present levels of academic and functional performance. (R. Ex. 3-1—4). The ARDC considered age-appropriate *** assessments, information from school personnel, and the Parent’s concerns for enhancing the education of Student. (R. Ex. 3-2).

24. The IEP was based on the student's present levels of academic achievement and functional performance. Academic goals and objectives were developed. Due to Student's failures on the STAAR examinations, the ARDC determined that the accelerated instruction plan would include "targeted instruction during the school day to address deficit areas." (R. Ex. 3-5). To that end, annual goals and objectives were developed in all core academic areas. Recognizing that grade-level TEKS "exceed Student's present levels of educational performance," the committee considered the least restrictive environment factors for the student's educational placement. The ARDC recommended instruction on a modified curriculum and placement in the resource classroom for core academics, all other classes were in the regular education classroom. (R. Ex. 3)
25. All of Student's *** grade teachers described Student as a very positive person who worked diligently in class, advocated for ***self when needed, and followed all instructions. (Tr. at p. 428 (lines 18-21) (***); Tr. at p. 433 (lines 18-20); Tr. at p. 434 (lines 6-11); Tr. at p. 438 (lines 1-8) (***); Tr. at p. 440 (lines 23-25); Tr. at p. 441 (lines 1-7)) (***); Tr. at p. 489 (lines 8-25) (***); Tr. at p. 511 (lines 19-25); Tr. at p. 512 (lines 1-5) (***); Tr. at p. 519 (lines 23-25); Tr. at p. 520 (lines 1-10) (***); Tr. at p. 529 (lines 11-25); Tr. at p. 530 (lines 1-11) (***)). Student passed the *** STAAR test and was close to passing ***. (R. Ex. 10) (noting mastery of IEP goals in ***); Tr. at p. 507 (lines 3-6) (teacher regarding passing of *** STAAR); Tr. at p. 532 (lines 5-18)).
26. Student was ***. (Tr. at p. 173 (lines 21-24)).
27. In the first-half of *** grade, Student's grades for the first semester ranged from a *** (***) to a *** (***). (R. Ex. 12-2).
28. On November ***, 2017, Student received a disciplinary referral, Student's first one ever, (Tr. at p. 566 (lines 17-26)) related to Student's behavior when a substitute teacher was present. (R. Ex. 20-4) (referral for excessive talking, arguing with another student and eating in class); R. Ex.1-26; P. Ex. 27-8).
29. On November ***, 2017, the Parent informed Student's teachers that Student was under the care of a new psychiatrist who was trying to ***. (R. Ex. 20-1).
30. Parent sent an email on November ***, 2017, informing the District that Student was having significant mental health issues. (P. Ex. 67-8). Student had only one disciplinary referral during the 2017-18 school year and did not present any indications of *** or mental health difficulties at school. (Tr. at p. 567 at p.567 (lines 1-21)).
31. The ARDC met on December ***, 2017, for Student's annual ARD meeting. Student's 3-year reevaluation was due. The ARDC conducted a Review of Existing Evaluation Data (REED). The purpose of a REED is to consider whether additional data is needed to determine Student's disability condition or whether "any additional or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum." (R. Ex. 1-30). Utilizing over 10 sources of data to conduct a consideration of Student's needs,

the ARD committee, which included Parent, concluded that no additional data was needed, and no new evaluations were requested because the historical data was consistent with Student's current data and Parent did not request new evaluations. (R. Ex.1-35).

32. Parent was notified verbally and in writing that the Parent had a right to request an evaluation "at any point." (Tr. at p. 546 (lines 14-18); R. Ex. 1-36).
33. The ARDC reviewed Student's *** goals, discussed Student's *** strengths and needs and informed the Parent of *** resources (R. Ex. 1-10).
34. Student failed to meet the requirements of the STAAR *** examinations administered (***) in May 2018 at the end of Student's *** grade year. (P. Ex. 11-4).
35. In May 2018, to avoid ***." (Tr. at p. 307 (lines 18-25)); (Tr. at p. 308 (lines 9-12)) (Parent explaining Student "****). ***. (R. Ex. 20-9).
36. Petitioner's expert, Dr. ***, did not appear concerned about the *** incident in isolation because "sometimes people try to get out of things." (Tr. at p. 386 (lines 12-21)).
37. Beginning on August ***, 2018, Student made ***. (R. Ex. 14-1—14-2) (noting additional visits on September ***, 2018 and September ***, 2018). On September ***, 2018, the nurse called the Parent to discuss her concern. (R. Ex. 14-2). In a conversation with the nurse at school, the Parent explained that Student was diagnosed with *** and was having significant *** issues for which the Parent was seeking immediate placement at ***. (R. Ex. 14-2).
38. Parent informed the school counselor of the same information (Tr. at p. 651 (lines 13-19)).
39. Parent testified that the primary source of Student's anxiety was ***. (Tr. at p. 174 (lines 14-25)).
40. On September ***, 2018 Student became disruptive and disrespectful during Student's *** class. When confronted by the teacher, Student ***. The teacher emailed the Parent about the problem. (P. Ex. 28-6). The teacher referred Student to the school counselor. (R. Ex. 19-4; Tr. at p. 608 (lines 23-25)).
41. The *** grade counselor, Ms. ***, first met with Student on September ***, 2018 after receiving an email from Student's *** teacher about Student being upset and acting out in class. She was read an email from Parent to the *** teacher noting Parent's concerns, including the Student's ***, and allegations of bullying. (Tr. at p. 649 (lines 1-12)). Student was *** when Student met with the counselor and when questioned about specifics relating to the alleged bullying, Student did not reveal any information or respond to the counselor. The counselor informed Student that the counselor took bullying very seriously and that Student should let her know if Student encountered any bullying. (Tr. at p. 657 (lines 15-22)).

42. On September ***, 2018 and October ***, 2018, Student's psychologist, Dr. ***, wrote letters recommending *** placement of Student for *** purposes. Dr. *** wrote that Student was diagnosed with ***, had recently developed symptoms of ***, and was experiencing large mood fluctuations. (P. Ex. 5).
43. On or about September ***, 2018, Student reported an alleged *** occurring on ***, 2018, at school by another student attending the school. (Tr. at p. 192 (lines 14-16)).
44. Student's last day of attendance at *** was September ***, 2018. (R. Ex. 19-9).
45. Parent withdrew Student from the District on October ***, 2018. (R. Ex. 17-1).
46. October ***, 2018, Student was admitted to ***, a *** (***) in ***. (P. Ex. 6-27).
47. *** provided Student primarily with *** service to address Student's *** issues. Student was also provided 1,800 minutes weekly specialized academic instruction, *** minutes weekly *** services, and *** minutes weekly *** services. (P. Ex.6-26).
48. On October ***, 2018, Parent sent an email to the District requesting that the District schedule an ARD for Student's *** from *** back to the District and to add suggestions from the *** to Student's IEP. (P. Ex. 28-22). On October ***, 2018, Parent spoke with ***, CISD diagnostician, who informed Parent that she was not sure if the District could convene an ARDC meeting at that time because Student was still enrolled at the *** and Parent was unsure when Student would return home. Ms. *** inquired when Student was expected to return, asked about the types of services the *** was recommending and asked Parent to send the District information about the services recommended by the ***. (Tr. at p. 667 (lines 11-25)).
49. The Parent contacted the *** and requested a list of recommended services but did not provide the district with the recommendations. (R. Ex. 22-27) (Tr. at p. 668 (lines 2-6)).
50. The District did not provide Parent with prior written notice (PWN) that the District would not schedule an ARD as requested by Parent on October ***, 2018. (Tr. at p. 185 (lines 4-7)).
51. On November ***, 2018, CISD received a request from Parent for an IEE. (P. Ex. 28-24). On November ***, 2018, Parent filed a request for a due process hearing.
52. The District did not send prior written notice to Parent explaining why the District was not going to grant the IEE requested by Parent. (Tr. at p. 77 (lines 15-23)).
53. Dr. ***, a Licensed Psychologist with Psychological Solutions in *** performed a psychological evaluation of Student on November ***, 2018 during the period of time that Student was in ***. The report recommended continued *** placement for student. (P. Ex. 4). The report was provided to the District on November ***, 2018. (P. Ex. 4-1).

54. Student was discharged from *** at *** in *** on November ***, 2018 and returned home to reside within the boundaries of Conroe ISD.
55. From November ***, 2018, through January ***, 2019, Student enrolled in *** (***). The program was held Monday through Friday 9:00-4:00 and on Saturday from 9:00 -2:00. (P. Ex. 10)
56. The District learned on November ***, 2019 that Student was *** and that Student was not receiving educational services at ***. The Director in an email to the Parent on November ***, 2019, offered to facilitate Student's having school work at *** to give Student an opportunity to ***. (R. Ex. 16-1).
57. On November ***, 2018, December ***, 2018, and January ***, 2019, the District offered to perform a FIE of Student. On each occasion, Parent refused the offers (R. Ex. 16-1; 16-15; 16-21) and accessed private assessments. (P. Ex. 14; P. Ex. 2).
58. On January ***, 2019, the District filed a Request for Due Process Hearing requesting permission to conduct a reevaluation of Student in the absence of Parental consent. The District claimed that a reevaluation of Student was necessary due to Student's changed circumstances. On January 24, 2019, *Student v. Conroe ISD* Docket No. 144-SE-0119 and *Conroe ISD v. Student* Docket No. 150-SE-0119 were consolidated under Docket No. 144-SE-0119.
59. On February ***, 2019, Student was *** where Student continues to be enrolled. Student attends the ***. (P. Ex. (10).
60. Student's ***, ***, ***." (P. Ex. 7-28 and 29).
61. At the resolution session held on November ***, 2018, the District offered a reevaluation of Student's educational needs and an ARD meeting to consider the private evaluation the Parent provided to the District's Special Education Director at the resolution session. (R. Ex. 16-1; Tr. at p. 106 (lines 4-22) (Cannon)).
62. After the Parent refused to give consent to the District's November ***, 2018, request to conduct a reevaluation of Student, the Parent obtained an independent psychological evaluation at *** own expense performed by Dr. ***, Ph. D., in December 2018 and January and March 2019. The report, which was delivered on March ***, 2019, concluded that Student should be considered a student who qualifies for special education and related services as a student with other health impairment (OHI) as a result of Student's attention-deficit hyperactivity disorder (ADHD), specific learning disabilities in math and reading comprehension, and *** because Student presents with the following characteristics over a long period of time and to a marked degree that adversely affects Student's educational performance: a) An inability to learn that cannot be explained by intellectual, sensory, or health factors; b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; c) Inappropriate types of behavior or feelings under normal circumstances; d) A general pervasive mood of unhappiness or depression; e) A tendency to develop physical

- symptoms or fears associated with personal or school problems. (P. Ex. 2-26-27). Dr. *** also recommended a speech and language assessment because of Student's significant problems with language processing and listening comprehension. (P. Ex. 37-17).
63. Dr. *** was presented as an expert witness whose qualifications as an expert witness were not challenged. (Tr. at p. 345 (lines 20- 25)).
 64. Parent was charged \$*** for the independent psychological evaluation. (P. Ex. 26-1).
 65. On February ***, 2019, Student enrolled in, and continues to attend, ***, a private school located in ***, Texas. (P. Ex. 8-1).
 66. The total amount paid by Parent to *** for Student's enrollment in the spring and summer 2019 sessions was \$***. (P. Ex. 26-1).
 67. *** serves *** graders. *** focuses on students who have learning differences, neurodevelopment disorders, and problems with emotional functioning that impact social, academic, and critical thinking skills. (P. Ex. 8-17). *** is not a medical facility or drug rehabilitation facility. (Tr. at p. 264 (lines 2-10)). Class sizes are *** students grouped by ability in language arts and math classes. (Tr. at p. 260 (lines 19-25)). The schedule is nine periods of classes of 45 minutes each, including academics, electives, and a social communications class of 10 students taught by an SLP three times each week. (Tr. at p. 264 (lines 19-25); Tr. at p. 255 (lines 2-10)). *** students ***. (Tr. at p. 265 (lines 20-24)).
 68. The Clinical Evaluation of Language Fundamentals, 5th Edition (CELF-F) was administered to Student by ***, Speech Language Pathologist employed at ***, on April ***, and April ***, 2019. (P. Ex. 51). The assessment determined that Student presented with a severe receptive language disorder which contributed significantly to Student's difficulty attending, following directions, and applying principles of what Student is taught. (P. Ex. 51-7). The SLP recommended speech language therapy specifically targeting receptive language to remediate Student's weakness.
 69. The District's expert testified that it was her opinion that Student's final scores on the CELF-5 administered by *** were not valid because the standardization procedures weren't followed. (Tr. at p. 716 (lines 4-9)).
 70. ***, the District's Assistant Director of Special Education for Special Programming, oversees all of the District's behavior specialists, BCBAs, and behavior instructional coaches. She coordinates and collaborates services with campuses, and provides support and training for campuses and staff. (Tr. at p. 683 (lines 12-18)). Ms. *** visited *** in early 2019 to look at services and supports that *** offers for different needs that The District might have. (Tr. at p. 686 (lines 1-7)).
 71. Ms. *** stated that *** provides small group instruction, has a low student-to-staff ratio, provides support, a lot of the supports are visual, has a smaller building, and provides accommodations and modifications to individual students. (Tr. at p. 687-688 (lines 24-25)

and lines 1-5)). Ms *** did not see any programming provided at *** that CISD could not provide. (Tr. at p. 688 (line 21)).

72. Ms *** is familiar with the educational programming recommendations made for Student by Dr. *** in his report. CISD can provide the educational programming recommended by Dr. ***. (Tr. at p. 688-689 (lines 22-25 and 1-3 and line 16)).

DISCUSSION

I. The Texas One-Year Statute of Limitations

Respondent asserts the defense of statute of limitations. Texas has a one-year limitations period for filing due process hearing litigation. 34 C.F.R. §300.511; 19 Tex. Admin. Code 89.1151. There are two exceptions to the one-year period. Petitioner pled one of the two exceptions: the District withheld information that was required to be given and/or made misrepresentations to the family. Petitioner presented no evidence to support a finding in Petitioner's favor. The one-year statute of limitations therefore applies in this matter. As a result, any claims arising before November ***, 2017, are time-barred.

II. The Nature of the Dispute

Petitioner asserts several claims under IDEA that allegedly arose during the relevant one-year period. Petitioner claims that Student was denied FAPE because Student's December ***, 2017 IEP was not appropriate. In addition, Petitioner claims that before Parent withdrew Student in October 2018, District should have evaluated Student for *** and a speech or language impairment and should have revised Student's IEP to include special education and related services to address *** and speech and language impairment. Petitioner further claims that Student was denied FAPE because of student bullying.

Contrary to Petitioner's argument, this is not a Child find case. Student was identified and determined to be eligible for special education and received services from 2013 until Parent withdrew Student from the District.

In its counterclaim, Respondent seeks an order permitting it to reevaluate Student, based on changed circumstances, without Parental consent.

III. The Governing Legal Standards

A. Burden of Proof

Petitioner has the burden of proof to establish the inappropriateness of the educational plan proposed by CISD. As the Supreme Court has explained, “[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Applying this principle, the Fifth Circuit held that, “the IDEA creates a presumption in favor of a school system’s educational plan, placing the burden of proof on the party challenging it.” *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5th Cir. 2003). Consequently, Petitioner bears the burden of proof to overcome the presumption that the plan proposed by CISD was appropriate. *See id.*

B. FAPE

The IDEA requires that all children with disabilities who are in need of special education and related services are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. Nothing in IDEA requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of the IDEA and who, by reason of that disability, needs special education and related services is regarded as a child with a disability. 20 U.S.C. §1414(a)(3)(a)(B).

The purpose of the IDEA is to ensure all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and ***. 20 U.S.C. § 1400(d). A school district is responsible for providing a student with specially designed personalized instruction with sufficient support services to meet the student’s unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child’s IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

The IDEA requires more than a diagnosis of a disability. It requires that a child exhibit symptoms of a qualifying disability and exhibit them to such a degree that they interfere with the child’s ability to benefit from the general education setting. *Student v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-

152-SS (W.D. Tex. Filed Aug. 10, 2007); *Alvin Indep. Sch. Dist. V. A.D.*, 46 IDELR 221 (5th Cir. 2007).

C. Standards of IEP Appropriateness

The Fifth Circuit has addressed the meaning of the *Rowley* standard in light of the Supreme Court's recent decision in *Endrew F. v. Douglas Cnty. Sch. Dist. Re-1.*, 137 S. Ct. 988 (2017). While *Rowley* sets the floor of opportunity for an eligible student, the Fifth Circuit concluded that the *Endrew F.* decision does not displace or differ from the Circuit's own standard set forth in *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). This case must be analyzed in accordance with the holding in *Michael F.*

The Court in *Michael F.* determined that a student's IEP is reasonably calculated to provide meaningful educational benefit when:

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

The Fifth Circuit in *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 397 (5th Cir. 2012), explained that the focus of the IDEA is on the child's "whole educational experience, and its adaptation to confer 'benefits' on the child." In *Endrew F.*, the Supreme Court held schools must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances. See 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV). Every IEP begins by describing a student's present level of achievement, including explaining "how the child's disability affects the student's involvement and progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa). It then sets out "a statement of measurable annual goals ... designed to ... enable the child to be involved in and make progress in the general education curriculum," along with a description of specialized instruction and services that the child will receive. 20 U.S.C. §§ 1414(d)(1)(A)(i)(II), (IV).

D. Standards for Required Reevaluation

A public agency must ensure that a reevaluation of each child with a disability is conducted if the agency determines that the student's educational or related services needs, including improved academic achievement and functional performance of the child warrant a reevaluation or if the child's

parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, but must occur at least once every three years, unless the Parent and the agency agree that a reevaluation is unnecessary. 34 C.F.R. §300.303.

IV. Petitioner Did Not Prove That Student’s December *, 2017 IEP Was Not Appropriate.**

The IEP at issue in this matter is Student’s December ***, 2017 IEP. Student’s educational program under the IEP complied with the legal standards of appropriateness set forth in *Andrew F.* and with the four factors set forth in *Michael F.*

1. Individualized On the Basis Of The Student’s Assessment And Performance

The evidence showed that Student’s IEP was devised by a properly constituted ARD committee, including the Parent. On December ***, 2017, the ARDC conducted a REED of Student and determined that no additional data were needed. The Parent did not request further evaluation of Student. The IEP contained short-term objects for Student in each core academic curriculum area, accommodations to meet Student’s special education needs in all classes, accommodations for the Student during administration of the STAAR test, PLAAFs, measurable annual and a schedule of services describing the special instruction and services provided to Student. The IEPs and overall educational programming provided Student a FAPE during the relevant time period and were consistent with the requirements of *Andrew F.*

2. Provided in a Coordinated and Collaborative Manner by Key Stakeholders

The December ***, 2017 IEP was devised by the required members of the ARD committee, including the Parent who was accompanied by an advocate. The committee conducted a review and revision of the IEP, and all members of the ARDC, including the Parent, signed the document indicating their agreement with the provisions of the IEP. The Parent was informed both verbally and in writing that she had the right to request additional evaluation “at any point.” The parent did not request additional evaluation. (R. Ex. 1-36).

3. Least Restrictive Environment

While a student in the District, Student received special education services in core curriculum classes. Student was with the general school population during all other classes, extracurricular

activities, lunch, and bus transportation to and from school. Student's placement satisfied IDEA requirements for least restrictive environment.

The evidence shows that each of the *** where the Parent placed Student after withdrawing Student from the District served students who had learning disabilities, *** or ***, or mental health issues. The *** and private placements provided by the Parent for Student were not proven to be the least restrictive environment for Student.

4. Positive Academic and Non-academic Benefits Demonstrated

The credible evidence at the hearing showed that the District's provision of special education to the student under the December ***, 2017 IEP was reasonably calculated to, and did, result in meaningful education benefits to Student. Student achieved both academic and non-academic progress, met the goals and objectives set forth in the IEP, and made progress in the areas of the core curriculum.

The evidence does not support Petitioner's claim that Student was denied FAPE because Student's December ***, 2017 IEP was not appropriate.

V. Petitioner Did Not Prove That The District Failed To Timely And Properly Reevaluate Student or That Procedural Violations Denied Student FAPE.

Petitioner asserts Student's behaviors interfered with the Student's capacity to benefit from educational programming. The evidence showed that prior to early September 2018, Student did not show any behaviors at school that suggested Student was suffering from a psychological or *** that interfered with Student's educational progress. Between the beginning of the 2018-2019 school year and September ***, 2018, Student experienced *** and being disrespectful in class on September ***, 2018, but when called to talk to the grade level counselor, Student did not explain to her the reason for the outburst. The Parent informed the District on September ***, 2018 that due to *** issues she was seeking a *** for the Student. On September ***, 2018, Student's psychologist wrote a letter referring Student for ***, stating that Student needed *** as soon as possible because Student was in desperate need of a safe place where Student could have Student's *** to achieve emotional stability. Student stopped attending school September ***, 2018, and, according to communications from the Parent, Student was having mental health problems related to *** issues and to an incident occurring on ***, 2018 at school. The Parent

withdrew Student from the District on October ***, 2018 and enrolled Student in a *** in *** on October ***, 2018.

On October ***, 2018, Parent sent an email to the District requesting that the District schedule an ARD for Student's *** from *** back to the District and to add suggestions from the *** to Student's IEP. On October ***, 2018, Parent spoke with ***, CISD diagnostician, who informed Parent that she was not sure if the District could convene an ARD at that time because Student was still enrolled at the *** and Parent was unsure when Student would return home. Ms. *** inquired when Student was expected to return and the about the types of services the *** was recommending and asked Parent to get more information about the services recommended by the ***. On October ***, 2018, the Parent contacted the *** to request a list of the services recommend for Student. The Parent never forwarded the recommendations of the *** to the District. The District did not schedule the ARDC meeting and did not provide Parent with prior written notice (PWN) that the District would not schedule an ARD as requested by the Parent on October ***, 2018.

Student returned to the geographical boundaries of the District on November ***, 2018, but did not enroll in the District. Instead, on November ***, 2018, the Parent enrolled Student in a ***, which is located within the geographical boundaries of the District. The Parent did not inform the District of Student's return to the District until the resolution session on November ***, 2018. At that time, the Special Education Director offered to schedule an ARDC meeting to consider education services for Student at ***. The Parent denied the offer for the ARDC meeting and education services.

The District made a concerted attempt at the November 30, 2018 resolution session, in an email to the Parent on December ***, 2018, and in a second resolution session followed by an email on January ***, 2019, to obtain the Parent's consent to allow the District to conduct a comprehensive full individual evaluation of Student and for the Parent to participate in an ARDC meeting to review and revise Student's IEP. On January ***, 2019, the District filed a counterclaim to obtain permission to conduct a reevaluation of Student in the absence of Parental consent based on Student's changed circumstances.

Based on the evidence, the District did not have sufficient time or the opportunity to gather and analyze information, collaborate with Parent, and begin the process to reevaluate Student before Student was withdrawn from the District. Moreover, when the District learned Student had

returned to the geographical boundaries of the District, the District acted within a reasonably prompt time to attempt to hold an ARDC meeting and to offer a reevaluation.

Accordingly, Petitioner's claim that the District failed to reevaluate Student and determine whether Student needed psychological services was not proven. While it is true that the District committed a procedural violation of the IDEA by failing to provide Parent with prior written notice of the reason for failing to schedule an ARD as requested by the Parent, the violation did not result in a denial of FAPE to Student because the District was not able to reevaluate or provide services to Student after Student was withdrawn and removed from the District, was not able to obtain Parent's consent even after being informed, in November 2018, that Student had returned from the ***, and had not received the recommendations from the *** that the District had requested from the Parent on October ***, 2018 .

VI. Petitioner Did Not Prove That Bullying Caused A Denial Of FAPE.

Although Petitioner alleges CISD did not protect Student from bullying, harassment, discrimination and/or retaliation, the evidence does not support the conclusion that Student was the victim of such actions, much less that the District failed to respond to any such reports. The only teacher who testified that she received a report of bullying was Student's *** grade *** teacher who referred the allegation to the counselor. The counselor immediately called Student to her office to discuss the issue. Student did not open up about the allegation but was soon withdrawn from school and enrolled in ***. Although the Parent testified to concerns during Student's *** that she characterized as "bullying," the evidence does not show that it impacted Student's educational progress. Petitioner therefore failed to prove that bullying caused a denial of FAPE.

VI. Petitioner Did Not Prove That Petitioner Is Entitled To Reimbursement For Private * Placements.**

The evidence shows that Student's placements at *** and *** *** were primarily for *** issues, and unrelated to Student's educational program. The Fifth Circuit has explained that the IDEA exists to ensure students receive a "meaningful education;" it does not exist "to shift the costs of treating a child's disability to the public school district." *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d at 300 (5th Cir. 2009). To that end, when a *** is primarily aimed at

addressing a child's *** difficulties, as it was for Student, the public school is not responsible for the placement.

VII. Petitioner Did Not Prove Petitioner Is Entitled To Reimbursement for Placement of Student At * Private School**

Petitioner argues that the District's IEP in place when Student returned to Texas from the *** in *** was inappropriate and Student is therefore entitled to reimbursement for expenses for private school. The IDEA permits the Hearing Officer to award reimbursement of private school expenses if the district did not make a FAPE available to the child in a timely manner prior to the child's enrollment in the private school. 20 U.S.C. §1412(a)(10)(C)(ii); 34 C.F.R. §300.148(c). To be eligible for reimbursement, the Parent must establish that 1) the school denied the child a FAPE, and 2) the private placement is appropriate. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d at 300 (5th Cir. 2009). Petitioner did not prove that the District had not made FAPE available to Student prior to Student's enrollment in private school.

VIII. Petitioner Did Not Prove The Right To An Independent Educational Evaluation Paid For By The District.

A parent has a right to an Independent Education Evaluation (IEE) at the District's expense if the Parent disagrees with the results or recommendations of the District's own evaluation. 34 C.F.R. §300.502(b)(1). In this case, on the day before Petitioner filed for a due process hearing, the Parent requested that the District provide an IEE of Student conducted by Dr. ***. Before Dr. *** began his evaluation, the Parent refused to consent to the District's request to conduct a Full Individual Evaluation (FIE) of Student. The request for an IEE was premature to the extent it was made before the District conducted its own FIE. As a result, there was no District IEE for Parent to disagree with. Parent therefore is not entitled to reimbursement for the costs of Dr. ***'s IEE.

CONCLUSIONS OF LAW

1. Petitioner's claims arising before November ***, 2018 are barred by the Texas one year statute of limitations rule as applied in Texas. 34 C.F.R. §300.507(a)(2); 19 Tex. Admin. Code §89.1151(c).

2. Respondent met its burden of proving that to the extent Student seeks to enroll in CISD and receive a FAPE, CISD is entitled to reevaluate Student over the Parent's objection. 34 C.F.R. §300.300(c)(1)(ii).
3. Petitioner failed to meet Petitioner's burden of proving that the District failed to conduct timely and proper re-evaluations of Student and failed to conduct evaluations in all areas of suspected need.
4. Petitioner failed to meet Petitioner's burden of proving that Respondent failed to develop an appropriate IEP for Student. 34 C.F.R. §300.320.
5. Petitioner did not meet Petitioner's burden of proving that the District failed to provide a FAPE.
6. Petitioner met Petitioner's burden of proving that Respondent failed to schedule an ARD as requested by the Parent on October ***, 2018 and failed to provide Parent with prior written notice of the reason(s) that the ARD meeting would not be scheduled as requested. 19 Tex. Admin. Code §89.1050(e)(1)(2). However, Petitioner failed to meet Petitioner's burden of proving that this procedural violation constituted a denial of FAPE. 34 C.F.R. §300.513(a)(2).
7. Petitioner is not entitled to reimbursement for expenses of placement of Student at private school.
8. Petitioner is not entitled to reimbursement for expenses of placements of Student at *** or *** ***,
9. Petitioner is not entitled to reimbursement for costs of Dr. ***'s IEE.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and Discussion,

IT IS HEREBY ORDERED THAT:

1. The District shall be permitted to conduct a Full Individual Evaluation of Student in the absence of Parental consent should Student enroll in Conroe Independent School District.
2. The District shall convene an ARDC meeting in August 2019 prior to the beginning of the 2019-2020 school year. Based on the District's FIE of Student, and considering the IEEs obtained by the Parent since November ***, 2018, the ARDC shall devise an IEP for Student that includes each of the elements set forth at 34 C.F.R. §300.320(a) and (b).

3. The ARDC shall complete a Functional Behavior Assessment (FBA) of Student and develop a Behavior Intervention Plan (BIP) for Student.
4. Any and all other requested relief is **DENIED**.

SIGNED on the 21st day of June, 2019.

Sandy Lowe
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 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) and (3)(A) and